

Oneida Nation

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
David P. Jordan, Councilmember
Jennifer Webster, Councilmember

LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2nd Floor Norbert Hill Center

August 19, 2015 9:00 a.m.

- I. Call To Order and Approval of the Agenda**
- II. Minutes to be approved**
 - 1. August 5, 2015 LOC Meeting Minutes
- III. Current Business**
 - 1. Administrative Procedures Act Emergency Extensions
 - 2. Election Board Bylaw Amendments
 - 3. ONGO Amendments
 - 4. Comprehensive Policy Governing Boards, Committees and Commissions Amendments
 - 5. Rulemaking Law
 - 6. Back Pay Policy Amendments
 - 7. Petition: Cornelius-4 Resolutions (Investigate 7 Gens, 7 Gens Return Money, Freedom of Press, Impose Tax on OBC)
 - 8. Oneida Flag Code
- IV. New Submissions**
 - 1. Compliance and Enforcement Law
 - 2. Tribal Secured Transactions Law
- V. Additions**
- VI. Administrative Updates**
 - 1. LOC Priority List Update
- VII. Executive Session**
- VIII. Recess/Adjourn**

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LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center
August 5, 2015 9:00 a.m.

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

EXCUSED: Jennifer Webster

OTHERS PRESENT: Candice Skenandore, Krystal John, Douglass McIntyre, Taniquelle Thurner, Rae Skenandore, Jo Anne House, Rhiannon Metoxen, Danelle Wilson, Leyne Orosco, Cheryl VanDenBerg, Mitch Metoxen, Don White, Norbert Hill, Jr., Paula Rippl, Bonnie Pigman, Layatalati Hill, Brad Graham, Bill Graham

I. Call To Order and Approval of the Agenda

Brandon Stevens called the August 5, 2015 Legislative Operating Committee meeting to order at 9:02 a.m.

Motion by Tehassi Hill to approve the agenda; seconded by David P. Jordan. Motion carried unanimously.

II. Minutes to be approved

1. July 15, 2015 LOC Meeting Minutes (00:53-2:05)

Motion by David P. Jordan to approve the July 15, 2015 Legislative Operating Committee meeting minutes with the noted revision; seconded by Tehassi Hill. Motion carried unanimously.

III. Current Business

1. Tribal Hearing Bodies/Administrative Court (02:05-06:35)

Motion by Tehassi Hill to accept the Tribal Hearing Bodies/Administrative Court Action Plan and forward it to the Oneida Business Committee for its consideration; seconded by David P. Jordan. Motion carried unanimously.

Motion by Fawn Billie to direct the Oneida Child Protective Board, the Oneida Election Board, the Oneida Environmental Resource Board, the Oneida Land Commission, the Oneida

Personnel Commission, the Oneida License Commission and the Oneida Trust/Enrollment Committee to retrieve their financial expenses for the last three (3) years (including, but not limited to, the amount of stipends received, training costs and other expenses) and turn the information over to the Oneida Business Committee to help in evaluating which entities should retain their hearing body authority; seconded by Tehassi Hill. Motion carried unanimously.

2. Election Board Bylaws Amendments (06:35-10:49)

Motion by Fawn Billie to defer the Election Board Bylaw Amendments to the next Legislative Operating Committee meeting to allow the sponsor to work with the Board to resolve the remaining issues; seconded by David P. Jordan. Motion carried unanimously.

3. Oneida Flag Policy (10:49-13:14)

Motion by Tehassi Hill to defer the Oneida Flag Policy for a legislative analysis and a fiscal impact statement and bring back in two weeks; seconded by David P. Jordan. Motion carried unanimously.

4. GTC Meetings Law (13:14-18:15)

Motion by David P. Jordan to defer the GTC Meetings Law to a work meeting; seconded by Fawn Billie. Motion carried unanimously.

5. Higher Education (18:15-51:04)

Motion by David P. Jordan to direct the Legislative Reference office to makes the noted revisions and to defer the Oneida Higher Education Scholarship (Law), as revised, for a legislative analysis and a fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.

6. Petition: Cornelius-4 Resolutions (Investigate 7 Gens, 7 Gens Returns Money, Freedom of Press, Impose Tax on OBC) (51:04-51:49)

Motion by David P. Jordan to accept the status update memorandum regarding the Petition: Cornelius- 4 Resolutions (Investigate 7 Gens, 7 Gens Returns Money, Freedom of Press, Impose Tax on OBC) as FYI and forward to the Oneida Business Committee; seconded by Fawn Billie. Motion carried unanimously.

7. Petition: Constitution Amendments in regards to Membership (51:49-56:26)

Motion by David P. Jordan to forward the status update memorandum and the research memorandum regarding Petition: Constitution Amendments in regards to Membership to the Oneida Business Committee and request that the Tribal Secretary provide a final recommendation at the September 9, 2015 OBC meeting and that the Tribal Secretary consider the attached research memorandum in making the said recommendation; also assigning Brandon Stevens as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

8. Petition: Powless-Per Capita Payments (56:26-57:48)

Motion by David P. Jordan to accept the statement of effect pertaining to Petition: Powless-Per Capita Payments and to forward it to the Oneida Business Committee for its consideration; seconded by Fawn Billie. Motion carried unanimously.

IV. New Submissions

1. Garnishment Ordinance Amendments (57:48-1:04:23)

Motion by David P. Jordan to add the Garnishment Ordinance Amendments to the active files list with himself as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

2. Cemetery Law Amendments (1:04:23-1:06:05)

Motion by David P. Jordan to add the Cemetery Law Amendments to the active files list with himself as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

V. Additions

VI. Administrative Updates

1. Krystal John Travel Request (1:06:05-1:07:25)

Motion by David P. Jordan to accept the travel memo regarding Krystal John Travel Request as FYI noting that an Oneida Environmental Health and Safety grant will be covering the travel costs; seconded by Tehassi Hill. Motion carried unanimously.

2. LRO Budget (1:07:25-1:09:34)

Motion by David P. Jordan to ratify the changes to the Legislative Operating Committee budget; seconded by Fawn Billie. Motion carried unanimously.

3. LOC Priority List Update (1:09:34-1:11:22)

Motion by David P. Jordan to defer the discussion of the Legislative Operating Committee Priority List Update for two weeks; seconded by Fawn Billie. Motion carried unanimously.

VII. Executive Session

VIII. Recess/Adjourn

Motion by David P. Jordan to adjourn the August 5, 2015 Legislative Operating Committee Meeting at 10:13 a.m.; seconded by Tehassi Hill. Motion carried unanimously.



Legislative Operating Committee

August 19, 2015

Administrative Procedures Act

Submission Date: February 12, 2015

☐ Public Meeting:
☒ Emergency Enacted: 3/1/15
 Emergency Expiration: 9/1/15

LOC Sponsor: Brandon Stevens

Summary: *This is a proposal for emergency amendments to the Administrative Procedures Act, because the APA is set to be repealed as of March 1, 2015; however if it is repealed at that time, it would leave various Tribal hearing bodies without any rules to govern hearings.*

2/18/15 LOC: Motion by Tehassi Hill to approve the resolution and forward to the Oneida Business Committee for consideration of adoption; seconded by Fawn Billie. Motion carried unanimously.

2/25/15 OBC: Motion by Tehassi Hill to adopt resolution titled Administrative Procedures Act Amendments Emergency Adoption, seconded by Trish King. Motion carried unanimously.

Next Steps:

- Review the memorandum, resolution, statement of effect and drafts and request the OBC extend the emergency amendments to the Administrative Procedures Act.

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 Jennifer Webster, Councilmember

Memorandum

To: Oneida Business Committee
From: Brandon Stevens, LOC Chairperson
Date: August 26, 2015
Re: Administrative Procedures Act Amendments Emergency Adoption Extension

Please find attached the following for your consideration:

1. Resolution: Administrative Procedures Act Amendments Emergency Adoption Extension
2. Statement of Effect: Administrative Procedures Act Amendments Emergency Adoption Extension
3. Administrative Procedures Act (redline)
4. Administrative Procedures Act (clean)

Overview

On January 7, 2013 the Oneida General Tribal Council (GTC) adopted resolution GTC-01-07-13-A, Adoption of the Administrative Procedures Act Amendments and the Legislative Procedures Act. With the adoption of the Judiciary Law through resolution GTC-01-07-13-B, the GTC repealed the hearing procedures found in the Administrative Procedures Act (APA) effective March 1, 2015, with the adoption of the Judiciary Law, resolution GTC-01-07-13-B. Although the Judiciary Law was adopted, certain boards, committees and commissions of the Tribe continued to have hearing body authority through various Tribal laws and are required to hold their hearing s in accordance with the Administrative Procedures Act under Tribal law. Some of these hearing bodies, including the Gaming Commission and the Police Commission

On February 25, 2015, the Oneida Business Committee (OBC) adopted emergency amendments in resolution BC-02-25-15-B: Administrative Procedures Act Amendments Emergency Adoption. These amendments repealed the outstanding sections of the APA and put a hearing process in place for those hearing bodies that were required to hold hearings in accordance with the APA and did not have other hearing rules in place. These emergency amendments took effect March 1, 2015 for a period of six (6) months and are set to expire on September 1, 2015.

Adoption of the attached resolution will extend these emergency amendments for an additional six (6) months.

Requested Action

Approve the Resolution: Administrative Procedures Act Amendments Emergency Adoption Extension.

BC Resolution _____*Administrative Procedures Act Amendments Emergency Adoption Extension*

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

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin; and

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

WHEREAS, GTC Resolution 01-07-13-A adopted amendments to the Administrative Procedures Act (APA) and adopted the Legislative Procedures Act (LPA); and

WHEREAS, GTC Resolution 01-17-13-B adopted the Judiciary Law and repealed the hearing procedures found in the APA, effective March 1, 2015; and

WHEREAS, although the Judiciary Law was adopted, certain boards, committees and commissions of the Tribe continue to have hearing body authority through various Tribal laws; and

WHEREAS, some of these hearing bodies, including the Gaming Commission, Environmental Resource Board and Land Commission are required to hold their hearings in accordance with the APA; and

WHEREAS, after March 1, 2015, the APA no longer contained hearing body procedures; and

WHEREAS, the Oneida Business Committee adopted resolution BC-02-25-15: Administrative Procedures Act Amendments Emergency Adoption to put a hearing process in place for those hearing bodies that are required to hold hearings but do not have other hearing rules in place; and

WHEREAS, the Administrative Procedures Act Amendments Emergency Adoption began on March 1, 2015 and are set to expire on September 1, 2015; and

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

WHEREAS, emergency adoption of the amendments is necessary for the immediate preservation of the public health, safety, or general welfare of the reservation population, and amendment of the Law is required sooner than would be possible under the LPA.

Resolution _____

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48 **NOW THEREFORE BE IT RESOLVED**, that effective September 1, 2015, the attached
49 emergency amendments to the Administrative Procedures Act are extended on an emergency
50 basis for an additional six (6) months.

Oneida Tribe of Indians of Wisconsin Legislative Reference Office

Krystal L. John, Staff Attorney
Douglass A. McIntyre, Staff Attorney
Taniquelle J. Thurner, Legislative Analyst
Candice E. Skenandore, Legislative Analyst



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Statement of Effect

Administrative Procedures Act Amendments Emergency Adoption Extension

Summary

This Resolution extends the emergency amendments to the Administrative Procedures Act (APA) for another six (6) months or when permanent amendments are adopted, whichever occurs first. The amendments implement hearing procedures for those bodies required to hold hearings in accordance with the Administrative Procedures Act. This Resolution identifies an effect date of September 1, 2015.

Submitted by: Douglass A. McIntyre, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

The Administrative Procedures Act (APA) hearing procedures were repealed pursuant to GTC Resolution GTC-01-07-13-B effective March 1, 2015. Certain boards, committees and commissions of the Tribe continue to have hearing body authority through various Tribal laws and are required to hold their hearings in accordance with the Administrative Procedures Act under Tribal law. On February 25, 2015, the Oneida Business Committee (OBC) adopted resolution BC-02-25-15-B, Administrative Procedures Act Amendments Emergency Adoption, to begin effect March 1, 2015 for a period of six (6) months. These amendments repealed the outstanding sections of the APA and put a hearing process in place for those hearing bodies that were required to hold hearings in accordance with the APA and did not have other hearing rules in place. The extension of the emergency amendments would keep the hearing process in place for those hearing bodies.

Under the attached Resolution, the extension of the emergency amendments would not be effective until September 1, 2015, which coincides with the expiration of the current emergency amendments. The extension of the emergency amendments would remain in effect for six (6) months, unless replaced before that time has expired.

Section 16.9-5 of the Legislative Procedures Act (LPA) allows the OBC to take emergency action to amend a law where it is “necessary for the immediate preservation of the public health, safety, or general welfare of the reservation population” and when enactment or amendment of legislation is required sooner than would be possible under the LPA. With the initial passage of the emergency amendments in resolution BC-02-25-5-B, the OBC issued a finding of an

emergency and stated the necessity for these emergency amendments. Adoption of this Resolution would extend those emergency amendments for an additional six (6) months.

Conclusion

Adoption of the amendments to these Laws will not conflict with any Tribal law or policy.

Chapter 1 Administrative Procedures Act

1.1. Purpose and Policy
1.2. Adoption, Amendment, Repeal
1.3. Definitions

1.4. Complaints and Notice
1.5. Procedures
1.6. Judgments and Appeals

<i>Analysis by the Legislative Reference Office</i>			
Title	Administrative Procedures Act (APA)		
Drafter	Lynn A. Franzmeier	Analyst	Candice E. Skenandore
Reason for Request	Ensure that Tribal boards, committees and commissions have hearing procedures that are noticed so a person is presented with a fair opportunity to file a claim that arises under Tribal law [See 1.1-2].		
Purpose	The APA provides hearing procedures for boards, committees and commissions that do not have established hearing procedures in place [See 1.1-1].		
Authorized/ Affected Entities	Tribal boards, committees and commissions that are authorized, by Tribal law, to conduct hearings; anyone bringing or defending an action before such a Tribal hearing body; anyone identified as a respondent; witness; and the Court of Appeals [See 1.4-1, 1.1-1, 1.4-2, 1.4-3 (a), 1.5-5 (b) & 1.6-2]		
Due Process	A party can appeal a hearing body's decision to the Tribe's Court of Appeals [See 1.6-2]		
Related Legislation	The following are some Tribal laws and policies which reference the APA when describing how a hearing is conducted: All-Terrain Vehicle Law [49.6-2]; Building Code [66.24-1]; Condominium Ordinance [68.26-2]; Oneida Nation Gaming Ordinance [21.12-8 (g)]; Hunting, Fishing and Trapping Law [45.15-3]; On-Site Waste Disposal Ordinance [46.5-1 (a), (b)(2) & (c)(2)]; Protection and Management of Archeological & Historical Resources [12.5-3]; Real Property Law [67.16-3 (a) (3)]; Oneida Vendor Licensing [56.7-1]; Well-Abandonment Law [43.7-3] and Employee Protection Policy [4-7]		
Policy Mechanism	The hearing body can issue fines, orders and/or penalties so long as they comply with the Indian Civil Rights Act [See 1.6-1].		

Overview

The APA housed the hearing procedures for various boards, committees and commissions (hearing bodies) which have hearing authority. GTC Resolution 01-07-13-B removed these hearing procedures from the APA effective March 1, 2015. Because these hearing bodies continued to have hearing authority after the APA was set to expire, the Oneida Business Committee (OBC) adopted emergency amendments to the APA which provided a consistent process for these hearing bodies to conduct hearings. These emergency amendments are set to expire on September 1, 2015. The Legislative Procedures Act allows the OBC to consider extending these emergency amendments for up to an additional six months [See *Legislative Procedures Act* 16.9-5 (b)].

The following amendments to the APA are currently in effect and are being considered for a six-month extension. These amendments:

- Require hearing bodies to follow the APA when conducting hearings unless another Tribal law establishes hearing procedures for the specific hearing body [See 1.4-1]. The APA will not pertain to the Oneida Personnel Commission, Oneida Police Commission or Oneida Election Board because Tribal law dictates how their hearings are conducted [See *Oneida Judiciary Rules of Civil Procedure* 153.4-6, *Oneida Nation Law*

Enforcement Ordinance 37.9-1 and Oneida Election Law 2.5-6]. In addition, the APA specifically excludes the Tribe's Judiciary and Family Court *[See 1.3-1 (f)]*.

- Allow hearing bodies to develop additional hearing body procedures so long as those procedures do not conflict with the APA and are noticed to the public *[See 1.4-1]*.
- Establishing procedural requirements for hearings, including:
 - Specifying what information must be included in the complaint as well as identify how a complaint and summons can be served and that service must be made within 30 days of filing the complaint *[See 1.4-2 & 1.4-3]*.
 - Authorizing hearing bodies to establish a regular time to hold pre-hearings and hearings as well as designate officer and alternates to serve on the hearing body *[See 1.5-1]*.
 - Restricting hearing officers and parties from engaging in ex parte communications *[See 1.5-2]*.
 - Specifying when evidence is used and how it can be obtained and presented, or objected to. *[See 1.5-3]*.
 - Require a pre-hearing to be conducted within 45 days after notice is served *[See 1.5-4]*. The pre-hearing allows the hearing body or hearing officer to determine dispositive motions; identify the need for witnesses and/or evidence; implement a scheduling order and address matters that will clarify, simplify or settle the case or facilitate a just, speedy and inexpensive disposition *[See 1.5-4]*.
 - Require a hearing, if necessary, to be conducted within 60 days after the pre-hearing or within 60 days after it is decided to not hold a pre-hearing *[See 1.5-6]*.
- Authorize the hearing bodies to issue fines, orders and/or penalties that comply with the Indian Civil Rights Act *[See 1.6-1]*.
- Allow a party to appeal the hearing body's decision to the Tribe's Court of Appeals in accordance with the Judiciary law and any applicable rules of procedure *[See 1.6-2]*.

Considerations

The LOC may want to consider the following:

- Amendments require a pre-hearing to be conducted within 45 days after the notice is served as well as require a hearing be held, if necessary, within 60 days after the pre-hearing was conducted or the decision that a pre-hearing is not needed *[See 1.5-1 and 1.5-5]*. The amendments do not address allowing hearing bodies to extend these timelines. The LOC may want to consider whether or not to allow hearing bodies to extend the 45 day pre-hearing and/or 60 day hearing timelines if all parties agree, or in specific circumstances when additional time is necessary in the interests of justice.
- Amendments will allow the hearing body to issue fines, orders or penalties for those who violate the APA but there are no enforcement provisions for hearing bodies that violate this Law.
- The APA does not state whether or not a hearing body can issue subpoenas.

Miscellaneous

A public meeting or a fiscal impact statement is not required for emergency legislation *[See Legislative Procedures Act 16.9-5 (a)]*.

~~1.1-1. Authority. The Oneida Tribe of Indians of Wisconsin has the authority and jurisdiction to enforce this act as well as the responsibility as a government to protect the health, safety,~~

welfare, and economy of the Oneida Reservation lands and all persons who either reside on the reservation or who are visitors and/or are conducting business within the exterior boundaries of the reservation. The Oneida Tribe shall ensure due process of law for the designated citizens through adoption of this act, pursuant to Article VI of the Oneida Tribal Constitution, as amended.

1.2-1. Purpose. The Oneida Business Committee, various committees, entities and administrative bodies of the Oneida Tribe shall act in a responsible and consistent manner when enacting, approving, revising, reviewing, interpreting, implementing, and administering the laws, directions, rules, programs, and policies of the Oneida Tribe as adopted. The following principles shall be the framework of this Act:

- (a) Fundamental fairness, justice, and common sense.
- (b) Record keeping that is responsible, organized, accessible, and understandable.
- (c) Deliberative bodies and decision makers which are familiar with the evidence and facts of the cases presented to them as well as issuing clear and concise written opinions; and
- (d) Provisions for appeals of administrative errors and contested issues.

1.3-1. Adoption, Amendment, Repeal

(a) This law was adopted by the Oneida General Tribal Council by resolution GTC 8-19-91-A and amended by GTC 1-07-13-A.

(b) This law may be amended by the Oneida General Tribal Council.

(c) 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.

(d) Any law, policy, regulation, rule, resolution or motion, or portion thereof, which directly conflicts with the provisions of this law is hereby repealed to the extent that it is inconsistent with or is contrary to this law. Specifically, the following are repealed:

(a) BC #7-5-95-K (Amendment to the Administrative Procedures Act to address public hearing process)

(b) BC# 2-2-88-A (Public hearing process for laws and policies)

(e) This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

1.4-1. Definitions. (a) "AGENCY": Any tribal entity, board, commission, committee, department, or officer authorized by the Oneida Tribe to propose ordinance/rules for adoption by the Oneida Business Committee or a decision maker for the contested cases. The term "Agency" shall not include the Oneida Business Committee or a tribal appeals body.

(b) "CONFIDENTIALITY": State or quality of being confidential; treated as private and not for publication.

(c) "CONTESTED CASES": A proceeding before an "Agency" in which an opportunity for a hearing before said "Agency" is required by law prior or subsequent to the determination of the "Agency" of the legal rights, duties, or privileges or specific parties unless otherwise provided for by tribal law. This shall include the revocation, suspension, or modification of a license or permit when a grant of such application is contested by a person directly affected by said licensing or permitting.

- (d) ~~"DECLARATORY RULING": A written ruling made by a tribal decision-making body which removes doubts or puts an end to conflicting decisions in regard to what law is in relation to a particular matter.~~
- (e) ~~"DELIBERATIVE BODY": A body that weighs, examines, and consults the reasons for and against a contemplated act or course of conduct or a choice of acts or means in order to form an opinion.~~
- (f) ~~"EMERGENCY": An unexpected or unforeseen occurrence or condition; a sudden or unexpected occasion for action; pressing necessity.~~
- (g) ~~"LICENSE" or "PERMIT": The approval, permission, or allowance of an individual or group to engage in an activity that is lawfully adopted by the Oneida Tribe.~~
- (h) ~~"LICENSING" or "PERMITTING": The process that refers to the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or modification of a license or permit.~~
- (i) ~~"ONEIDA BUSINESS COMMITTEE" (OBC): The representative body of the Oneida Tribe elected by the Oneida General Tribal Council pursuant to Article III of the Oneida Tribal Constitution.~~
- (j) ~~"ONEIDA GENERAL TRIBAL COUNCIL": The ultimate governing body of the Oneida Tribe composed of enrolled tribal members as described in Article III of the Oneida Tribal Constitution.~~
- (k) ~~"ORDINANCE": A tribal law that applies to and governs persons, activities, and properties subject to tribal jurisdiction.~~
- (l) ~~"RESERVATION": 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.~~
- (m) ~~"RESERVATION ENVIRONMENT" or "RESERVATION RESOURCES": Land, surface water, ground water, fish, animals, flora, fauna, air, wildlife, and capital improvements on or near the reservation.~~
- (n) ~~"RULE/REGULATION": Any order or directive, or regulation of general applicability enacted into law and approved by the Oneida Business Committee that exhibits the following:~~
- ~~(1) The violation of which may result in a fine, penalty, or other civil administrative sanction;~~
 - ~~(2) May establish, change, or revoke a procedure, practice, or requirement of administration hearing;~~
 - ~~(3) May establish, change, or revoke requirements relating to benefits or privileges conferred by law;~~
 - ~~(4) May establish, change, or revoke standards for assistance, suspension, or revocation of licenses;~~
 - ~~(5) The amendment or repeal of a prior ordinance/rule;~~
 - ~~(6) Does not include the following:~~
 - ~~(A) statements concerning internal management of an area, nor;~~
 - ~~(B) Declaratory rulings issued pursuant to this Act as now or hereafter amended.~~
- (o) ~~"SECRETARY": Secretary of the Oneida Business Committee.~~
- (p) ~~"SPONSORING AGENCIES": Any tribal agency that prepares an ordinance/rule or other matter under this Act for action by the Oneida Business Committee.~~

1.5-1. Inspection of Agency Orders, Decisions, and Opinions ~~Each agency shall keep on file for public inspection all final orders, decisions, and opinions in contested cases as well as an index to said cases, decisions, orders, or opinions except that said public inspection shall be~~

limited by applicable federal law or tribal laws of confidentiality. In addition, said agencies shall forward all agency orders, decisions, or opinions to the "Secretary" who shall keep said records in one centralized area.

1.1. Purpose and Policy

1.1-1. Purpose. The purpose of this Law is to provide procedures for boards, committees and commissions that conduct hearings for disputes arising under Tribal law and have no procedures in place under other Tribal law. This Law shall not apply to hearings held before the Family Court or any court of the Tribe's Judiciary. This Law shall not be construed to create hearing rights where no hearing rights exist under Tribal law.

1.1-2. Policy. It is the policy of the Tribe that the hearing procedures of boards, committees and commissions shall be noticed to ensure all individuals are presented with a fair opportunity to file any claim that may arise under Tribal law.

1.2. Adoption, Amendment, Repeal

1.2-1. This Law was adopted by the Oneida Business Committee by resolution BC _____.

1.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

1.2-3. 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.

1.2-4. 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.

1.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

1.3. Definitions

1.3-1. 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) "Decision" shall mean the written conclusion of the hearing body concerning the facts, alleged violations of Tribal law and penalties.

(b) "Deliberations" shall mean the confidential process during which the hearing officers discuss the issues presented before the hearing body.

(c) "Dispositive motion" shall mean a request to the hearing body to entirely dispose of one (1) or more claims in favor of the party making the request without need for a further hearing.

(d) "Evidence" shall mean documentation or testimony presented to the hearing body which supports a party's claim.

(e) "Ex parte communication" shall mean oral or written, off-the-record communication made to or by the hearing officers without notice to the parties that is directed to the merits or outcome of the hearing.

(f) "Hearing body" shall mean the member or members of a board, committee or commission that hear and decide the case or motions presented as part of a case.

"Hearing body" shall not include the Family Court or any court of the Tribe's Judiciary.

(g) "Scheduling order" shall mean the hearing body's order establishing the dates of the hearing and the deadlines for discovery and submitting witness lists.

(h) "Summons" shall mean an order to appear before a hearing body because a petitioner has filed a complaint.

1.4. Complaints and Notice

1.4-1. Whenever a claim arises under Tribal law, a hearing body shall hear the complaint in accordance with the procedures established under this Law, unless another Tribal law has established hearing procedures for that specific hearing body. Nothing in this Law shall be construed to prevent a hearing body from establishing additional hearing body procedures, as long as those procedures do not conflict with this Law and are noticed to the public by the hearing body.

1.4-2. A petitioner(s) may file a complaint with the hearing body, the complaint shall include:

- (a) The name and contact information of each petitioner;
- (b) The name and contact information, if known, of the respondent(s)
- (c) The alleged violation that resulted in the complaint and the Tribal law that has been violated;
- (d) The date, time, place and description of the alleged violation;
- (e) The nature of the relief requested.

1.4-3. Notice. The complaint, along with a summons, shall be served upon the respondent(s) within thirty (30) days after the complaint is filed with the hearing body.

(a) The summons shall contain the date, time and place the respondent(s) is required to appear, along with a notice that failure to appear may result in a default judgment against him or her.

(b) Anyone who is not a party to the action and is at least eighteen (18) years of age may serve the notice. Notice shall be served in the following order of progression, unless personal service is more practical than by mail:

- (1) Mail with delivery confirmation, using U.S. mail or a private carrier.
- (2) Personal service, by hand delivering a copy of the complaint and summons to the party named in the complaint.
- (3) Publication, in the Kalihwisaks and another paper located in an area where the subject was last known to have resided. The publication shall be designated as a legal notice, stating the name and last-known address of the subject being located.

1.5. Procedures

1.5-1. Designated Hearing Dates. The hearing body may establish a regular time to hold pre-hearings and hearings. The hearing body shall designate officers and may designate alternates to serve on a hearing body.

1.5-2. Ex Parte Communications. Hearing officers and parties shall not engage in ex parte communications.

1.5-3. Evidence. A party shall include evidence as part of his/her original filings or obtain the evidence through discovery. A party may attempt to present the hearing body with evidence later in the proceedings if the opposing party does not object.

(a) Copies. If a party submits documentation as evidence, the party shall present an original for the record and copies to each of the hearing officers and the opposing party.

(b) Objections. The opposing party may object to any evidence submitted.

(c) Acceptance into the record. The hearing body makes the final determination whether to accept evidence into the record. The hearing body may admit and consider evidence that is commonly accepted and has a direct connection to the case.

1.5-4. Pre-Hearings. Pre-hearings shall be conducted within forty-five (45) days after notice has been served. The purpose of a pre-hearing is for the hearing body or a hearing officer to:

(a) Hear and determine dispositive motions. The parties may present any dispositive motions and raise any issues that may affect the conduct of the hearing, including, but not limited to excluding evidence. If either party makes a dispositive motion:

(1) The party making the motion shall reference the applicable law and state with clarity why the hearing body should grant the motion. The party making the motion may present a proposed written decision for the hearing body to consider.

(2) The opposing party shall respond and state with clarity why the hearing body should not grant the motion. The opposing party may request an adjournment to prepare a written response to oral dispositive motions.

(3) The hearing body may ask any questions of the parties in order to clarify the issues.

(b) Identify the need for any witnesses and/or evidence.

(c) Implement a scheduling order.

(d) Address any matters which will assist in the clarification, simplification or settlement of the case or that may facilitate the just, speedy and inexpensive disposition of the matter.

1.5-5. Hearing Procedures. Within sixty (60) days after a pre-hearing is conducted, or within sixty (60) days after it has been determined that a pre-hearing will not be conducted, the hearing body shall conduct a hearing, if necessary. If a hearing is conducted, it shall substantially comply with the following:

(a) Opening Statements. Each party shall state with clarity why the hearing body should decide in his/her favor based on the facts and the laws presented.

(b) Witnesses. Each party may call any witness to testify.

(1) Each party shall be responsible for ensuring his or her witness(es) appears at the hearing.

(2) A witness(es) may rely only on evidence on record.

(3) A witness(es) is subject to cross examination by the opposing party.

(4) The hearing body may ask questions of any witness or request clarification of any documents during the proceeding.

(c) Rebuttal. Parties may present a witness(es) or introduce evidence that has not been previously presented in order to refute or rebut the opposing party's evidence or a witness statement.

(d) Closing Statements. Each party summarizes the evidence and the testimony he or she presented in order to rebut evidence or witness testimony presented by the opposing party.

(e) Deliberations. After the hearing, the hearing body shall schedule a time for deliberations. Deliberations are confidential and shall not be subject to reproduction and shall not be part of the case record. During deliberations, the hearing body shall place an emphasis on logic and reasoning in order to make sound decisions. The hearing body may adopt a proposed written decision and issue the decision during the hearing.

1.5-6. Decisions. The hearing body may issue an oral decision on a matter, but the decision shall not be final until the hearing body issues a written decision. The hearing body shall issue a written decision within ten (10) business days after a pre-hearing or hearing. Should any party fail to appear at any scheduled pre-hearing or hearing or contest a complaint, the hearing body may issue a default judgment in favor of the opposing party.

(a) The decision shall include:

(1) Findings of fact and conclusions of law;

(2) Reference to specific provision of Tribal law violated;

(3) Disposition of any dispositive motions;

(4) In the case of a decision issued after a pre-hearing, a scheduling order if the hearing body does not grant a dispositive motion; and

(5) Reference to the parties' appeal rights.

(b) If the hearing body does not reach a unanimous decision, hearing officers may draft concurring and/or dissenting opinions.

(c) Notification to Parties. The hearing body shall ensure the final decision is sent to the parties via mail with delivery confirmation, using U.S. mail or a private carrier, within one (1) business day following the issuance of the decision. Time lines for an appeal are calculated based on receipt of the written decision.

1.6. Judgments and Appeals

1.6-1. Judgments A hearing body, subsequent to a hearing, may issue fines, orders and/or penalties that comply with the Indian Civil Rights Act and may include, but not be limited to, the following:

(a) An order directing a violator or person in non-compliance of/with a Tribal law or regulation to pay a monetary fine for the violation, and/or actual damages and/or punitive damages.

(b) In the case of damages caused by minors, an order requiring the parent, custodian, or guardian to pay for damages and/or plan designed for restitution in lieu of monetary compensation to be fulfilled by the minor.

(c) An order directing the violator or non-complying person to cease and desist from further violation or non-compliance and to cure said violation within a specified period.

(d) An order requiring appropriate exclusion and/or mandated community service and/or denial of specific Tribal benefits.

(e) Unless precluded by law, informal disposition, signed by both parties, may also be made of any contested case by stipulation, agreed settlement, consent order, or default.

(f) An order placing a lien upon property owned by a person within jurisdiction of the Tribe.

1.6-2. Appeals A party may appeal a decision of a hearing body to the Court of Appeals in accordance with the Judiciary law and any applicable rules of procedure.

End.

Chapter 1 Administrative Procedures Act

1.1. Purpose and Policy
1.2. Adoption, Amendment, Repeal
1.3. Definitions

1.4. Complaints and Notice
1.5. Procedures
1.6. Judgments and Appeals

1.1. Purpose and Policy

1.1-1. *Purpose.* The purpose of this Law is to provide procedures for boards, committees and commissions that conduct hearings for disputes arising under Tribal law and have no procedures in place under other Tribal law. This Law shall not apply to hearings held before the Family Court or any court of the Tribe's Judiciary. This Law shall not be construed to create hearing rights where no hearing rights exist under Tribal law

1.1-2. *Policy.* It is the policy of the Tribe that the hearing procedures of boards, committees and commissions shall be noticed to ensure all individuals are presented with a fair opportunity to file any claim that may arise under Tribal law.

1.2. Adoption, Amendment, Repeal

1.2-1. This Law was adopted by the Oneida Business Committee by resolution BC _____.

1.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

1.2-3. 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.

1.2-4. 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.

1.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

1.3. Definitions

1.3-1. 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) "Decision" shall mean the written conclusion of the hearing body concerning the facts, alleged violations of Tribal law and penalties.

(b) "Deliberations" shall mean the confidential process during which the hearing officers discuss the issues presented before the hearing body.

(c) "Dispositive motion" shall mean a request to the hearing body to entirely dispose of one (1) or more claims in favor of the party making the request without need for a further hearing.

(d) "Evidence" shall mean documentation or testimony presented to the hearing body which supports a party's claim.

(e) "Ex parte communication" shall mean oral or written, off-the-record communication made to or by the hearing officers without notice to the parties that is directed to the merits or outcome of the hearing.

(f) "Hearing body" shall mean the member or members of a board, committee or commission that hear and decide the case or motions presented as part of a case. "Hearing body" shall not include the Family Court or any court of the Tribe's Judiciary.

(g) "Scheduling order" shall mean the hearing body's order establishing the dates of the hearing and the deadlines for discovery and submitting witness lists.

(h) "Summons" shall mean an order to appear before a hearing body because a petitioner has filed a complaint.

1.4. Complaints and Notice

1.4-1. Whenever a claim arises under Tribal law, a hearing body shall hear the complaint in accordance with the procedures established under this Law, unless another Tribal law has established hearing procedures for that specific hearing body. Nothing in this Law shall be construed to prevent a hearing body from establishing additional hearing body procedures, as long as those procedures do not conflict with this Law and are noticed to the public by the hearing body.

1.4-2. A petitioner(s) may file a complaint with the hearing body, the complaint shall include:

- (a) The name and contact information of each petitioner;
- (b) The name and contact information, if known, of the respondent(s)
- (c) The alleged violation that resulted in the complaint and the Tribal law that has been violated;
- (d) The date, time, place and description of the alleged violation;
- (e) The nature of the relief requested.

1.4-3. *Notice.* The complaint, along with a summons, shall be served upon the respondent(s) within thirty (30) days after the complaint is filed with the hearing body.

(a) The summons shall contain the date, time and place the respondent(s) is required to appear, along with a notice that failure to appear may result in a default judgment against him or her.

(b) Anyone who is not a party to the action and is at least eighteen (18) years of age may serve the notice. Notice shall be served in the following order of progression, unless personal service is more practical than by mail:

- (1) Mail with delivery confirmation, using U.S. mail or a private carrier.
- (2) Personal service, by hand delivering a copy of the complaint and summons to the party named in the complaint.
- (3) Publication, in the Kalihwisaks and another paper located in an area where the subject was last known to have resided. The publication shall be designated as a legal notice, stating the name and last-known address of the subject being located.

1.5. Procedures

1.5-1. *Designated Hearing Dates.* The hearing body may establish a regular time to hold pre-hearings and hearings. The hearing body shall designate officers and may designate alternates to serve on a hearing body.

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1.5-3. *Evidence.* A party shall include evidence as part of his/her original filings or obtain the evidence through discovery. A party may attempt to present the hearing body with evidence later in the proceedings if the opposing party does not object.

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(a) The decision shall include:

- (1) Findings of fact and conclusions of law;
- (2) Reference to specific provision of Tribal law violated;
- (3) Disposition of any dispositive motions;
- (4) In the case of a decision issued after a pre-hearing, a scheduling order if the hearing body does not grant a dispositive motion; and
- (5) Reference to the parties' appeal rights.

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(b) In the case of damages caused by minors, an order requiring the parent, custodian, or guardian to pay for damages and/or plan designed for restitution in lieu of monetary compensation to be fulfilled by the minor.

(c) An order directing the violator or non-complying person to cease and desist from further violation or non-compliance and to cure said violation within a specified period.

(d) An order requiring appropriate exclusion and/or mandated community service and/or denial of specific Tribal benefits.

(e) Unless precluded by law, informal disposition, signed by both parties, may also be made of any contested case by stipulation, agreed settlement, consent order, or default.

(f) An order placing a lien upon property owned by a person within jurisdiction of the Tribe.

1.6-2. *Appeals* A party may appeal a decision of a hearing body to the Court of Appeals in accordance with the Judiciary law and any applicable rules of procedure.

End.



Legislative Operating Committee

August 19, 2015

Election Board Bylaws Amendments

Submission Date: March 18, 2015

☐ Public Meeting:
☐ Emergency Enacted:

LOC Sponsor: Brandon Stevens

Summary: *The Election Board had requested amendments to their Bylaws per the current Election Law and previous GTC action.*

3/18/15 LOC: Motion by Jennifer Webster to add the Election Board Bylaws Amendments to the active files list, and to defer this item to the Legislative Reference Office for processing and to bring back when ready; seconded by Tehassi Hill. Motion carried unanimously.

Note: Brandon Stevens will be the sponsor.

5/20/15 LOC: Motion by Fawn Billie to accept the Election Board Bylaws Amendments memorandum; seconded by David P. Jordan. Motion carried unanimously.

6/17/15 LOC: Motion by David P. Jordan to defer the Election Board Bylaws Amendments to the sponsor to bring back a report in two weeks; seconded by Fawn Billie. Motion carried unanimously.

8/5/15 LOC: Motion by Fawn Billie to defer the Election Board Bylaw Amendments to the next Legislative Operating Committee meeting to allow the sponsor to work with the Board to resolve the remaining issues; seconded by David P. Jordan. Motion carried unanimously.

Next Steps:

- Accept the sponsor's report and defer to the sponsor.

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
David P. Jordan, Councilmember
Jennifer Webster, Councilmember

Memorandum

To: Oneida Election Board
From: Brandon Stevens, LOC Chairperson
Date: August 10, 2015
Re: Election Board Bylaws - Stipends

This memorandum is being sent to request discussion and direction between the LOC Chair and the Election Board Chair in regards to the issues noted in the legislative analysis for the Election Board Bylaws amendments. In particular, discussion is needed in relation to the meeting stipends paid to Election Board members. In brief, the issues for discussion include:

- **Quorum requirements:**
 1. Whether and when a board, committee, or commission should pay meeting stipends for meetings that do not have quorum, including “SOP” and “Officer” meetings.
 2. Amending section 3-7 of the bylaws to clarify that meeting stipends are only paid to a member when the meeting has established a quorum for a minimum of one hour, and the official was present for at least one hour of the established quorum.
- **Hearing Stipends.** Adding language to the bylaws to identify when Board members receive a stipend for conducting hearings, and how much that stipend is.
- **Appointed Alternate Stipends.** Alternates have historically been paid the same \$100 meeting stipends as elected members. However, this conflicts with 11-3 of the Comprehensive Policy, which states that “appointed members serving on entities shall be paid a stipend of no more than \$50 per month when at least one (1) meeting is conducted where a quorum has been established in accordance with the duly adopted by-laws of that entity.”
- **GTC Meeting Double Stipends.** Identifying the authority for the additional \$100 stipend that each Board member receives for attending GTC meetings.
- **Elected Member Stipends.** Identifying authority for the increased meeting stipend amount (\$100 instead of \$50) paid to elected Board members, before approving the amended bylaws which would establish it as \$100.

In addition, it may also be beneficial to have a broader discussion of administrative processes and procedures, to look at whether safeguards are in place to ensure that stipends are only paid in accordance with the Comprehensive Policy and entity bylaws; as well as discussion of what should happen in situations where stipends are paid that should not have been.



Legislative Operating Committee

August 19, 2015

ONGO Amendments

Submission Date: September 17, 2014

LOC Sponsor: Brandon Stevens

<input type="checkbox"/> Public Meeting: <input checked="" type="checkbox"/> Emergency Enacted: 5/1/15 Expires: 11/1/15

Summary: *Amendments are being sought to permanently amend the Law to ensure compliance with NIGC requirements as well as update the Law.*

9/17/14 LOC: Motion by Jennifer Webster to add the Amendments to the Oneida Nation Gaming Ordinance to the Active Files List on an emergency basis; seconded by Fawn Billie. Motion carried unanimously.

Motion by Fawn Billie to direct the Legislative Reference Office to bring back an analysis, resolution and statement of effect for the October 1, 2014 LOC meeting; seconded by Tehassi Hill. Motion carried unanimously.

Note: Brandon Stevens will be the sponsor.

10/01/14 LOC: Motion by Tehassi Hill to approve the resolution with the change from seven years to three years, and to forward it to the Oneida Business Committee; seconded by Fawn Billie. Motion carried unanimously.

10/08/14 OBC: Motion by Tehassi Hill to adopt resolution 10-08-14-C Oneida Nation Gaming Ordinance Emergency Amendments, seconded by Fawn Billie. Motion carried unanimously.

03/25/15: Oneida Gaming Commission requests a six-month extension so that all appropriate revisions can be made prior to permanent ONGO revisions are adopted by the LOC/OBC.

04/15/15 LOC: Motion by Fawn Billie to forward the ONGO Emergency Amendments to the Oneida Business Committee for consideration; seconded by Tehassi Hill. Motion carried unanimously.

04/22/15 OBC: Motion by Brandon Stevens to adopt resolution 04-22-15-B ONGO Emergency Amendments Extension, seconded by Fawn Billie. Motion carried unanimously.

5/20/15 LOC: Motion by Fawn Billie to defer the ONGO Amendments to the Legislative Reference Office and direct that a legislative and fiscal analysis be developed once the draft is completed; seconded by Tehassi Hill. Motion carried unanimously.

7/1/15 LOC: Motion by David P. Jordan to forward the ONGO Amendments to Public Meeting date of July 30, 2015; seconded by Tehassi Hill. Motion carried unanimously.

7/30/15: Public Meeting held. Attendees include: Tehassi Hill, Jennifer Webster, Steve Hill, Tamara Van Schynder, Matt Denny, Loucinda Conway, William Cornelius, Michele Doxtator, Rae Skenandore, Mark Powless, Sr., Lora Skenandore, Krystal John, Douglass McIntyre, Candice Skenandore, Tani Thurner, Cathy Bachhuber.

Next Steps:

- Review and accept the public meeting comments and responses and consider sending the Oneida Business Committee for adoption.

**Oneida Nation
Legislative Reference Office**

Krystal L. John, Staff Attorney
Douglass A. McIntyre
Taniquelle J. Thurner, Legislative Analyst
Candice E. Skenandore, Legislative Analyst



P.O. Box 365
Oneida, WI 54155
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<https://oneida-nsn.gov/Laws>

Memorandum

TO: Legislative Operating Committee
FROM: Krystal L. John, Staff Attorney *[Signature]*
DATE: August 19, 2015
RE: ONGO Amendments: Public Meeting Comment Review

On July 30, 2015, a public meeting was held regarding proposed amendments to the Oneida Nation Gaming Ordinance (Law). Amendments to the Law include:

- Updates to the Ordinance in order to comply with National Indian Gaming Commission (NIGC) regulations by:
 - Requiring the identity of a person being interviewed for a background investigation to be kept confidential;
 - Requiring the Commission to retain all applications, investigative reports and eligibility determinations for at least three years from the date the applicant's employment was terminated;
 - Requiring the Commission to forward a copy of its decision to suspend, condition or revoke a license to NIGC within forty-five (45) days of receiving NIGC's notification indicating that an employee is not eligible for a license.
 - Clarifying that the Commission takes fingerprints as required in the Ordinance.
 - Including the process for determining an applicant's eligibility for a license and notice to NIGC.
 - Clarifying when an Applicant may be issued a License
 - Including a section that allows for NIGC review of a License and actions that will or may be taken based on that review.
 - Requiring the Commission to forward a hearing decision regarding a License to NIGC if the License was suspended, conditioned or revoked based on a notification from NIGC.
 - Requiring an approved revenue allocation plan before per capita payments are made
- Clarification as to how the Rules of Play and Oneida Gaming Minimum Internal Controls are adopted and when they become effective.

This memorandum is submitted as a review of the oral comments received during the public meeting process and written comments received within the public comment period. The public meeting draft with comments and the written comments received are attached for your review.

Comment 1. Purpose and Policy

21.1-1. *Purpose.* The purpose of this Ordinance is to set forth the laws of the Oneida Tribe of Indians of Wisconsin regarding all Gaming Activities conducted within the jurisdiction set forth

in this Ordinance. It is intended to govern the Gaming Activities of all persons, Gaming Employees, consultants, business entities, vendors, boards, committees, commissions and hearing bodies. This Ordinance does not authorize the operation of Gaming by a private person or private entity for gain. This Ordinance shall govern all Gaming Activities occurring on lands under the jurisdiction set forth in this Ordinance and all individuals or entities engaged in Gaming Activities, including those providing goods or services to any person or entity engaged in Gaming Activities.

Michele M. Doxtator: My only... Hello, I'm Michele Doxtator, the Retail Profit Manager. My only comment or concern would be that the ONGO be loose enough or that be a provision that would allow retail to sell lottery tickets, scratch off, and possibly pull tabs at the Oneida One Stops, Smoke shops and the Oneida Casino Tribal Center. Um, we have been working with the LRO and Law Office to clear the path for that to happen. So I am just asking that the – that be consideration.

Response

This type of amendment requires extensive research; the Oneida Law Office is currently looking into the legal feasibility and potential legal impacts of pursuing state lottery sales through Oneida Retail. With the ONGO Emergency Amendments expiring November 1, 2015 and with no further extensions available, there is not sufficient time to make the commenter's requested revisions.

There are no recommended changes based on this comment.

Comment 2. Oneida Gaming Commission – Requirements of Commission Membership.

21.6-5. Requirements of Commission Membership.

(a) *Qualifications.* Candidates for election or appointment to the Commission shall be at least twenty-one (21) years of age on the day of the election or on the day of appointment. In addition, ~~C~~candidates for election to the Commission shall meet the following qualifications within five (5) business days after a caucus for elected positions on the Commission. Candidates for appointment to the Commission shall meet the following qualifications on the day of appointment to a vacancy on the Commission under section 21.6-13:

- (1) Be an enrolled member of the Tribe;
- (2) Have a minimum of three (3) years of education experience, employment experience and/or regulatory experience in Gaming Operations related to Gaming Activity, Gaming law, Gaming control or regulation, or Gaming accounting or of any combination of the foregoing; and
- (3) Meet all other qualifications set forth in this Ordinance.

(b) *Conflict of Interest.* No person shall be considered for election or appointment as a Commissioner until the candidate has disclosed all conflicts of interest as defined by the Oneida Conflict of Interest Policy.

(c) *Background Investigation.* No person shall be considered for election or appointment as a Commissioner until a preliminary ~~b~~Background ~~i~~Investigation has been completed and the person has been found to meet all qualifications.

(d) Swearing into office is subject to a Background Investigation regarding the qualifications set

forth in sections 21.6-5 and 21.6-6 upon being elected or appointed to office.

Racquel Hill: *written* – The main concern I have with the amendments to the ONGO and the current ONGO is that it does not state anywhere within the content, and I do not believe it is currently a requirement that the elected Gaming Commissioners are licensed. It would seem that those individuals who serve in a regulatory capacity and are responsible to develop licensing procedures for all employees of the Oneida gaming operation, who have the authority to request background investigations, and who are also authorized to issue, suspend, revoke and renew those licenses should be held to the same or even higher standards and be required to be licensed themselves.

It is my understanding that many Tribes have implemented this requirement and adopted gaming ordinances with specific language addressing this issue and those can be found on the website of the National Indian Gaming Commission.

Response

The law as it is currently written complies with the requirements of the Comprehensive Tribal/State Gaming Compact (as amended 2003). Further, Gaming Commissioners are required to meet the same requirements as those seeking licensure in order to assume office. In addition, requiring Gaming Commissioners to both be licensed and to hear gaming license matters may present a conflict of interest. Commissioners, unlike Gaming Employees are subject removal, which is the remedy available should any conduct or eligibility issues arise throughout a Commissioner's term.

There are no recommended changes based on this comment.

Comment 3. Oneida Gaming Commission – Authority and Responsibilities

21.6-14. *Authority and Responsibilities.* Subject to any restrictions contained in this Ordinance or other applicable law, the Commission is vested with powers including, but not limited to the following:

(d) To draft, and approve, ~~subject to review and adoption by the Oneida Business Committee,~~ the Rules of Play and Oneida Gaming Minimum Internal Controls; provided that, Rules of Play and Oneida Gaming Minimum Internal Controls shall require review and comment by ~~the Gaming Operation~~ Senior Gaming Management prior to approval by the Commission, and ~~those comments shall be included in any submission~~ are subject to review and ratification by the Oneida Business Committee. ~~Rules of Play and Oneida Gaming Minimum Internal Controls are adopted and approved industry standards for Gaming Operations.~~

(1) Rules of Play and Oneida Gaming Minimum Internal Controls are minimum standards with which the Gaming Operations are required to comply and are audited against.

(2) Comments received from Senior Gaming Management shall be included in any submission to the Oneida Business Committee.

(3) Rules of Play and Oneida Gaming Minimum Internal Controls shall be effective upon adoption by the Commission.

Cathy Buchhuber: *written* - 21.6-14 (d) states Rules of Play and OGMIC are approved by the Commission (and become immediately effective) and are to be reviewed and ratified by the OBC. As written, the sequence of approvals which are needed may be unclear; however, the analysis does state the intent is that the Commission first adopts the Rules of Play and OGMIC and *then* they are sent to the OBC for review and ratification. In which case the amendments do not state what would occur if the OBC does not agree with the changes already approved and made immediately effective by the Commission.

Draft

21.6-14. *Authority and Responsibilities.* Subject to any restrictions contained in this Ordinance or other applicable law, the Commission is vested with powers including, but not limited to the following:

(d) To draft, and approve, subject to review and adoption by the Oneida Business Committee, the Rules of Play and Oneida Gaming Minimum Internal Controls; provided that, Rules of Play and Oneida Gaming Minimum Internal Controls shall require review and comment by Senior Gaming Management prior to approval by the Commission, and are subject to review and ratification by the Oneida Business Committee.

(1) Rules of Play and Oneida Gaming Minimum Internal Controls are minimum standards with which the Gaming Operations are required to comply and are audited against.

(2) Comments received from Senior Gaming Management shall be included in any submission to the Oneida Business Committee.

(3) Rules of Play and Oneida Gaming Minimum Internal Controls shall be effective upon adoption by the Commission.

Response

The commenter correctly notes that current draft of the law does not state what would occur if the OBC does not agree with the changes to the Rules of Play and Oneida Gaming Minimum Internal Controls which would have already been adopted and made effective by the Gaming Commission prior to the OBC's ratification of the same.

Accordingly, I would recommend including of the following in 21.6-14(d)(3):

(3) Rules of Play and Oneida Gaming Minimum Internal Controls shall be effective upon adoption by the Commission, Immediately after the Commission adopts the Rules of Play and Oneida Gaming Minimum Internal Controls, the Commission must provide notice of adoption to the Oneida Business Committee at the next available regularly scheduled Oneida Business Committee meeting. If the Oneida Business Committee has any concerns or requested revisions upon review of the Rules of Play

and Oneida Gaming Minimum Internal Controls, the Commission shall work with the Oneida Business Committee to address any concerns.

(A) Unless the Oneida Business Committee repeals the Rules of Play and Oneida Gaming Minimum Internal Controls adopted by the Commission, the Rules of Play and Oneida Gaming Minimum Internal Controls will remain in effect while the Commission and the Oneida Business Committee jointly work to amend the existing Rules of Play and Oneida Gaming Minimum Internal Controls.

(i) Should the Oneida Business Committee pursue amendments to the Rules of Play and Oneida Gaming Minimum Internal Controls adopted by the Commission, the amendments must be completed within six (6) months from the date the amendments are initiated by the Oneida Business Committee.

Comment 4. Gaming Employee License – License Application

21.12-2. *License Application.* Every Applicant for a License shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, which shall certify:

(m) Fingerprints consistent with procedures adopted by the Commission which meet the criteria set forth in 25 C.F.R. section 522.2(h). The Commission shall be the agency that takes the fingerprints.

Cathy Buchhuber: *written* - Does the Commission qualify as a “law enforcement agency” as reference in 25 CFR 522.2? NIGA doesn’t appear to be limiting fingerprinting to only being done by a Gaming Commission type entity; NIGA states that a law enforcement agency needs to be identified:

25 CFR 522.2. A Tribe shall submit to the Chairman all of the following information with a request for approval of a class II or class III ordinance or resolution.

(h) Identification of a law enforcement agency that will take fingerprints and a description of procedures for conducting a criminal history check by a law enforcement agency. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

NIGA has a broader scope of who can take fingerprints: “an appropriate federal, state or tribal law enforcement authority”.

25 CFR 537.1 Applications for approval. (b) For each natural person identified in paragraph (a) of this section, the management contractor shall provide to the Commission the following information:

...
(2) *Fingerprints.* The management contractor shall arrange with an appropriate federal, state, or tribal law enforcement authority to supply the Commission with a completed form FD-258, Applicant Fingerprint Card, (provided by the

Commission), for each person for whom background information is provided under this section.

Is the intent to authorize *only* the Commission to take fingerprints? Would this eliminate the ability of someone to obtain their fingerprints from the Oneida Police Department or another Tribal department who may otherwise be authorized to complete a FD-258 Applicant Fingerprint Card?

Draft

1.12-2 (m) Fingerprints consistent with procedures adopted by the Commission which meet the criteria set forth in 25 C.F.R. section 522.2(h). The Commission shall be the agency that takes the fingerprints.

Response.

In response the first question, "Does the Commission qualify as a "law enforcement agency" as reference in 25 CFR 522.2," yes, the Commission qualifies as a "law enforcement agency" as referenced in 25 C.F.R. 522.2 because it is the agency responsible for enforcing ONGO.

In response to the commenter's second question, "Is the intent to authorize *only* the Commission to take fingerprints," yes, that is the intent. It is also my understanding that the Commission is only agency currently taking fingerprints for gaming licenses due to tight time frames and special NIGC requirements which they are specifically trained for.

In response to the commenter's third question, "Would this eliminate the ability of someone to obtain their fingerprints from the Oneida Police Department or another Tribal department who may otherwise be authorized to complete a FD-258 Applicant Fingerprint Card," the answer is yes.

There are no recommended changes based on this comment.

Comment 5. Gaming Employee License – Eligibility Determination and Notification to NIGC

21.12-5. Eligibility Determination and Notification to NIGC—Review. When a Gaming Employee begins employment at a Gaming Operation, the Commission shall:

(b) Review the Background Investigation of the ~~Applicant.~~ Based Gaming Employee. Within sixty (60) days after a Gaming Employee begins employment at a Gaming Facility under a temporary license, the Commission shall make an eligibility determination regarding whether the Gaming Employee may receive a License based upon the results of the Background Investigation, the Commission shall determine the eligibility of the Applicant to receive a License.

Cathy Buchhuber: *written* - Are there any tribal employees, other than Gaming employees, not employed at a location that is defined as a gaming facility who are required to obtain a gaming license?

Draft

21.4-15. *Gaming Facility or Gaming Facilities* means any location or structure, stationary or movable, wherein Gaming is permitted, performed, conducted or operated. Gaming Facility does not include the site of a fair, carnival, exposition, or similar location.

Are gaming licenses ever issued to someone not employed directly at a gaming facility? For example, based on the definition of a gaming facility, Gaming Commissioners and their staff (at the W. Mason location) would not fall under this provision.

Draft

21.12-5(b) Review of Background Investigation of Gaming Employee. Within sixty (60) days after a Gaming Employee begins employment at a Gaming Facility under a temporary license, the Commission shall make an eligibility determination regarding whether the Gaming Employee may receive a License based upon the results of the Background Investigation.

Response

In response to the first question, “are there any tribal employees, other than Gaming employees, not employed at a location that is defined as a gaming facility who are required to obtain a gaming license,” the answer is yes. The commission’s employees do not work at a location that is defined as a “Gaming Facility” and are required by the Commission, not ONGO, to have a gaming license. The answer to commenter’s second question, “are gaming licenses ever issued to someone not employed directly at a gaming facility,” is also yes.

There are no recommended changes based on this comment.

Comment 6. Allocation of Gaming Funds

21.17. Allocation of Gaming Funds

21.17-1. Net Gaming revenues may only be used for the following purposes:

- (a) To fund Tribal government operations, programs, or services.
- (b) To provide for the general welfare of the Tribe and its members; provided that per capita payments shall only be made pursuant to an approved revenue allocation plan.
- (c) To promote Tribal economic development.
- (d) To contribute to charitable organizations.
- (e) To assist in funding operations of other local governments.
- (f) To fund programs designed to provide education, referrals, and treatment of Gaming addiction disorders.
- (g) Any other purpose as determined by the Oneida General Tribal Council or the Oneida Business Committee which is not inconsistent with the Constitution of the Tribe and IGRA.

Cathy Buchhuber: *written* - In accordance with the more recent FY 2014 Revenue Allocation Plan (RAP), the RAP governs “the allocation of available net revenues from tribally owned gaming enterprises including per capita distributions to qualified members of the Oneida Tribe.”

Therefore, the Tribe’s RAP includes a plan of how net gaming revenues should be allocated for

21.17-1(a)-(f), not only for the general welfare.

Draft

21.17-1. Net Gaming revenues may only be used for the following purposes:

- (a) To fund Tribal government operations, programs, or services.
- (b) To provide for the general welfare of the Tribe and its members; provided that per capita payments shall only be made pursuant to an approved revenue allocation plan.
- (c) To promote Tribal economic development.
- (d) To contribute to charitable organizations.
- (e) To assist in funding operations of other local governments.
- (f) To fund programs designed to provide education, referrals, and treatment of Gaming addiction disorders.
- (g) Any other purpose as determined by the Oneida General Tribal Council or the Oneida Business Committee which is not inconsistent with the Constitution of the Tribe and IGRA.

The additional language added to 21.17-1(b) is placing a requirement for the distribution of per capita payments in the Gaming Ordinance which seems misplaced and would seem to be a better fit in a law governing per capita payments. This is likely already covered assuming the “Tribal Allocation Plan” referenced in the Tribe’s Per Capita Law is meant to refer to a Revenue Allocation Plan:

9.4-5. Oneida Business Committee. The Oneida Business Committee shall be identified as having the following responsibilities regarding per capita activities. Action reasonably related to activities defined herein, shall be considered an Oneida Business Committee activity.

- (a) Identification of funds for allocation of per capita payments.
- (b) Approval of Tribal Allocation Plan and forwarding the Tribal Allocation Plan for approval by the Bureau of Indian Affairs.
- (c) Transfer of funds for the trust account to the Trust Committee in a timely manner and within a reasonable timeframe.

Response

The additional language does not place a “requirement for the distribution of per capita payments in the Gaming Ordinance” as the commenter asserts; rather, it provides that gaming revenues *may be used* to pay per capita payments in accordance with an approved revenue allocation plan. The commenter is correct that the Per Capita distribution requirements are contained in the Tribe’s Per Capita Law.

There are no recommended changes based on this comment.

Comment 7. Public Meeting Packet

Cathy Buchhuber: *written* – The Public hearing packet made available online was not complete. It did not contain the legislative analysis:

<https://www.oneida->

nsn.gov/uploadedFiles/wwwroot/Government/Laws_Policies_Resolutions/Oneida_Register/Public_Meetings/Public%20Meeting%20Packet.pdf

Response

The LRO apologizes for this error. It was corrected in the packet handed out at the public meeting held on July 30, 2015.

There are no recommended changes based on this comment.

Conclusion

Public comment period for this law has produced helpful comments. Specifically, it is recommended that revisions be made to section 21.6-14 based on comments received. The next action for the LOC is to decide whether to incorporate the suggested revisions and whether such revisions would necessitate an additional public comment period.

Chapter 21

Oneida Nation Gaming Ordinance

Thatiwi·ʔStunya·tha Olihwa·ke

Matters of interest to where they make the money

21.1. Purpose and Policy	21.11. Licenses, Generally
21.2. Adoption, Amendment, Applicability , Repeal	21.12. Gaming Employee License
21.3. Jurisdiction	21.13. Gaming Services Licensing and Non-Gaming Services Permitting
21.4. Definitions	21.14. Gaming Facility License
21.5. Oneida Business Committee: Powers and Duties	21.15. Gaming Operator License
21.6. Oneida Gaming Commission	21.16. Games
21.7. Gaming Surveillance: Powers, Duties and Limitations	21.17. Allocation of Gaming Funds
21.8. [Reserved for future use.]	21.18. Audits
21.9. Gaming Security Department	21.19. Enforcement and Penalties
21.10. Background Investigations	

1

<i>Analysis by the Legislative Reference Office</i>					
Title	Oneida Nation Gaming Ordinance (ONGO)				
Requester	Tamara Vanschyndel (Oneida Gaming Commission)	Drafter	Lynn Franzmeier	Analyst	Taniquelle Thurner
Reason for Request	<p>On June 25, 2014, the Oneida Business Committee (OBC) adopted minor terminology amendments to ONGO, which replaced references to the Oneida Appeals Commission/Tribal Judicial System with the Tribal Judiciary. Those amendments were then submitted to the National Indian Gaming Commission (NIGC) for approval, as required. However, NIGC returned the submission after three discrepancies were found between ONGO and federal law/NIGC regulations. To address those discrepancies, the OBC adopted emergency amendments to ONGO on October 8, 2014, and extended the emergency adoption on April 22, 2015. The emergency amendments are set to expire on November 1st, 2015.</p> <p>Now, this draft is being presented for permanent adoption. The amendments include the changes adopted on an emergency basis, and additional changes made based on a request from the Oneida Gaming Commission.</p>				
Purpose	Governs Oneida Tribal gaming				
Authorized/ Affected Entities	NIGC, Oneida Gaming Commission, the Oneida Tribal Judiciary				
Due Process	The Gaming Commission hears appeals of licensing decisions, then Judiciary				
Related Legislation	Gaming SOPs, an agreement between HRD and the Gaming Commission for conducting background investigations (as required by ONGO 21.10-1)				
Policy Mechanism	Licensing				
Enforcement	Licensing Suspension, Revocation				

2

3

Overview

4

The proposed amendments make permanent the changes that were adopted on an emergency basis in 2014 in order to comply with NIGC requirements. Additional changes are made to one of those proposed amendments, and to:

7

- Clarify that the Oneida Gaming Commission (the Commission) may issue a Gaming License (hereinafter: license) to new employees after they have notified the National Indian Gaming

8

Commission (NIGC) of the determination of eligibility, without needing to wait for approval, objections, or any other a response from NIGC.

- Clarify requirements pertaining to Rules of Play and Oneida Gaming Minimum Internal Controls (Minimum Internal Controls), and how they are reviewed and adopted.
- Add detail, and improve clarity and consistency throughout the Law.

Emergency Amendments

The proposed amendments permanently adopt the changes adopted on an emergency basis on October 8, 2014, which were extended on April 22, 2015; which made in order to comply with federal law and NIGC requirements. These changes include:

1. Clarifying that the identity of any person interviewed in order to conduct a background investigation, is confidential. [21.10-2]
2. Requiring the Commission to retain various records for three years after a Gaming Employee's (hereinafter: employee) employment is terminated, instead of for seven years after the employee begins employment. [21.12-5(e)]
3. Adding that when the Commission makes a final decision to suspend, place a condition on or revoke a license based on information from NIGC that the employee is not eligible; the Commission must forward a copy of the decision to NIGC within 45 days. [21.12-9(e)]. These proposed permanent amendments also require the Commission to forward a copy of a final decision to suspend, place a condition on, or revoke a license when that action was taken based on information from another source besides NIGC. This additional change to ONGO is being made to reflect the Commission's current practice of doing so. [21.12-9(e)]

Eligibility Determinations and Notifying NIGC

When a new employee begins working at a Gaming Operation, his or her employment application, along with specific other information listed in the Law, must be submitted by the employee to the Commission, instead of from the Commission to the NIGC. [21.12-5(a)]

Within 60 days after a new employee starts, the Commission is still required to review the employee's background investigation, make a determination of whether the employee is eligible for a license, and to provide this information and determination to NIGC. However, the amendments add more detail - instead of just requiring the Commission to submit a "report" to NIGC, the amended Law requires the Commission to create an Investigative Report based on the employee's background investigation, and then, to submit to NIGC a Notice of Results of Background Investigation (Notice of Results). The amendments also identify the purpose for submitting this notice/information to NIGC: it is submitted for inclusion in the Indian Gaming Individual Record System. [21.12-5(b) and (c)]

New language identifies specific information that must be included in the Investigative Report and/or Notice of Results:

- The Investigative Report must identify the steps taken in conducting the employee's background investigation, the results obtained, the conclusions reached and the basis for those conclusions. It must also identify:
 - License(s) that have previously been denied;
 - Gaming licenses that have been revoked, even if subsequently reinstated;
 - Every known criminal charge brought against the employee within the 10 years before the application;
 - Every felony conviction or any ongoing prosecution. [21.12-5(c) and (d)(3)]

- The Notice of Results must include a copy of the Commission’s eligibility determination for that employee, a summary of the Investigative Report, and the employee’s name, date of birth, social security number, and start date. The amendments also add that additional or alternate information will be forwarded as directed in NIGC regulations or rules. [21.12-5(d)]

Issuing a License to New Employees

Amendments clarify that the Commission does not need to wait for a response from NIGC before issuing a license to the employee – after submitting the Notice of Results to NIGC, the Commission may issue the license at any time. [21.12-6] To support this, new language is added to clarify that the Commission not only makes the final decision on whether to issue a license, but also on whether to suspend or revoke a license, if one has already been issued. [21.12-8]

New requirements are added to reflect this change:

- Now, whenever the Commission issues or denies the issuance of a license to an employee, the Commission must notify NIGC within 30 days. [21.12-6]
- Any employee who does not have a license 90 days after the start of employment shall have his or her employment terminated. [21.12-6]
- If the NIGC notifies the Commission that an employee is not eligible for employment, the Commission must immediately suspend the employee’s license and provide the employee with written notice of the suspension and revocation, and notice of a time and place for a hearing on the proposed revocation. [21.12-8(d).]

Rules of Play and Oneida Gaming Minimum Internal Controls

The amendments change some of the requirements relating to Rules of Play and Oneida Gaming Minimum Internal Controls (Minimum Internal Controls), as follows:

- Rules of Play and Oneida Gaming Minimum Internal Controls currently become effective once they are adopted by the Oneida Business Committee (OBC). Under the amendments, they would become effective upon adoption by the Commission, but they are subject to review and ratification by the OBC.
- To clarify responsibilities, the amended Law makes Senior Gaming Management, instead of Gaming Operations, responsible for reviewing and providing comments on any proposed Rules of Play or Minimum Internal Controls.
- The amendments change the explanation of what Rules of Play and Minimum Internal Controls are. Instead of being identified as “adopted and approved industry standards” they are identified as “minimum standards.” And instead of stating that these standards are “for Gaming Operations”, the amendments identify them as standards “with which the Gaming Operations are required to comply and are audited against.” [21.6-14]

Other

Additional changes made to the Law include:

- Deleting a reference to the Administrative Procedures Act (APA) and replacing it with a reference to the Tribe’s “administrative procedures law.” This would resolve potential conflict with future changes to (or repeal of) the APA. [21.12-9(g)]
- Clarifying responsibilities by identifying the Commission as responsible for taking the fingerprints required for a license application. [21.12-2(m)]

- Specifically identifying what must be included in the Commission's written decision when a licensing decision is appealed: a determination of whether to uphold their original licensing decision, including whether to revoke or reinstate a license. [21.12-10]
- Adding that per capita payments can only be made pursuant to an approved revenue allocation plan. [21.17-1(b)]

Miscellaneous

Sections 21.2 and 21.4 were updated to comply with the requirements of the Legislative Procedures Act. Various other minor amendments were made to ensure compliance with tribal drafting and formatting standards. These changes did not affect the content of the Law.

A public meeting has not been held.

Considerations

1. Although both Federal Law [25 CFR 558.4] and this Law [21.12-9(e)] require certain licensing/hearing decisions to be sent to NIGC within 45 days, 21.12-10 also provides that any person aggrieved by a licensing decision of the Commission may appeal the decision by filing a request for an original hearing before the Commission, within 15 days after receiving the decision. The Commission must certify the record within 30 days, and issue a written decision within 120 days after receiving the request, and then that decision may be appealed to the Judiciary on another timeline. These timelines exceed the 45 day-requirement and the Law does not identify whether any later decision would also need to be submitted to NIGC.

Recommendation: The LOC may want to consider identifying a timeline for notifying NIGC of any later decisions, and/or a requirement for notifying NIGC when any decisions that are submitted to NIGC are appealed.

2. Now that the Law clarifies that the Commission may issue or suspend a license without waiting for NIGC approval, it's not clear why the Law still identifies a 30-day period for NIGC to respond after being notified of the Commission's determination of eligibility (or ineligibility) for an employee to be licensed. Section 21.12-8 identifies that within 30 days after receiving the notice of results from the Commission (which includes a summary of the investigative report and the Commission's determination about whether the employee is eligible for a license):

- The NIGC Chairman may request additional information from the Commission concerning the employee, and such a request suspends the 30-day period until the NIGC Chairman receives the additional information.
- If NIGC notifies the commission that it has no objection to issuing the license, the Commission may grant the license to the employee.
- If the NIGC objects to issuing a license to the employee, the Commission must reconsider the application, but still makes the final decision.

Under the amendments, these provisions are revised to clarify that if NIGC notifies the Commission that it has no objection, the Commission may grant the license if it hasn't already done so. And if NIGC objects to the issuance of a license to the employee, the Commission still makes the final decision as to whether to issue a license, or if a license has already been issued, whether to suspend/revoke the license.

Now that the Commission does not have to wait for a response from NIGC before issuing a license, this 30-day timeline for an NIGC response may do more to confuse than to clarify; as it

doesn't appear to serve any purpose. For example, the Chairman of NIGC may request more information about an applicant during that 30 day period – but what happens if they request that information after the 30 day period? As written, this could be interpreted as meaning that the Commission does not need to comply with a request from the NIGC chair for more information, after those 30 days. Also, a request from the Chairman “tolls” (pauses) the 30 day period, and there does not seem to be a reason to toll a 30-day period since the Commission no longer has to wait for a response from NIGC before making a licensing decision.

Recommendation: The LOC may want to consider deleting the 30-day requirement or more clearly identifying when or how it is still necessary.

3. Section 21.12-8(d) states that if a NIGC notifies the Commission that a licensed Gaming Employee is not eligible for employment, the Commission must immediately suspend the license “in accordance with section 21.12-9.” However, section 21.12-9(c) states that a license may only be immediately suspended if, “in the judgment of the Commission, the public interest, and effective regulation and control of Gaming Activities requires the immediate exclusion of a Licensee.” There may be confusion between these two provisions as to whether the intent is to always require immediate suspension whenever the NIGC notifies the Commission that an employee is ineligible, or if immediate suspension is only required after NIGC notifies the Commission of an employee’s ineligibility if the Commission determines it is necessary for the public interest, and effective regulation and control of Gaming Activities.

- Also 21.12-8(d) does not clearly create a separate requirement; it states that a license will immediately be suspended *in accordance with 21.12-9*. However, 21.12-9 and 21.12-9(e) both contain references to both 21.12-8(d) and 21.12-9(c) – these are circular references, because 21.12-8(d) refers to 21.12-9.
- There may also be confusion between 21.12-8(d) and 21.12-9, which refer to each other and it is not clear which provision supersedes the other, or how:
 - 21.12-8(d): the Commission shall immediately suspend the License in accordance with section 21.12-9.
 - 21.12-9. Except as provided in section 21.12-8(d) or 21.12-9(c), no License may be suspended or revoked except after notice and opportunity for hearing.

Recommendation: The LOC may want to consider either deleting 21.12-8(d) or adding clarification regarding how it deviates from 21.12-9, which already addresses what happens if the NIGC provides information that an employee is not eligible for a license.

Chapter 21

Oneida Nation Gaming Ordinance

21.1. Purpose and Policy

21.1-1. *Purpose.* The purpose of this Ordinance is to set forth the laws of the Oneida Tribe of Indians of Wisconsin regarding all Gaming Activities conducted within the jurisdiction set forth in this Ordinance. It is intended to govern the Gaming Activities of all persons, Gaming Employees, consultants, business entities, vendors, boards, committees, commissions and

hearing bodies. This Ordinance does not authorize the operation of Gaming by a private person or private entity for gain. This Ordinance shall govern all Gaming Activities occurring on lands under the jurisdiction set forth in this Ordinance and all individuals or entities engaged in Gaming Activities, including those providing goods or services to any person or entity engaged in Gaming Activities.¹

21.1-2. *Policy.* It is the policy of this Ordinance to ensure that the Oneida Tribe is the primary beneficiary of its Gaming Operations and has the sole proprietary interest, and that Gaming Activities within the jurisdiction set forth in this Ordinance are conducted fairly and honestly, and that all internal departments, enterprises, officials and employees of the Oneida Tribe work cooperatively to advance the best interests of the Oneida Tribe to protect the Tribe's gaming resources, protect the integrity of all ~~g~~Gaming ~~a~~Aactivities operated under the jurisdiction set forth in this Ordinance and to ensure fairness of all games offered to the Tribe's gaming patrons.

21.2. Adoption, Amendment, ~~Applicability~~, Repeal

21.2-1. *Adoption.* This Ordinance ~~is was~~ adopted ~~under the authority of the Constitution of by~~ the Oneida ~~Tribe of Indians of Wisconsin by Oneida~~ General Tribal Council ~~Resolution # 7~~by resolution GTC-07-05-04-A and amended by resolutions BC-10-06-04-D, BC-3-23-05-C, BC-9-23-09-D ~~and~~, BC-06-25-14-B, ~~and~~ _____.

21.2-2. *Amendment.* This Ordinance may be amended ~~or repealed~~ by the Oneida Business Committee or the Oneida General Tribal Council ~~pursuant to the procedures set out in accordance with Tribal law~~the Legislative Procedures Act.

21.2-3. *Severability.* Should a provision of this Ordinance or the application ~~of this Ordinance thereof to any person or circumstances~~ be held as invalid, ~~the~~such invalidity shall not ~~effect~~affect other provisions of this Ordinance.

~~21.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions~~ which are considered to have legal force without the invalid portions.

~~21.2-4. inconsistent with~~In the event of a conflict between a provision of this Ordinance and a provision of another law ~~are hereby repealed unless specifically re-enacted after adoption, the provisions of this law. Specifically, Ordinance shall control. Provided that, this Ordinance repeals~~ the following ~~resolutions are repealed by this law~~:

- (a) BC-~~04~~-21-89-D (Adoption of the Oneida Gaming Control Ordinance);
- (b) GTC-03-04-91-A (Establishing 7 elected Gaming Commissioners and Bingo standards);
- (c) GTC-~~07-06~~-92-A (Amendments to Gaming SOP Manual);
- (d) GTC-~~7-6~~07-06-92-B (Adoption of the Comprehensive Gaming Ordinance);
- (e) BC-~~303~~-16-94-A; (Comprehensive Gaming Ordinance Interpretation); and
- (f) BC-~~404~~-5-95-D (Amendments to the Comprehensive Gaming Ordinance).

21.2-5. This Ordinance is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

¹ Michele M. Doxtator: My only... Hello, I'm Michele Doxtator, the Retail Profit Manager. My only comment or concern would be that the ONGO be loose enough or that be a provision that would allow retail to sell lottery tickets, scratch off, and possibly pull tabs at the Oneida One Stops, Smoke shops and the Oneida Casino Tribal Center. Um, we have been working with the LRO and Law Office to clear the path for that to happen. So I am just asking that the – that be consideration.

232 | 21.2-6. *Name.* This Ordinance shall be known as the Oneida Nation Gaming Ordinance or
233 | ONGO.

234 | 21.2-67. *Preemptive Authority.* The Gaming Commission shall be the original hearing body
235 | authorized to hear licensing decisions as set forth in this Ordinance.
236 |

237 | **21.3. Jurisdiction**

238 | 21.3-1. *Territorial Jurisdiction.* This Ordinance extends to all land within the exterior
239 | boundaries of the Reservation of the Tribe, as established pursuant to the 1838 Treaty with the
240 | Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

241 | 21.3-2. *Subject Matter Jurisdiction.* This Ordinance applies to all Gaming conducted within the
242 | territorial jurisdiction of the Oneida Tribe as set forth in section 21.3-1.

243 | 21.3-3. *Personal Jurisdiction.* This Ordinance shall govern:

244 | (a) the Tribe;

245 | (b) tribal members; and

246 | (c) individuals and businesses leasing, occupying, or otherwise using Tribal ~~f~~Fee ~~L~~and
247 | on the Reservation and all Tribal Trust Lands.
248 |

249 | **21.4. Definitions**

250 | 21.4-1. This section shall govern the definitions of words and phrases used within this
251 | Ordinance. Words and phrases capitalized through-out this document refer to the defined words
252 | and phrases in this section. All words or phrases not defined ~~in this section~~herein shall be
253 | ~~interpreted based on~~used in their ~~plain~~-ordinary and everyday ~~meanings~~sense.

254 | 21.4-2. *Applicant* means any person or entity who has applied for a License from the Oneida
255 | Gaming Commission or the Oneida Business Committee.

256 | 21.4-3. *Background Investigation* means a standard and thorough investigation conducted by the
257 | Oneida Tribe in compliance with this Ordinance, Commission regulations, Oneida Gaming
258 | Minimum Internal Controls, the IGRA and the Compact. Such investigations may be in
259 | cooperation with federal, state, or Tribal law enforcement agencies.

260 | 21.4-4. *Class I Gaming* means social games solely for prizes of minimal value or traditional
261 | forms of Indian gaming engaged in by individuals as a part of, or in connection with, Tribal
262 | ceremonies or celebrations.

263 | 21.4-5. *Class II Gaming* means:

264 | (a) The game of chance commonly known as bingo (whether or not electronic, computer
265 | or other technologic aids are used in connection therewith) in which:

266 | (1) The game is played for prizes, including monetary prizes, with cards bearing
267 | numbers or other designations.

268 | (2) The holder of the card covers such numbers or designations when objects,
269 | similarly numbered or designated, are drawn or electronically determined.

270 | (3) The game is won by the first person covering a previously designated
271 | arrangement of numbers or designation on such cards, including (if played in the
272 | same location) pull-tabs, lotto, punch boards, tip jars, instant bingo and other
273 | games similar to bingo.

274 | (b) Card games that:

275 | (1) Are explicitly authorized by the laws of the State; or

276 | (2) Are not explicitly prohibited by the laws of the State and are played at any
277 | location in the State, but only if such card games are played in conformity with

laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games. Class II Gaming does not include any banking card games, including baccarat, chemin de fer, or blackjack (twenty-one), or electronic or electro-mechanical facsimiles of any game of chance or slot machines of any kind.

21.4-6. *Class III Gaming* means all forms of Gaming that are not Class I or Class II.

21.4-7. *Commission* means the Oneida Gaming Commission as established by this Ordinance.

21.4-8. *Commissioner* means a duly elected member of the Oneida Gaming Commission.

21.4-9. *Compact* means the 1991 Tribe-State Gaming Compact between the Tribe and the State of Wisconsin as amended and any future amendments or successor compact entered into by the Tribe and State and approved by the Secretary of the United States Department of Interior.

21.4-10. *Compliance Certificate* means a certificate issued by an agency with the authority and responsibility to enforce applicable environmental, health or safety standards, which states that a Gaming Facility complies with these standards.

21.4-11. *Environmental Assessment* means a document prepared and issued in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. sec. 4321 et seq., and all related Federal regulations.

21.4-12. *Fraud* means any act of trickery or deceit used to or intended to gain control or possession of the property of another.

21.4-13. *Games, Gaming, or Gaming Activity* means all forms of any activity, operation, or game of chance that is considered Class II or Class III Gaming, provided that this definition does not include Class I Gaming.

21.4-14. *Gaming Employee* means any person employed by a Gaming Operation.

21.4-15. *Gaming Facility* or *Gaming Facilities* means any location or structure, stationary or movable, wherein Gaming is permitted, performed, conducted, or operated. Gaming Facility does not include the site of a fair, carnival, exposition, or similar occasion.

21.4-16. *Gaming Operation* means the conduct of Gaming Activities and related business activities in Gaming Facilities and areas where Gaming Employees are employed or assigned.

21.4-17. *Gaming Operator* means the Tribe, an enterprise owned by the Tribe, or such other entity of the Tribe as the Tribe may from time to time designate as the wholly-owned entity having full authority and responsibility for the operation and management of Gaming Operations.

21.4-18. *Gaming Services* means the provision of any goods and services, except legal services and accounting services, to a Gaming Operation, including, but not limited to, equipment, transportation, food, linens, janitorial supplies, maintenance, or security services.

21.4-19. *Indian Gaming Regulatory Act* or *IGRA* means Public Law 100-497, 102 Stat. 2426, 25 U.S.C. sec. 2701, et seq., as amended.

21.4-20. *Judiciary* means the judicial system that was established by Oneida General Tribal Council resolution GTC #1-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

21.4-21. *License* means a certificate or other document that represents the grant of a revocable authorization to conduct the licensed activity. A ~~License~~ License shall ~~must~~ be supported by a physical document, badge, certification or other physical manifestation of the issuance of the revocable authorization to conduct the licensed activity.

21.4-22. *Licensee* means a person or entity issued a valid License.

21.4-23. *NIGC* means the National Indian Gaming Commission.

21.4-24. *Oneida Business Committee* means the elected governing body of the Tribe exercising authority delegated from the Oneida General Tribal Council of the Oneida Tribe of Indians of Wisconsin under Article IV of the Constitution and By-laws for the Oneida Tribe of Indians of Wisconsin, approved December 21, 1936, as thereafter amended.

21.4-25. *Oneida General Tribal Council* means the governing body of the Oneida Tribe of Indians of Wisconsin as determined by the Tribe's Constitution.

21.4-26. *Ordinance or ONGO* means the Oneida Nation Gaming Ordinance as it may from time to time be amended.

21.4-27. *Regulatory Incident* means the occurrence of any event giving rise to a potential or alleged non-compliance with a gaming regulation, ordinance, law or policy involving any person or Licensee on the premises of a Gaming Facility.

21.4-28. *Remediation* means efforts taken to reduce the source and migration of environmental contaminants at a site.

21.4-29. *Reservation* means all lands 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.

21.4-30. *Senior Gaming Management* means the gaming general manager, assistant gaming general managers, gaming directors and assistant gaming directors.

21.4-31. *State* means the State of Wisconsin, its authorized officials, agents and representatives.

21.4-32. *Tribe* means the Oneida Tribe of Indians of Wisconsin.

21.4-33. *Tribal Fee Land* means all land to which the Tribe holds title in fee simple.

21.4-34. *Tribal Trust Land* means all land to which the United States holds title for the benefit of the Tribe pursuant to federal law.

21.5. Oneida Business Committee: Powers and Duties

21.5-1. The Oneida Business Committee retains the power and duty to enter into agreements or compacts with the State under the Indian Gaming Regulatory Act.

21.5-2. The Oneida Business Committee retains the power and duty to enter into agreements with local governments and other Tribal governments for services or cooperative ventures for the Gaming Operations.

21.5-3. The Oneida Business Committee has the exclusive power and duty to enter into contracts and agreements affecting the assets of the Tribe, except for those assets that were placed under the responsibility of the Oneida Land Commission under Chapter 67, Real Property Law.

21.5-4. The Oneida Business Committee delegates to the Commission, as set out in section 21.6-14, certain authorities and responsibilities for the regulation of Gaming Activities, Gaming Operations, Gaming Operators, Gaming Employees, Gaming Facilities, Gaming Services, and enforcement of laws and regulations, as identified in this Ordinance.

21.5-5. The Oneida Business Committee retains the duty and responsibility to safeguard all funds generated by the Gaming Operations and all other authorities and responsibilities not delegated by a specific provision of this Ordinance.

21.5-6. The Chairperson of the Tribe shall be the designated and registered agent to receive notice of violations, orders, or determinations which are issued pursuant to the Indian Gaming Regulatory Act and the Compact.

21.6. Oneida Gaming Commission

21.6-1. *Establishment and Purpose.* The Oneida Business Committee has established the Oneida Gaming Commission for the purpose of regulating all Gaming Activities. The Commission is an elected body comprised of four (4) members, provided that, the Oneida Business Committee may, upon request of the Commission, increase the number of Commissioners by resolution without requiring amendment of this Ordinance.

21.6-2. *Location and Place of Business.* The Commission shall maintain its offices and principal place of business within the Reservation.

21.6-3. *Duration and Attributes.* The Commission shall have perpetual existence and succession in its own name, unless dissolved by Tribal law. Operations of the Commission shall be conducted on behalf of the Tribe for the sole benefit of the Tribe and its members. The Tribe reserves unto itself the right to bring suit against any person or entity in its own right, on behalf of the Tribe, or on behalf of the Commission, whenever the Tribe considers it necessary to protect the sovereignty, rights, and interests of the Tribe or the Commission.

21.6-4. *Sovereign Immunity of the Tribe.*

(a) All inherent sovereign rights of the Tribe with regard to the existence and activities of the Commission are hereby expressly reserved.

(b) The Tribe confers upon the Commission sovereign immunity from suit as set forth in the Tribe's Sovereign Immunity Ordinance.

(c) Nothing in this Ordinance nor any action of the Commission shall be construed to be a waiver of its sovereign immunity or that of the Tribe, or consent by the Commission or the Tribe to the jurisdiction of the Judiciary, the United States, any state, or any other tribe, or consent by the Tribe to any suit, cause of action, case or controversy, or the levy of any judgment, lien, or attachment upon any property of the Commission or the Tribe.

21.6-5. Requirements of Commission Membership.

(a) *Qualifications.* Candidates for election or appointment to the Commission shall be at least twenty-one (21) years of age on the day of the election or on the day of appointment. In addition, candidates for election to the Commission shall meet the following qualifications within five (5) business days after a caucus for elected positions on the Commission. Candidates for appointment to the Commission shall meet the following qualifications on the day of appointment to a vacancy on the Commission under section 21.6-13:

(1) Be an enrolled member of the Tribe;

(2) Have a minimum of three (3) years of education experience, employment experience and/or regulatory experience in Gaming Operations related to Gaming Activity, Gaming law, Gaming control or regulation, or Gaming accounting or of any combination of the foregoing; and

(3) Meet all other qualifications set forth in this Ordinance.

(b) *Conflict of Interest.* No person shall be considered for election or appointment as a Commissioner until the candidate has disclosed all conflicts of interest as defined by the Oneida Conflict of Interest Policy.

(c) *Background Investigation.* No person shall be considered for election or appointment as a Commissioner until a preliminary Background Investigation has been completed and the person has been found to meet all qualifications.

(d) Swearing into office is subject to a Background Investigation regarding the qualifications set forth in sections 21.6-5 and 21.6-6 upon being elected or appointed to

office.2

21.6-6. Unless pardoned for activities under subsection (a) and/or (d) by the Tribe, or pardoned for an activity under subsection (a) and/or (d) by another Federally-recognized Indian Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or pardoned for an activity under subsection (a) and/or (d) by the State or Federal government, no individual shall be eligible for election or appointment to, or to continue to serve on, the Commission, who:

(a) Has been convicted of, or entered a plea of guilty or no contest to, any of the following:³

(1) Any gambling-related offense;

(2) Any offense involving Fraud or misrepresentation;

(3) Any offense involving a violation of any provision of chs. 562 or 565, Wis. Stats., any rule promulgated by the State of Wisconsin Department of Administration, Division of Gaming or any rule promulgated by the Wisconsin Racing Board;

(4) A felony not addressed in paragraphs 1, 2, or 3, during the immediately preceding ten (10) years; or

(5) Any offense involving the violation of any provision of Tribal law regulating the conduct of Gaming Activities, or any rule or regulation promulgated pursuant thereto.

(b) Has been determined by the Tribe to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming or the carrying on of the business and financial arrangements incidental thereto;

(c) Possesses a financial interest in or management responsibility for any Gaming Activity or Gaming Services vendor;

(d) Has been convicted of a crime involving theft, Fraud, or conversion against the Tribe;

(e) Has been removed from any office pursuant to the Oneida Removal Law within the past five (5) years; or

(f) Is a sitting Commissioner whose term is not concluded at the time of that election or appointment action.

2 Racquel Hill: *written* – The main concern I have with the amendments to the ONGO and the current ONGO is that it does not state anywhere within the content, and I do not believe it is currently a requirement that the elected Gaming Commissioners are licensed. It would seem that those individuals who serve in a regulatory capacity and are responsible to develop licensing procedures for all employees of the Oneida gaming operation, who have the authority to request background investigations, and who are also authorized to issue, suspend, revoke and renew those licenses should be held to the same or even higher standards and be required to be licensed themselves.

It is my understanding that many Tribes have implemented this requirement and adopted gaming ordinances with specific language addressing this issue and those can be found on the website of the National Indian Gaming Commission.

³ This section taken substantially from Section IX of the Tribe-State Gaming Compact.

21.6-7. *Term of Office.* Commissioners shall serve five (5) year terms and shall serve until a successor takes the oath of office. Terms of office shall be staggered.

21.6-8. *Official Oath.* Each Commissioner shall take the official oath at a regular or special Oneida Business Committee meeting prior to assuming office. Upon being administered the oath of office, a Commissioner shall assume the duties of office and shall be issued a security card setting forth his or her title and term of office.

21.6-9. *Full-time Status.* The Commission shall identify the appropriate work schedule for its members. Each Commissioner shall perform his or her duties and responsibilities on a full-time basis and ~~will~~shall devote his or her entire work and professional time, attention and energies to Commission business, and ~~will~~shall not, during his or her tenure in office, be engaged in any other profession or business activity that may impede the Commissioner's ability to perform duties on behalf of the Commission or that competes with the Tribe's interests.

21.6-10. *By-laws.* The Commission shall adopt bylaws subject to review and approval by the Oneida Business Committee.

21.6-11. *Budget and Compensation.* The Commission shall function pursuant to an annual budget. The Oneida Business Committee shall submit the operating budget of the Commission for approval in the same fashion as all other Tribal budgets. Compensation of Commissioners shall not be subject to the Tribe's Comprehensive Policy Governing Boards, Committees, and Commissions, but shall be established by the Commission in a manner consistent with the Commission's internal rules and by-laws. The Commission shall adopt internal rules consistent with the existing Tribal accounting practices to verify its budgetary expenditures.

21.6-12. *Removal.* Removal of Commissioners shall be pursuant to the Oneida Removal Law.

21.6-13. *Vacancies.* Any vacancy in an unexpired term of office, however caused, shall be filled by appointment by the Oneida Business Committee of a person qualified pursuant to sections 21.6-5 and 21.6-6.

21.6-14. *Authority and Responsibilities.* Subject to any restrictions contained in this Ordinance or other applicable law, the Commission is vested with powers including, but not limited to the following:

(a) To exercise all power and authority necessary to effectuate the gaming regulatory purposes of this Ordinance, IGRA, Oneida Gaming Minimum Internal Controls, and the Compact. Unless otherwise indicated in this Ordinance or Commission regulation, or authorized by majority vote of the Commission, no Commissioner shall act independently of the Commission. Any such action may constitute grounds for removal.

(b) To promote and ensure the integrity, security, honesty, and fairness of the regulation and administration of Gaming.

(c) To draft, and approve, subject to review and adoption by the Oneida Business Committee, regulations pursuant to this Ordinance for the regulation of all Gaming Activity, including processes for enforcement of such regulations consistent with Tribal law.

(d) To draft, and approve, ~~subject to review and adoption by the Oneida Business Committee,~~ the Rules of Play and Oneida Gaming Minimum Internal Controls; provided that, Rules of Play and Oneida Gaming Minimum Internal Controls shall require review and comment by ~~the Gaming Operation~~Senior Gaming Management prior to approval by the Commission, ~~and those comments shall be included in any submission~~are subject to review and ratification by the Oneida Business Committee. ~~Rules of Play and Oneida Gaming Minimum Internal Controls are adopted and approved industry standards for~~

Gaming Operations.

(1) Rules of Play and Oneida Gaming Minimum Internal Controls are minimum standards with which the Gaming Operations are required to comply and are audited against.

(2) Comments received from Senior Gaming Management shall be included in any submission to the Oneida Business Committee.

(3) Rules of Play and Oneida Gaming Minimum Internal Controls shall be effective upon adoption by the Commission.⁴

(e) To prepare proposals, including budgetary and monetary proposals, which might enable the Tribe to carry out the purpose and intent of this Ordinance, and to submit the same for consideration by the Oneida Business Committee; provided, however, that no such proposal shall have any force or effect unless it is approved by the Oneida Business Committee.

(f) To monitor and enforce all laws and regulations governing the operation and conduct of all Gaming Activities, including the ongoing monitoring of Licenses, subject to this Ordinance and/or regulations setting forth hearing or enforcement processes.

(g) To monitor and investigate all Gaming Operators for compliance with internal audits, and external audits.

(h) To inspect, examine, and photocopy all papers, books, and records of Gaming Activities and any other matters necessary to carry out the duties pursuant hereto, provided that, all photocopies of documents shall be maintained in a confidential manner or in the same manner as the original.

(i) To grant, deny, revoke, condition, suspend or reinstate the Licenses of Gaming Employees, Gaming Services vendors, and Gaming Operators.

(j) To conduct hearings relating to Licenses issued under this Ordinance by the Commission.

4 **Cathy Buchhuber:** *written* - 21.6-14 (d) states Rules of Play and OGMIC are approved by the Commission (and become immediately effective) and are to be reviewed and ratified by the OBC. As written, the sequence of approvals which are needed may be unclear; however, the analysis does state the intent is that the Commission first adopts the Rules of Play and OGMIC and *then* they are sent to the OBC for review and ratification. In which case the amendments do not state what would occur if the OBC does not agree with the changes already approved and made immediately effective by the Commission.

Draft

21.6-14. *Authority and Responsibilities.* Subject to any restrictions contained in this Ordinance or other applicable law, the Commission is vested with powers including, but not limited to the following:

(d) To draft, and approve, subject to review and adoption by the Oneida Business Committee, the Rules of Play and Oneida Gaming Minimum Internal Controls; provided that, Rules of Play and Oneida Gaming Minimum Internal Controls shall require review and comment by Senior Gaming Management prior to approval by the Commission, and are subject to review and ratification by the Oneida Business Committee.

(1) Rules of Play and Oneida Gaming Minimum Internal Controls are minimum standards with which the Gaming Operations are required to comply and are audited against.

(2) Comments received from Senior Gaming Management shall be included in any submission to the Oneida Business Committee.

(3) Rules of Play and Oneida Gaming Minimum Internal Controls shall be effective upon adoption by the Commission.

- (k) To review all vendors doing business with the Gaming Operator to verify that such persons or entities hold a valid License, where required, to do business with a Gaming Operator.
- (l) To retain professional advisors such as attorneys, law enforcement specialists, and Gaming professionals consistent with Tribal law and practices.
- (m) To arbitrate, negotiate, or settle any dispute to which it is a party and which relates to its authorized activities.
- (n) To act as the designated agent to receive all regulatory notices not included in section 21.5-6.
- (o) To investigate all Regulatory Incidents.
- (p) To issue warnings or notices of violation, in accordance with regulations, to Gaming Operators and Licensees for non-compliance with the Compact, Oneida Gaming Minimum Internal Controls, Rules of Play, IGRA, or this Ordinance.
- (q) To make determinations regarding suitability for licensing.
- (r) To establish an administrative structure by regulation to carry out its authority and responsibilities.
- (s) To establish, where needed, additional processes for conducting licensing hearings by regulation.
- (t) To establish and collect fees for processing License applications by regulation.
- (u) To establish and impose a point system for findings of regulatory violations by any Gaming Employee by regulation.
- (v) To establish and impose a fine system for findings of regulatory violations by any Gaming Services vendor or permittee by regulation.
- (w) To approve procedures that provide for the fair and impartial resolution of patron complaints.

21.6-15. *Reporting Requirements.* The Commission shall adhere to the following reporting requirements:

- (a) A true, complete and accurate record of all proceedings of the Commission shall be kept and maintained;
- (b) Complete and accurate minutes of all Commission meetings shall be filed with the Secretary of the Oneida Business Committee within thirty (30) days of their approval by the Commission;
- (c) Quarterly, or as may be directed by the Oneida Business Committee, reports of the Commission's activities, including information regarding funding, income and expenses and any other matters to which the parties may agree, shall be submitted to the Oneida Business Committee.

21.6-16. *Oneida Gaming Commission Personnel.* The Commission shall hire an Executive Director who shall be responsible for hiring and managing the personnel of the Commission. The Executive Director shall hire such personnel as is necessary to assist the Commission to fulfill its responsibilities under this Ordinance, the IGRA, and the Compact, and all regulations including the Oneida Gaming Minimum Internal Controls. The Executive Director and personnel of the Commission shall be hired through the Tribe's regular personnel procedure and shall be subject to its personnel policies and salary schedules. The Executive Director and personnel shall be required to meet the requirements set forth in section 21.12-3 at hiring and during employment.

21.7. Gaming Surveillance: Powers, Duties and Limitations

21.7-1. *Purpose.* The purpose of Gaming Surveillance is to observe and report Regulatory Incidents to the Commission and Gaming General Manager to provide for the regulation, operation, and compliance of Gaming Activities under this Ordinance. Gaming Surveillance is a department within the Commission's administrative structure and supervision shall be identified within the organizational chart adopted by the Commission, provided that nothing in the designation of supervisory responsibility shall be deemed to prohibit the responsibility of Gaming Surveillance to provide information and/or video and/or audio records to the parties identified in section 21.7-3.

21.7-2. Gaming Surveillance shall be responsible for all Gaming surveillance activities including, but not limited to, equipment and maintenance of equipment, observation and reporting of all persons to include Gaming Employees, customers, consultants, and Gaming Services vendors.

21.7-3. Surveillance personnel shall provide to Senior Gaming Management, the Commission, or Gaming Security a copy of any time-recorded video and accompanying audio (if available) within twenty-four (24) hours of request.

21.7-4. Gaming Surveillance shall:

- (a) Develop, implement and maintain written policies and procedures for the conduct and integrity of the Surveillance Department.
- (b) Develop, implement and maintain additional procedures governing the use and release of the surveillance recordings or reports.
- (c) Work cooperatively with the Gaming Security Department to carry out its official duties and to coordinate its activities in order to effectuate the protection of patrons and the assets of the Gaming Operation.
- (d) Develop, implement and maintain written policies and procedures for implementation of duties and responsibilities identified with the Oneida Gaming Minimum Internal Controls, subject to approval by the Commission.

21.8. [Reserved for future use.]

21.9. Gaming Security Department

21.9-1. *Purpose.* The Gaming Security Department is a department within the Oneida Police Department. The purpose of the Gaming Security Department is to protect Gaming assets, patrons and Gaming Employees from an activity, repeat activity, or ongoing activities which could injure or jeopardize Gaming assets, patrons and Gaming Employees and report these activities to the Oneida Police Department for further review and/or investigation. Provided that, all reports of the Gaming Security Department shall be copied to the Commission.

21.9-2. *Reporting.* The Oneida Police Department, Gaming General Manager and the Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, which describes their responsibilities and reporting requirements under this [lawOrdinance](#).

21.9-3. The Gaming Security Department shall:

- (a) Develop, implement and maintain written policies and procedures for the conduct and integrity of Gaming Security, as identified in the Oneida Gaming Minimum Internal Controls and subject to approval by the Commission.
- (b) Develop, implement and maintain additional procedures governing the use and

release of the investigation reports.

(c) Work cooperatively with Gaming Surveillance to carry out its official duties and to coordinate activities between the departments.

21.9-4. *Investigations.* This ~~S~~section is intended to authorize report gathering, information gathering, and preliminary review, to be conducted by the Gaming Security Department.

21.10. Background Investigations

21.10-1. The Human Resources Department and the Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, for carrying out Background Investigations for employees as required under this ~~law-~~ Ordinance.

21.10-2. Background Investigations shall be conducted on all persons or entities as specified under this ~~law-~~ Ordinance. All Background Investigations shall be conducted to ensure that the Tribe in its Gaming Operations shall not employ or contract with persons whose prior activities, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of ~~g~~Gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods in the conduct of such ~~g~~Gaming. The identity of any person interviewed in order to conduct a Background Investigation shall be confidential.

21.11. Licenses, Generally

21.11-1. The Commission shall adopt procedures that ensure the efficient and orderly processing of all applications for a License. All Gaming Employees, Gaming Services vendors, and Gaming Operators shall apply for a License from the Commission prior to their participation in any Gaming Activity. All Gaming Facilities ~~must~~shall be licensed by the Oneida Business Committee.

21.11-2. *Temporary License.* All Applicants, upon receipt by the Commission of a completed application for a License and completion of a preliminary Background Investigation, may receive a temporary license for a ninety (90) day period, unless a Background Investigation of the application demonstrates grounds to disqualify the Applicant. Such temporary license, as defined in this section, shall permit the Licensee to engage in such activities and pursuant to any terms and conditions imposed and specified by the Commission. The temporary license shall be valid until either replaced by a License, the ninety (90) day temporary license period has concluded, or the temporary license is cancelled by the Commission, whichever occurs first.

21.11-3. *Revocable.* A License is revocable only in accordance with the procedures set forth in this Ordinance. A Licensee shall have only those rights and protections regarding a License granted in this Ordinance.

21.11-4. All Applicants:

(a) Consent to the release of any information relevant to the Applicant's Background Investigation by any person or entity in possession of such information.

(b) Consent to the jurisdiction of the Tribe and are subject to all applicable Tribal, Federal, and State laws, regulations, and policies.

21.11-5. All Licensees are subject to ongoing review at least every two (2) years by the Commission.

21.11-6. *Status of Licenses.* The Commission shall notify the Gaming Operation of the status of all Licenses, whether temporary or permanent, including all Commission action to revoke, suspend, or condition a License.

21.11-7. *Commission Licensing Actions.* The Commission may grant, deny, revoke, condition,

suspend or reinstate all Licenses, except for Gaming Facilities Licenses, in accordance with this Ordinance. Authority to place conditions on a License may be exercised only upon promulgation of regulations.

21.11-8. *Noncompliance.* The Commission may issue a notice of noncompliance when the Commission has developed regulations that identify procedures that notices of noncompliance may be issued to Licensees and permittees which provide an opportunity to correct actions. Such regulations shall include procedures for appeal of such notices. Regulations may include the ability to issue fines not to exceed one thousand dollars (\$1000.00) per violation for Gaming Services vendors and permittees.

21.12. Gaming Employee License

21.12-1. *Scope of Section.* This Section applies only to Gaming Employee Licenses and licensing actions.

21.12-2. *License Application.* Every Applicant for a License shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, which shall certify:

(a) Applicant's full name and all other names used (oral or written), Social Security Number(s), place of birth, date of birth, citizenship, gender, and all languages (spoken or written).

(b) Currently, and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license number(s).

(c) The names and current addresses, of at least three (3) personal references, including one (1) personal reference, who were acquainted with the Applicant during each period of residence listed in subsection (b) above.

(d) Current business and residence telephone numbers.

(e) A description of any existing and previous business relationships with Indian Tribes, including ownership interest in those businesses.

(f) A description of any existing and previous business relationship with the Gaming industry generally, including ownership interest in those businesses.

(g) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for a license or permit related to gGaming, whether or not such licenses or permit was granted.

(h) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for an occupational license or permit, whether or not such licenses or permit was granted.

(i) For each felony conviction or ongoing prosecution or conviction, the charge, the name and address of the court involved, and the date and disposition if any.

(j) For each misdemeanor or ongoing misdemeanor prosecution (excluding violations for which jail time is not part of the potential sentence) within ten (10) years of the date of the application, the name and address of the court involved, and the date and disposition.

(k) For each criminal charge (excluding charges for which jail time is not part of the potential sentence) whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to subsections (i) or (j) of this section, the criminal charge, the name and address of the court involved and the date and disposition.

(l) A photograph.

(m) Fingerprints consistent with procedures adopted by the Commission which meet the criteria set forth in 25 C.F.R. section 522.2(h). The Commission shall be the agency that takes the fingerprints.⁵

(n) Any other information the Commission deems relevant for a Gaming Employee License.

(o) A statement that each Applicant has read and understands notices and NIGC requirements relating to:

(1) The Privacy Act of 1974;

(2) Fraud and False Statements Act; and

(3) Fair Credit Reporting Act.

21.12-3. *License Qualifications.* No License shall be granted if the Applicant:

(a) Is under the age of eighteen (18).

(b) Unless pardoned for activities under this subsection by the Tribe, or pardoned for activities under this subsection by another Federally-recognized Indian Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or pardoned for activities under this subsection by the state or Federal government, has been convicted of, or entered a plea of guilty or no contest to, any of the following:

(1) Any gambling-related offense;

(2) Any offense involving Fraud or misrepresentation;

(3) Any offense involving a violation of any provision of chs. 562 or 565, Wis. Stats., any rule promulgated by the State of Wisconsin Department of

5 **Cathy Buchhuber:** *written* - Does the Commission qualify as a “law enforcement agency” as reference in 25 CFR 522.2? NIGA doesn’t appear to be limiting fingerprinting to only being done by a Gaming Commission type entity; NIGA states that a law enforcement agency needs to be identified:

25 CFR 522.2. A Tribe shall submit to the Chairman all of the following information with a request for approval of a class II or class III ordinance or resolution.

(h) Identification of a law enforcement agency that will take fingerprints and a description of procedures for conducting a criminal history check by a law enforcement agency. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

NIGA has a broader scope of who can take fingerprints: “an appropriate federal, state or tribal law enforcement authority”.

25 CFR 537.1 Applications for approval. (b) For each natural person identified in paragraph (a) of this section, the management contractor shall provide to the Commission the following information:

...

(2) *Fingerprints.* The management contractor shall arrange with an appropriate federal, state, or tribal law enforcement authority to supply the Commission with a completed form FD-258, Applicant Fingerprint Card, (provided by the Commission), for each person for whom background information is provided under this section.

Is the intent to authorize *only* the Commission to take fingerprints? Would this eliminate the ability of someone to obtain their fingerprints from the Oneida Police Department or another Tribal department who may otherwise be authorized to complete a FD-258 Applicant Fingerprint Card?

Draft

21.12-2 (m) Fingerprints consistent with procedures adopted by the Commission which meet the criteria set forth in 25 C.F.R. section 522.2(h). The Commission shall be the agency that takes the fingerprints.

Administration, Division of Gaming or any rule promulgated by the Wisconsin Racing Board;

(4) A felony not addressed in paragraphs (1), (2), or (3), during the immediately preceding ten (10) years; or

(5) Any offense involving the violation of any provision of Tribal law regulating the conduct of Gaming Activities, or any rule or regulation promulgated pursuant thereto.

(c) Is determined to be a person whose prior activities, criminal record, reputation, habits, or associations pose a threat to the public interest or to the effective regulation and control of Gaming or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming Activities or the carrying on of the business and financial arrangements incidental thereto.

(d) Possesses a financial interest in or management responsibility for any Gaming Activity or Gaming Services vendor, or he or she has any personal, business, or legal relationship which places him or her in a conflict of interest as defined in this Ordinance or the Conflict of Interest Policy.

(e) Each person ~~L~~icensed as a Gaming Employee shall have a continuing obligation to inform the Commission immediately upon the existence of any circumstance or the occurrence of any event which may disqualify him or her from being licensed as a Gaming Employee. Failure to report any such occurrence may result in suspension or revocation of the Gaming Employee's License.

21.12-4. *Initial Eligibility Determination.*

(a) Based on the results of the preliminary Background Investigation, the Commission shall make an initial determination regarding an Applicant's eligibility and either:

(1) Grant a temporary license, with or without conditions, to the Applicant; or

(2) Deny the ~~L~~icense application and provide notice to the Applicant that he or she may request a hearing regarding the decision consistent with subsection (b) below.

(b) If the Commission determines that an Applicant is ineligible for a License, the Commission shall notify the Applicant. The Commission shall set forth regulations for an Applicant to review any information discovered during the preliminary Background Investigation prior to scheduling a hearing under section 21.12-~~9~~10. The suspension or revocation hearing provisions set forth at section 21.12-~~89~~ do not apply to Initial Eligibility Determinations.

21.12-5. *Eligibility Determination and Notification to NIGC-Review.* When a Gaming Employee begins employment at a Gaming Operation, the Commission shall:

(a) ~~Forward~~Require the Gaming Employee to ~~the NIGC~~submit a completed application for employment that contains the notices and information listed in section 21.12-2~~and any other necessary reports.~~

(b) Review the Background Investigation of the ~~Applicant.~~Based Gaming Employee. Within sixty (60) days after a Gaming Employee begins employment at a Gaming Facility under a temporary license, the Commission shall make an eligibility determination regarding whether the Gaming Employee may receive a License based

upon the results of the Background Investigation, ~~the Commission shall determine the eligibility of the Applicant to receive a License.~~⁶

~~(c) Determine eligibility for a License within sixty (60) days after an Applicant begins work at a Gaming Facility under a temporary license.~~

~~(d) Forward, after determination of eligibility, a report to the NIGC~~ (c) Create an investigative report based on each Background Investigation performed. The investigative report shall include the steps in conducting the Background Investigation, results obtained, conclusions reached and the basis for those conclusions.

(d) Prior to issuing a License to a Gaming Employee and within sixty (60) days after the Applicant Gaming Employee begins employment at a Gaming Facility.

~~(1) During a thirty (30) day period, beginning when the NIGC receives a report submitted pursuant to subsection (d) above, the Chairman, submit a notice of results of the Background Investigation to the NIGC for inclusion in the Indian Gaming Individual Record System. The notice of the NIGC may request results shall include the following, provided that any additional or alternate information from the Commission concerning the Applicant. Such a request shall suspend the thirty (30) day period until the Chairman receives the additional information.~~

~~(2) If, within the thirty (30) day period described in subsection (1) above, the NIGC notifies the Commission that it has no objection to the issuance of a License, the Commission may grant the License to the Applicant.~~

~~(3) If, within the thirty (30) day period described in subsection (1) above, the NIGC provides the Commission with a statement itemizing objections to the issuance of a License, the Commission shall reconsider the application, taking into account the objections itemized by the NIGC. The Commission shall make the final decision whether to issue a License to the Applicant.~~

~~(4) shall be forwarded as directed in regulations or rules adopted by NIGC:~~

(1) The Gaming Employee's name, date of birth and social security number.

(2) The date on which the Gaming Employee began employment.

(3) A summary of the information presented in the investigative report, including:

(A) License(s) that have previously been denied;

6 **Cathy Buchhuber:** *written* - Are there any tribal employees, other than Gaming employees, not employed at a location that is defined as a gaming facility who are required to obtain a gaming license?

Draft

21.4-15. *Gaming Facility or Gaming Facilities* means any location or structure, stationary or movable, wherein Gaming is permitted, performed, conducted or operated. Gaming Facility does not include the site of a fair, carnival, exposition, or similar location.

Are gaming licenses ever issued to someone not employed directly at a gaming facility? For example, based on the definition of a gaming facility, Gaming Commissioners and their staff (at the W. Mason location) would not fall under this provision.

Draft

21.12-5(b) Review of Background Investigation of Gaming Employee. Within sixty (60) days after a Gaming Employee begins employment at a Gaming Facility under a temporary license, the Commission shall make an eligibility determination regarding whether the Gaming Employee may receive a License based upon the results of the Background Investigation.

(B) Gaming licenses that have been revoked, even if subsequently reinstated;

(C) Every known criminal charge brought against the Gaming Employee within the last ten (10) years of the date of the application;

(D) Every felony of which the Gaming Employee has been convicted or any ongoing prosecution.

(4) a copy of the eligibility determination made under section 21.12-5(b).

(e) All applications, Background Investigations, investigative reports, suitability determinations, findings and decisions of the Commission shall be retained in the Commission's files for a period of at least ~~seven (7) years~~ three (3) years from the date the Gaming Employee's employment is terminated.

~~21.12-6. License Issuance.~~ 21.12-6. License Issuance. The Commission may issue a License to a Gaming Employee at any time after providing NIGC with a notice of results as required under section 21.12-5(d); however, a Gaming Employee who does not have a License ninety (90) days after the start of employment shall have his or her employment terminated. The Commission shall notify the NIGC of the issuance or denial of a License to a Gaming Employee within thirty (30) days after the License is issued or denied.

(a) Any Gaming Employee License issued under this section shall be effective from the date of issuance and shall contain the Gaming Employee's photograph, the Gaming Employee's name, and the date that the License became effective. If a Gaming Employee is promoted, transferred, reassigned, or the position is reclassified, the Gaming Employee shall notify in writing the Commission, and the Commission shall review the Gaming Employee's License. The Commission retains the right to grant, deny, revoke, condition, suspend, or reinstate Licenses subject to the right to appeal the decision under the processes set forth in this Ordinance.

21.12-7. Requirement to Wear License. During working hours, all Licensees shall wear their License in a conspicuous place that is plainly visible by all employees, the Nation's ~~g~~Gaming patrons and surveillance.

21.12-8. NIGC Review.

(a) During a thirty (30) day period, beginning when the NIGC receives a notice of results submitted pursuant to section 21.12-5(d) above, the Chairman of the NIGC may request additional information from the Commission concerning the Gaming Employee. ~~Such a request shall suspend the thirty (30) day period until the Chairman receives the additional information.~~

(b) If, within the thirty (30) day period after NIGC receives the notice of results, the NIGC notifies the Commission that it has no objection to the issuance of a License, and the Commission has not yet issued a License to the Gaming Employee, the Commission may grant the License to the Gaming Employee.

(c) If, within the thirty (30) day period after NIGC receives the notice of results, the NIGC provides the Commission with a statement itemizing objections to the issuance of a License, the Commission shall reconsider the application, taking into account the objections itemized by the NIGC. The Commission shall make the final decision whether to issue a License to the Gaming Employee, or if the Gaming Employee has already been licensed, whether to suspend or revoke the License in accordance with section 21.12-9.

(d) Upon receipt of notification from the NIGC that a Gaming Employee who has already been licensed is not eligible for employment, the Commission shall immediately

suspend the License in accordance with section 21.12-9.
21.12-9. Suspension or Revocation of Licenses. Except as provided in section 21.12-8(d) or
21.12-9(c), no License ~~can~~may be suspended or revoked except after notice and opportunity for
hearing.

(a) *Basis for Licensing Action.* The Commission may suspend, condition, or revoke any
License issued under this Ordinance if:

(1) After the issuance of a License, the Commission receives from the NIGC or
other source reliable information indicating that a Gaming Employee is not
eligible for a License under section 21.12-3 or such information would justify the
denial of the renewal of any License, the Commission shall issue a written notice
of suspension;

(2) The Commission issues a written notice of suspension demonstrating that the
Licensee:

(A) Has knowingly made a materially false or misleading statement in
any application for a License, in any amendment thereto, or in response to
a request by the Commission for supplemental information or in
connection with any investigation of the Commission;

(B) Has knowingly promoted, played, or participated in any gaming
activity operated in violation of the Compact, Tribal or federal law, and
this Ordinance;

(C) Has bribed or attempted to bribe, or has received a bribe from, a
Commissioner or any other person in an attempt to avoid or circumvent
any applicable law;

(D) Has falsified any books or records relating to any transaction
connected with the operation of Gaming Activity;

(E) Has refused to comply with any lawful directive of the Tribe, the
Federal government, or any court of competent jurisdiction; or

(F) Has been convicted of, or entered a plea of guilty or no contest to, a
crime involving the sale of illegal narcotics or controlled substances.

(b) *Suspension Notice.* The Commission's notice of suspension shall be in writing and
shall, at a minimum, notify the Licensee of the following:

(1) The Licensee's right to review a file prior to any hearing regarding the notice
of suspension, and to make copies of any documents contained in that file;

(2) The Licensee's right to request a hearing on the proposed licensing action, to
present documents and witness testimony at that hearing to be represented by
counsel;

(3) The specific grounds upon which the proposed licensing action is based,
including citations to relevant sections of this Ordinance, the IGRA, any
applicable Regulations and/or the Compact; and

(4) The time and place set by the Commission for the Licensee's hearing.

(c) *Immediate Suspension.* If, in the judgment of the Commission, the public interest,
and effective regulation and control of Gaming Activities requires the immediate
exclusion of a Licensee, the Commission may immediately suspend a License prior to the
conduct of a hearing on the matter. Such an immediate suspension may take effect upon
service of the notice of immediate suspension.

(d) Any notice of suspension or notice of immediate suspension shall set forth the times

and dates for when the Licensee may review ~~their~~his or her file ~~review~~ and the date for a hearing on any proposed licensing action.

(e) Within fifteen (15) business days after a hearing, the Commission shall issue a final written licensing decision and decide whether to suspend, uphold an immediate suspension, revoke, or take other action concerning a License. If the License was suspended, conditioned or revoked based on information from the NIGC or other source under section 21.12-8(d) or 21.12-9(a)(1), the Commission shall forward a copy of its decision to NIGC within forty-five (45) days of receiving NIGC's or the other source's notification indicating that a Gaming Employee is not eligible for a License.

(f) If a Licensee fails to appear for his or her hearing before the Commission, that right shall be deemed to have been waived and the Commission will proceed on the proposed licensing action by default.

(g) Unless identified in this Ordinance or regulations of the Commission, the hearing processes set forth in the ~~Oneida Administrative Procedures Act~~Tribe's administrative procedures law shall apply.

~~21.12-9~~10. *Original Hearing Body*. Any person aggrieved by a licensing decision of the Commission may appeal the decision by filing a request for an original hearing before the Commission. The Licensee ~~must~~shall file any such request with the Commission in writing on or before the fifteenth (15th) day following receipt of the Commission's decision. The Commission shall certify the record, developed in section 21.12-4 or 21.12-~~89~~(a), within thirty (30) days of the date of the filing of the request for an original hearing. The Commissioners serving on the original hearing body shall not include the Commissioners who participated in the licensing decision from which the original hearing is scheduled. The Commission may determine to review the decision solely on the licensing decision record and briefs filed regarding the request for reconsideration. The Commission may also, in its sole discretion, grant oral argument. The Commission shall issue a written decision determining whether to uphold the Commission's licensing decision, including whether to revoke or reinstate a License, within one hundred twenty (120) days from receipt of the request for the original hearing. The Commission's decision shall be considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.

~~21.12-10~~11. *Notice to Oneida Business Committee*. Prior to any suspension or revocation of a License of the gaming general manager, the Commission shall provide notice to the Oneida Business Committee twenty-four (24) hours prior to the issuance of the suspension or revocation.

~~21.12-11~~12. *Record of Proceedings*. The Commission shall maintain a complete and accurate record of all ~~L~~licensure proceedings.

~~21.12-12~~13. Revocation of a License is solely limited to the licensing matter. Employment related processes resulting from revocation of a ~~L~~license are determined solely through the personnel processes and procedures of the Tribe and are not licensing matters governed by this Ordinance.

21.13. Gaming Services Licensing and Non-Gaming Services Permitting

21.13-1. *Scope of Section*. This section applies to all individuals and entities providing Gaming Services. The requirements of this Section are in addition to, and do not alter or amend any

requirements imposed by the Oneida Vendor Licensing Law.⁷

21.13-2. *Gaming Services License or Non-Gaming Services Permit Required.*

(a) *Gaming Services License.* Any Gaming Services vendor providing ~~g~~Gaming related contract goods or services as defined under Article VII(A) of the Compact to the Gaming Operation ~~must~~shall possess a valid Gaming Services License.

(b) *Non-Gaming Services Permit.* Any vendor providing non-gaming related goods or services to the Gaming Operation ~~must~~shall possess a valid Non-Gaming Services permit.

(c) Determinations regarding the issuance of a License or permit under this section shall be made by the Commission which may be subject to requests for reconsideration by the Gaming Services vendor within fourteen (14) business days of receipt by the Gaming Services vendor of the notice of License or permit determination.

21.13-3. *Approved Gaming Services Vendor List.* The Commission shall maintain an updated and complete list of all Gaming Services vendors that possess current and valid Gaming Services Licenses or Non-Gaming Services permits from the Commission, which shall be known as the Approved License and Permit List. Gaming Operations may only do business with vendors that possess valid and current Gaming Services Licenses or Non-Gaming Services permits and who appear on the Approved License and Permit List.

21.13-4. *Gaming Services License/Permit Application.* Every Applicant for a License or permit shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified which shall provide and certify the following. Provided that, ~~n~~Non-~~g~~Gaming ~~s~~Services vendors with less than two thousand five hundred dollars (\$2,500.00) in services for the prior fiscal year shall only be required to file a notice of doing business with the Commission.

(a) The Applicant's name and mailing address;

(b) The names and addresses of each officer or management official of the Applicant;

(c) A copy of the Applicant's articles of incorporation and by-laws, or if not a corporation, the Applicant's organizational documents;

(d) Identification of an agent of service for the Applicant;

(e) The name and address of each person having a direct or indirect financial interest in the Applicant;

(f) The nature of the License or permit applied for, describing the activity to be engaged in under the License or permit;

(g) Explicit and detailed disclosure of any criminal record, including any delinquent taxes owed to the United States, or any state, of the Applicant, any person involved in the organization, and any person of interest whose name appears or is required to appear on the application;

(h) Whether the Applicant is or has been licensed by the state of Wisconsin Office of Indian Gaming Regulation and Compliance and, if applicable, proof of current licensure;

(i) Whether the Applicant has been licensed in the state of New Jersey, Nevada, or by any other gaming jurisdiction, including any Indian Tribe or Tribal governmental organization and, if so, proof of such licensure and the status of any such ~~L~~License;

⁷ See also Appendix 1. Vendor Licensing/Permit.

(j) Whether the Applicant has been denied a ~~L~~icense by any gaming jurisdiction and, if so, the identity of the jurisdiction, the date of such decision and the circumstances surrounding that decision;

(k) Whether any ~~L~~icense held by the Applicant has been refused renewal, conditioned, suspended or revoked by an issuing authority and, if so, the circumstances surrounding that action;

(l) A statement of waiver allowing the Tribe to conduct a Background Investigation of the Applicant and any person whose name appears or is required to appear on the application;

(m) Whether the Applicant or any person whose name appears or is required to appear on the application has or has had any business with the Tribe or any business or personal relationship with any of the Tribe's officers or employees;

(n) The name and contact information for all Tribes or Tribal organizations with whom the Applicant or any person whose name appears or is required to appear on the application has done business;

(o) Whether the Applicant or any person whose name appears or is required to appear on the application maintains any involvement in the business of wholesale distribution of alcoholic beverages;

(p) A statement that the Applicant has read and understands notices and NIGC requirements relating to:

(1) The Privacy Act of 1974;

(2) False statements; and

(3) The Fair Credit Reporting Act.

(q) All additional information necessary to allow the Commission to investigate the Applicant and any person whose name appears or is required to appear on the application.

21.13-5. *Signature on Application.* Applications for Licenses or permits ~~must~~shall be signed by the following person:

(a) For companies and corporations (both for profit and non-profit), the highest ranking official of the corporation, or another person to whom the authority to execute the Application has been properly delegated.

(b) For a sole proprietorship, the principal owner.

(c) For a partnership, all partners.

(d) For a limited partnership, the general partner or partners.

21.13-6. *Incomplete Applications.* Applications that do not contain all information requested, including proper signatures, will be considered incomplete. Incomplete applications will not be considered by the Commission. The Commission shall notify an Applicant if an application is incomplete and what additional information is necessary to complete the application. If an Applicant who has submitted an incomplete application, and been notified of the deficiency in that application, fails to provide the information requested by the Commission, the application will be returned to the Applicant and the file closed.

21.13-7. *Supplemental Information.* The Commission may, in its discretion, request supplemental information from the Applicant. Supplemental information requested by the Commission shall be promptly submitted by the Applicant. An Applicant's failure or refusal to submit supplemental information requested by the Commission may constitute grounds for the denial of the application.

21.13-8. *Continuing Duty to Provide Information.* Applicants, permittees, and Licensees owe a

continuing duty to provide the Commission with information and materials relevant to the Applicant's, permittee's, or Licensee's character or fitness to be licensed, including but not limited to any change in the licensing or permitting status of the Applicant, permittee, or Licensee in any foreign jurisdiction. An Applicant's, permittee's, or Licensee's failure to notify the Commission promptly of inaccuracies on an application or new information or materials relevant to the Applicant may constitute grounds to deny, suspend or revoke a License or permit.

21.13-9. *Background Investigations.* Background Investigations for Gaming Services vendors shall be conducted as follows.

(a) *Gaming Related Equipment Gaming Services Vendors under Fifty Thousand Dollars (\$50,000.00) in Goods and/or Services Annually.* The Commission shall conduct the Background Investigations that are sufficient to determine the eligibility for licensing of all Gaming Services vendors that provide or anticipate providing under fifty thousand dollars (\$50,000.00) in goods and services annually.

(b) *Gaming Related Equipment Gaming Services Vendors over Fifty Thousand Dollars (\$50,000.00) in Goods and/or Services Annually.* The Commission shall review the background investigation conducted by the Wisconsin Office of Indian Gaming Regulation, and shall conduct any necessary additional Background Investigation to ensure that the state background investigation is complete and current.

(c) *Other Non-Gaming Related Goods and/or Services Gaming Services Vendors.* The Commission shall conduct Background Investigations on a sufficient number of randomly selected applications in order to verify the accuracy of all applications. The random selection process shall be identified by regulation of the Commission.

21.13-10. *Licensing Action in a Foreign Jurisdiction.* If the states of Wisconsin, New Jersey, Nevada or any other gaming jurisdiction refuses to renew a ~~L~~icense or permit or conditions, suspends, or revokes the ~~L~~icense or permit of an Applicant, permittee, or Licensee, such action may constitute grounds for similar action by the Commission.

21.13-11. *Claim of Privilege.* At any time during the licensing or permitting process, the Applicant may claim any privilege afforded by law. An Applicant's claim of privilege with respect to the production of requested information or documents or the provision of required testimony or evidence may constitute grounds for the denial, suspension or revocation of a ~~L~~icense or permit.

21.13-12. *Withdrawal of an Application.* An Applicant may request to withdraw an application by submitting a written request to the Commission. The Commission retains the right, in its exclusive discretion, to grant or deny a request for withdrawal. An Applicant who withdraws an application shall be precluded from reapplying for a Gaming Services License or Non-Gaming Services permit for a period of one (1) year from the date the application was withdrawn.

21.13-13. *Suspension or Revocation of Gaming Services Licenses or Permits.* Except as provided in section 21.13-13(c), no License or permit ~~can~~may be suspended or revoked except after notice and opportunity for hearing.

(a) *Basis for Licensing or Permitting Action.* The Commission may suspend, modify, or revoke any Gaming Services License or Non-Gaming Services permit issued under this Ordinance if, after issuance of the License or permit, the Commission receives reliable information that would justify denial of the issuance or renewal of a License or permit, or if the Commission determines that the Licensee or permittee has:

(1) Knowingly made a materially false or misleading statement in any application for a License or permit, in any amendment thereto, or in response to a request by

the Commission for supplemental information or in connection with any investigation of the Commission;

(2) Knowingly promoted, played, or participated in any Gaming Activity operated in violation of the Compact, or any Tribal or other applicable law;

(3) Bribed or attempted to bribe a Commissioner or any other person in an attempt to avoid or circumvent any applicable law;

(4) Falsified any books or records relating to any transaction connected with operation of Gaming Activity;

(5) Refused to comply with a lawful directive of the Tribe, the federal government, or any court of competent jurisdiction; or

(6) Been convicted of, or entered a plea of guilty or no contest to, a crime involving the sale of illegal narcotics or controlled substances.

(b) *Suspension Notice.* The Commission shall provide a Licensee or permittee with written notice of suspension, which shall, at a minimum, notify the Licensee or permittee of the following:

(1) The Licensee's or permittee's right to conduct a file review prior to any hearing regarding the notice of suspension, and to make copies of any documents in that file;

(2) The Licensee's or permittee's right to present documents and witness testimony at the hearing and to be represented by counsel;

(3) The specific grounds upon which the suspension is based, including citations to relevant sections of this Ordinance, the IGRA, any applicable regulations and/or the Compact; and

(4) The time and place set by the Commission for the Licensee's or permittee's file review and hearing.

(c) *Immediate Suspension.* If, in the judgment of the Commission, the public interest, and effective regulation and control of others require the immediate exclusion of a Licensee or permittee, the Commission may immediately suspend a License or permit prior to a hearing on the matter. Such an immediate suspension shall take effect upon service of the notice of immediate suspension.

(d) *File Review and Hearing.* Any notice of suspension or notice of immediate suspension shall set forth the time and date for the Licensee or permittee to conduct a file review and for a hearing.

(e) *Final Written Decision.* Within fifteen (15) business days after a hearing, the Commission shall issue a final written decision and decide whether to suspend, uphold an immediate suspension, revoke, or take other action concerning a License or permit.

(f) *Default.* If a Licensee or permittee fails to appear for his or her hearing before the Commission, that right shall be deemed to have been waived and the Commission will proceed on the proposed licensing action by default.

(g) Unless identified in this Ordinance or regulations of the Commission, the hearing processes set forth in the Oneida Administrative Procedures Act shall apply.

21.13-14. *Original Hearing Body.* Any person aggrieved by a licensing or permitting decision of the Commission may appeal the decision by filing a request for an original hearing before the Commission. The Applicant, Licensee or permittee ~~must~~shall file such request with the Commission in writing on or before the fifteenth (15th) day following the receipt of the Commission's decision. The Commission shall certify the record, developed in section 21.13-9

or 21.13-13(a), within thirty (30) days of the date of the filing on the request for an original hearing. The Commissioners participating in the initial licensing or permitting decision shall not participate in the original hearing. The Commission may determine to review the decision solely on the licensing or permitting decision record and briefs filed regarding the request for reconsideration. The Commission may also, in its sole discretion, grant oral argument. The Commission shall issue a written decision within one hundred twenty (120) days from receipt of the request for the original hearing. The Commission's decision shall be considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.

21.14. Gaming Facility License

21.14-1. The construction and maintenance of any Gaming Facility, and the operation of Gaming Activities, shall be conducted in a manner which adequately protects the environment and the public health and safety, and shall comply with requirements of the Compact and all other applicable health, safety, and environmental standards.

21.14-2. The Oneida Business Committee shall receive, review and grant or deny any application for licensing any Gaming Facilities located within the Reservation. Applicants shall provide the Oneida Business Committee sufficient information to show the following:

(a) The Gaming Facility meets all applicable Federal and Tribal health and safety standards.

(1) To show compliance with applicable health and safety standards, Gaming Operator shall submit certified copies of Compliance Certificates issued by the agencies responsible for the enforcement of the health and safety standards.

(2) If health and safety standards are not met, proof ~~must~~shall be submitted by Gaming Operator that the Gaming Facility is in the process of improvements which will place the Gaming Facility in compliance with the applicable standards.

(b) The Gaming Facility meets applicable federal and Tribal environmental standards.

(1) To show compliance with applicable environmental standards, Gaming Operator shall submit certified copies of an Environmental Assessment of the Gaming Facility which were prepared by the agency responsible for the enforcement of applicable environmental standards.

(2) If the applicable environmental standards are not met, proof ~~must~~shall be submitted by Gaming Operator that ~~f~~Remediation of the Gaming Facility is being actively sought which will place the Gaming Facility in compliance with the applicable standards.

21.14-3. Upon receipt and review of the above information, the Oneida Business Committee shall deliberate and either grant or deny for failure to meet the requirements of protecting the health and safety of patrons, public and employees of a Gaming Facility License to the Applicant. The Oneida Business Committee shall submit to the NIGC a copy of each Gaming Facility License issued.

21.14-4. If the Oneida Environmental, Health and Safety Department notifies the Oneida Business Committee that a Gaming Facility will be closed by a governmental agency with proper authority due to environmental, health or safety concerns, the Oneida Business Committee shall suspend the License of the Gaming Facility. The Oneida Business Committee shall re-License the Gaming Facility after receiving the information required in section 21.14-2.

21.15. Gaming Operator License

21.15-1. *Consent to Jurisdiction.* The application for License and the conduct of Gaming within the jurisdiction of the Tribe shall be considered consent to the jurisdiction of the Tribe in all matters arising from the conduct of Gaming, and all matters arising under any of the provisions of this Ordinance or other Tribal laws.

21.15-2. *License Required.* No Gaming Operator shall conduct Gaming Activity unless such entity holds a valid and current Gaming Operator License issued by the Commission.

21.15-3. *Types of Licenses.* The Commission may issue each of the following types of Gaming Operator Licenses:

(a) *Tribally-Owned or Tribally-Operated Class II.* This License shall be required of all Tribally-owned or Tribally-operated Gaming Operations operating one or more Class II Gaming Activities.

(b) *Tribally-Owned or Tribally-Operated Class III.* This License shall be required for all Tribally-owned or Tribally-operated Gaming Operations operating one or more Class III Gaming Activities.

21.15-4. *Gaming Operator License Qualifications.* The Commission shall issue a Gaming Operator License to any Gaming Operation if:

(a) The Gaming Operation is to be located within the Reservation, or land taken into trust after October 17, 1988, for Gaming purposes;

(b) The Gaming Activity proposed to be played at the Gaming Operation is Class II or Class III Gaming as defined by this Ordinance and IGRA; and

(c) The proposed Gaming Operation is authorized by a resolution of the Oneida Business Committee.

21.15-5. *Provisions of General Applicability to All Gaming Operators.*

(a) *Site and Gaming Operator Specified.* Each Gaming Operator License shall be applicable only to one (1) Gaming Operation and the Gaming Facility named on the License.

(b) *License Not Assignable.* No Gaming Operator License shall be sold, lent, assigned or otherwise transferred.

(c) *Regulations Posted or Available.* Each Gaming Operator shall have a copy of this Ordinance and any regulations promulgated thereunder available for inspection by any person at each Gaming Facility.

(d) *Display of License.* Each Gaming Operator shall prominently display its License at each Gaming Facility.

21.15-6. *Grandfathered Gaming Facilities.* All Gaming Operators operating on the effective date of July 5, 2007, are hereby granted a License under this section.

21.15-7. *License Application Fees and License Taxes.* No application fees or License taxes shall be required by the Tribe for a Gaming Operator License.

21.15-8. *Closure of a Gaming Operation.* If the Commission finds that any Gaming Operation is operating in violation of this Ordinance, or otherwise presents a threat to the public, the Commission shall immediately notify the Oneida Business Committee. The Oneida Business Committee may close any Gaming Operation temporarily or permanently at any time with or without cause, at its sole discretion.

21.16. Games

21.16-1. Class II and Class III Games are hereby authorized by this Ordinance.

21.16-2. *Gaming Procedures*. Games operated under this Ordinance shall be consistent with the Compact and any amendments thereto and the Internal Control Standards and Rules of Play of the Gaming Operation.

21.16-3. *Who May Not Play*. It is the policy of the Tribe that particular Gaming Employees, employees of the ~~Gaming~~ Commission, particular governmental officials, and consultants who directly advise the Commission or employees at Gaming Facilities regarding gaming related activities may not participate in Gaming Activities conducted at Gaming Operations. At a minimum, members of the Oneida Business Committee, the Commission, the gaming general manager, assistant gaming general managers, directors of individual Games and assistant directors of individual Games may not participate in any Gaming Activity within the Reservation.

(a) The Oneida Business Committee may identify by resolution additional positions restrictions on Gaming Activity conducted at Gaming Facilities. Such resolution shall be on file with the Commission.

(b) The Commission and Senior Gaming Management shall each develop and maintain their own standard operating procedure identifying other positions and any applicable restrictions on Gaming Activity conducted at Gaming Facilities. The standard operating procedure and the list of positions shall be on file with the Commission.

21.17. Allocation of Gaming Funds

21.17-1. Net Gaming revenues may only be used for the following purposes:

(a) To fund Tribal government operations, programs, or services.

(b) To provide for the general welfare of the Tribe and its members; provided that per capita payments shall only be made pursuant to an approved revenue allocation plan.

(c) To promote Tribal economic development.

(d) To contribute to charitable organizations.

(e) To assist in funding operations of other local governments.

(f) To fund programs designed to provide education, referrals, and treatment of Gaming addiction disorders.

(g) Any other purpose as determined by the Oneida General Tribal Council or the Oneida Business Committee which is not inconsistent with the Constitution of the Tribe and IGRA.⁸

⁸ **Cathy Buchhuber:** *written* - In accordance with the more recent FY 2014 Revenue Allocation Plan (RAP), the RAP governs “the allocation of available net revenues from tribally owned gaming enterprises including per capita distributions to qualified members of the Oneida Tribe.”

Therefore, the Tribe’s RAP includes a plan of how net gaming revenues should be allocated for 21.17-1(a)-(f), not only for the general welfare.

Draft

21.17-1. Net Gaming revenues may only be used for the following purposes:

(a) To fund Tribal government operations, programs, or services.

(b) To provide for the general welfare of the Tribe and its members; provided that per capita payments shall only be made pursuant to an approved revenue allocation plan.

(c) To promote Tribal economic development.

(d) To contribute to charitable organizations.

(e) To assist in funding operations of other local governments.

21.18. Audits

21.18-1. *Annual Audit.* An annual audit of each Gaming Operation shall be conducted by an independent, certified public accounting firm according to generally accepted accounting principles. Copies of the annual audit ~~will~~shall be provided to the Oneida Business Committee, the Oneida Audit Committee, the Commission, and the NIGC by said certified public accounting firm.

(a) All contracts for supplies, services, or concessions for the Gaming Operations in excess of twenty-five thousand dollars (\$25,000.00) are subject to audit as prescribed in this section. Contracts for legal services and accounting services are exempt from this requirement.

21.18-2. *Other Audits.* All audits, other than the annual audit under section 21.18-1, shall be conducted pursuant to the Oneida Audit Law or any other applicable law of the Tribe, and other audits authorized under the Compact.

21.18-3. *Request for Audits.* Any audit, except the annual audit which is mandated by IGRA, may be authorized at any time by the Oneida General Tribal Council, the Oneida Business Committee or the Oneida Audit Committee.

21.19. Enforcement and Penalties

21.19-1. No individual or entity may own or operate a Gaming Facility unless specifically authorized to do so pursuant to this Ordinance.

21.19-2. *Violations/Prosecutions.* Violators of this Ordinance may be subject to disciplinary action and civil and/or criminal prosecutions.

21.19-3. *Remedies.* The Oneida Business Committee may authorize commencement of an action in any court of competent jurisdiction to recover losses, restitution, and forfeitures resulting from violations of this Ordinance.

End.9

(f) To fund programs designed to provide education, referrals, and treatment of Gaming addiction disorders.

(g) Any other purpose as determined by the Oneida General Tribal Council or the Oneida Business Committee which is not inconsistent with the Constitution of the Tribe and IGRA.

The additional language added to 21.17-1(b) is placing a requirement for the distribution of per capita payments in the Gaming Ordinance which seems misplaced and would seem to be a better fit in a law governing per capita payments. This is likely already covered assuming the “Tribal Allocation Plan” referenced in the Tribe’s Per Capita Law is meant to refer to a Revenue Allocation Plan:

9.4-5. Oneida Business Committee. The Oneida Business Committee shall be identified as having the following responsibilities regarding per capita activities. Action reasonably related to activities defined herein, shall be considered an Oneida Business Committee activity.

(a) Identification of funds for allocation of per capita payments.

(b) Approval of Tribal Allocation Plan and forwarding the Tribal Allocation Plan for approval by the Bureau of Indian Affairs.

(c) Transfer of funds for the trust account to the Trust Committee in a timely manner and within a reasonable timeframe.

9 **Cathy Buchhuber:** *written* – The Public hearing packet made available online was not complete. It did not

1264

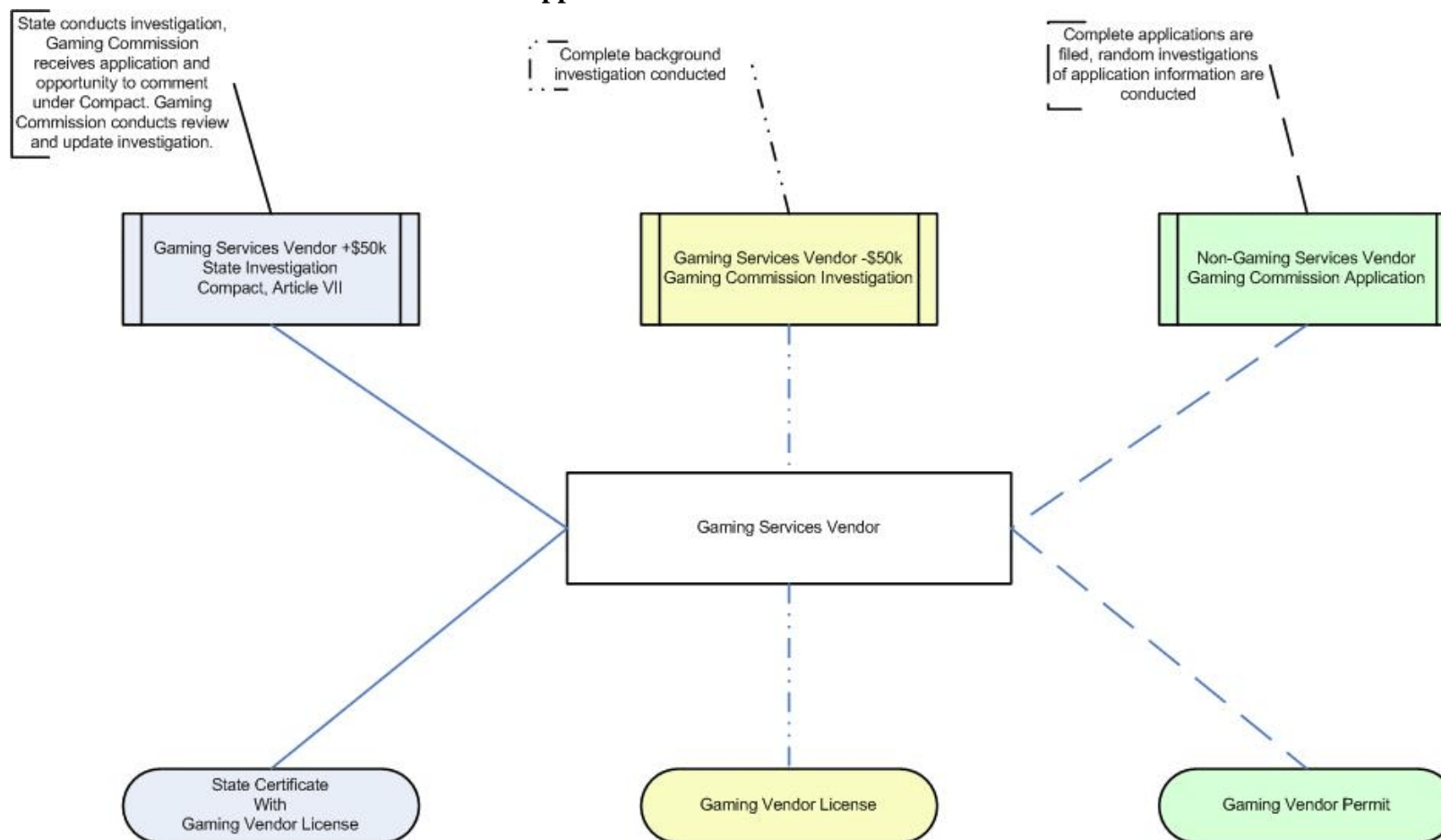
contain the legislative analysis:

[https://www.oneida-nsn.gov/uploadedFiles/wwwroot/Government/Laws, Policies, Resolutions/Oneida Register/Public Meetings/Public%20Meeting%20Packet.pdf](https://www.oneida-nsn.gov/uploadedFiles/wwwroot/Government/Laws,_Policies,_Resolutions/Oneida_Register/Public_Meetings/Public%20Meeting%20Packet.pdf)

1266 Adopted GTC-7-05-04-A
1267 Emergency Amended BC-7-14-04-A
1268 Amendment BC-10-06-04-D
1269 Emergency Amended BC-11-03-04-A
1270 Permanent Adoption BC-3-23-05-C
1271 Amended BC-9-23-09-D
1272| Amended BC-06-25-14-~~C~~B (effective 11 01 2014)
1273 Emergency Amended BC-10-08-14-C (effective 11
1274 01 2014)

Draft 4 redline to current
06/25/15

Appendix 1. Vendor License/Permit



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
David P. Jordan, Councilmember

LEGISLATIVE OPERATING COMMITTEE

Public Meeting on ONGO Amendments
Business Committee Conference Room-2nd Floor
Norbert Hill Center
July 30, 2015 12:15 p.m.

PRESENT: Tehassi Hill, Jennifer Webster, Steve Hill, Tamara Van Schynder, Matt Denny, Loucinda Conway, William Cornelius, Michele Doxtator, Rae Skenandore, Mark Powless, Sr., Lora Skenandore, Krystal John, Douglass McIntyre, Candice Skenandore, Taniquelle Thurner, Danelle Wilson, Cathy Bachhuber.

ONGO Amendments Public Meeting (00:01-4:56)

Tehassi Hill: Good afternoon everybody. It is 12:15. We'll get the public meeting under way. The topic is the Oneida Nation Gaming Ordinance Amendments.

The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal that would: update the Ordinance in order to comply with NIGC (National Indian Gaming Commission) regulations by: requiring the identity of a person being interviewed for a background investigation to be kept confidential; requiring the Commission to retain all applications, investigative reports and eligibility determinations for at least three years from the date the applicant's employment was terminated; requiring the Commission to forward a copy of its decision to suspend, condition or revoke a license to NIGC within forty-five (45) days of receiving NIGC's notification indicating that an employee is not eligible for a license; clarifying that the Commission takes fingerprints as required in the Ordinance; including in the process for determining an applicant's eligibility for a license and notice to NIGC; clarifying when an Applicant may be issued a License; including a section that allows for NIGC, NIGC review of a License and actions that were – will or may be taken based on that review; requiring the Commission to forward a hearing decision regarding a licensing – a License to NIGC if the License was suspended, conditioned or revoked based on a notification from NIGC; requiring an approved revenue allocation plan before per capita payments are made; and also clarifying how the Rules of Play and other – Oneida Gaming Minimum Internal Controls are adopted and when they become effective.

All community members are invited to attend this meeting to learn more about this proposal and/or submit comments concerning this proposal. The Public Comment Period open — opened until August 6, 2015. During the Public Comment Period, all interested persons may submit written comments regarding this legislative proposal; and/or 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 the website or contact the LRO Office.

I have a list of names here, with only one that is going to give testimony. That would be Michele Doxtator. Would you please come to a mic.

Michele M. Doxtator: My only... Hello, I'm Michele Doxtator, the Retail Profit Manager. My only comment or concern would be that the ONGO be loose enough or that be a provision that would allow retail to sell lottery tickets, scratch off, and possibly pull tabs at the Oneida One Stops, Smoke shops and the Oneida Casino Tribal Center. Um, we have been working with the LRO and Law Office to clear the path for that to happen. So I am just asking that the – that be consideration.

Krystal John: That is something that we have been working on but there is not time to do that with this Amendment and get it approve by the NIGC in order for this to be effective in time for the emergency amendments expiration. So, if we were to do that we would have to pursue that as an amendment down the road.

Tehassi Hill: Thank you. Is there any other persons in the audience that would like to give testimony or provide comments on the topic. [silence] Should we wait a little bit or [inaudible back ground noise]... Alright, seeing no more further public comments at this time – just to remind everybody that you have until August 6th to submit your written comments on this topic and we will go ahead and close this public meeting on the ONGO amendments. Thank you.

-End of meeting-

Krystal John

From: Cathy L. Bachhuber
Sent: Thursday, July 30, 2015 10:45 AM
To: LOC
Cc: Loucinda K. Conway
Subject: ONGO Public Hearing Comments
Attachments: ONGO PH review 07 22 2015.pdf

Good morning,

Attached are my comments for today's ONGO Public Hearing.

Cathy Bachhuber

Auditor, Internal Audit Department
Oneida Nation
(920)869-4419
cbachhub@oneidanation.org

This message, including any attachments, may contain confidential information intended for specific individuals and purpose, and is protected by law. If you are not the intended recipient, you should delete this message. Any disclosure, copying, distribution of this message or the taking of any action based on it, is strictly prohibited.

ONGO Public Hearing 7/30/15

To: Legislative Operating Committee
CC: Loucinda Conway, Internal Audit
From: Cathy Bachhuber
Date: July 30, 2015
RE: ONGO Public Hearing Comments and Questions on *Draft 4 redline to current 06/25/15*

1. 21.6-14(d) Approval of Rules of Play and OGMIC

21.6-14(d) states Rules of Play and OGMIC are approved by the Commission (and become immediately effective) and are to be reviewed and ratified by the OBC. As written, the sequence of approvals which are needed may be unclear; however, the analysis does state the intent is that the Commission first adopts the Rules of Play and OGMIC and *then* they are sent to the OBC for review and ratification. In which case the amendments do not state what would occur or could occur if the OBC does not agree with changes already approved and made immediately effective by the Commission.

Draft

21.6-14. *Authority and Responsibilities.* Subject to any restrictions contained in this Ordinance or other applicable law, the Commission is vested with powers including, but not limited to the following:

(d) To draft, and approve, the Rules of Play and Oneida Gaming Minimum Internal Controls; provided that, Rules of Play and Oneida Gaming Minimum Internal Controls shall require review and comment by Senior Gaming Management prior to approval by the Commission, and are subject to review and ratification by the Oneida Business Committee.

(1) Rules of Play and Oneida Gaming Minimum Internal Controls are minimum standards with which the Gaming Operations are required to comply and are audited against.

(2) Comments received from Senior Gaming Management shall be included in any submission to the Oneida Business Committee.

(3) Rules of Play and Oneida Gaming Minimum Internal Controls shall be effective upon adoption by the Commission.

2. 21.12-2(m) Fingerprints

Does the Commission qualify as a “law enforcement agency” as referenced in 25 CFR 522.2?

NIGA doesn’t appear to be limiting fingerprinting to only being done by a Gaming Commission type entity; NIGA states that a law enforcement agency needs to be identified:

25 CFR 522.2. A tribe shall submit to the Chairman all of the following information with a request for approval of a class II or class III ordinance or resolution:

(h) Identification of a law enforcement agency that will take fingerprints and a description of procedures for conducting a criminal history check by a law enforcement agency. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

NIGA has a broader scope of who can take fingerprints: “an appropriate federal, state, or tribal law enforcement authority”.

25 CFR 537.1 Applications for approval. (b) For each natural person identified in paragraph (a) of this section, the management contractor shall provide to the Commission the following information:

...

(2) *Fingerprints.* The management contractor shall arrange with an appropriate federal, state, or tribal law enforcement authority to supply the Commission with a completed form FD-258,

Applicant Fingerprint Card, (provided by the Commission), for each person for whom background information is provided under this section.

Is the intent to authorize *only* the Commission to take fingerprints? Would this eliminate the ability of someone to obtain their fingerprints from the Oneida Police Department or another Tribal department who may otherwise be authorized to complete a FD-258 Applicant Fingerprint Card?

Draft

21.12-2. (m) Fingerprints consistent with procedures adopted by the Commission which meet the criteria set forth in 25 C.F.R. section 522.2(h). The Commission shall be the agency that takes the fingerprints.

3. **21.12-5(b) Gaming Facility**

Are there any tribal employees, other than Gaming employees, not employed at a location that is defined as gaming facility who are required to obtain a gaming license?

Draft

21.4-15. *Gaming Facility* or *Gaming Facilities* means any location or structure, stationary or movable, wherein Gaming is permitted, performed, conducted, or operated. Gaming Facility does not include the site of a fair, carnival, exposition, or similar occasion.

Are gaming licenses ever issued to someone not employed directly at a gaming facility? For example, based on the definition of a gaming facility, Gaming Commissioners and their staff (at the W. Mason location) would not fall under this provision.

Draft

21.12-5(b) Review the Background Investigation of the Gaming Employee. Within sixty (60) days after a Gaming Employee begins employment at a Gaming Facility under a temporary license, the Commission shall make an eligibility determination regarding whether the Gaming Employee may receive a License based upon the results of the Background Investigation.

4. **21.17-1 Allocation of Gaming Funds**

In accordance with the more recent FY2014 Revenue Allocation Plan (RAP), the RAP governs “the allocation of available net revenues from tribally owned gaming enterprises including per capita distributions to qualified members of the Oneida Tribe.”

Therefore, the Tribe’s RAP includes a plan of how net gaming revenues should be allocated for 21.17-1(a)-(f), not only for the general welfare.

Draft

21.17-1. Net Gaming revenues may only be used for the following purposes:

- (a) To fund Tribal government operations, programs, or services.
- (b) To provide for the general welfare of the Tribe and its members; provided that per capita payments shall only be made pursuant to an approved revenue allocation plan.
- (c) To promote Tribal economic development.
- (d) To contribute to charitable organizations.
- (e) To assist in funding operations of other local governments.
- (f) To fund programs designed to provide education, referrals, and treatment of Gaming addiction disorders.
- (g) Any other purpose as determined by the Oneida General Tribal Council or the Oneida Business Committee which is not inconsistent with the Constitution of the Tribe and IGRA.

The additional language added to 21.17-1(b) is placing a requirement for the distribution of per capita payments in the Gaming Ordinance which seems misplaced and would seem to be a better fit in a law governing per capita payments. This is likely already covered assuming the “Tribal Allocation Plan” referenced in the Tribe’s Per Capita Law is meant to refer to a Revenue Allocation Plan:

9.4-5. Oneida Business Committee. The Oneida Business Committee shall be identified as having the following responsibilities regarding per capita activities. Actions reasonably related to activities defined herein, shall be considered an Oneida Business Committee activity.

(a) Identification of funds for allocation for per capita payments.

(b) Approval of Tribal Allocation Plan and forwarding the Tribal Allocation Plan for approval by the Bureau of Indian Affairs.

(c) Transfer of funds for the trust account to the Trust Committee in a timely manner and within a reasonable time frame.

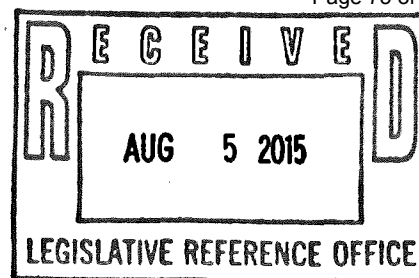
5. Other:

The Public hearing packet made available on-line was not complete. It did not contain the legislative analysis:

[https://www.oneida-nsn.gov/uploadedFiles/wwwroot/Government/Laws, Policies, Resolutions/Oneida Register/Public Meetings/Public%20Meeting%20Packet.pdf](https://www.oneida-nsn.gov/uploadedFiles/wwwroot/Government/Laws,_Policies,_Resolutions/Oneida_Register/Public_Meetings/Public%20Meeting%20Packet.pdf)

August 4, 2015

Legislative Operating Committee (LOC)
P. O. Box 365
Oneida, WI 54155




Subject: Oneida Nation Gaming Ordinance Amendments Public Meeting Written Testimony

To Whom It May Concern:

The main concern I have with the amendments to the ONGO and the current ONGO is that it does not state anywhere within the content, and I do not believe it is currently a requirement that the elected Gaming Commissioners are licensed. It would seem that those individuals who serve in a regulatory capacity and are responsible to develop licensing procedures for all employees of the Oneida gaming operation, who have the authority to request background investigations, and who are also authorized to issue, suspend, revoke, and renew those licenses should be held to the same or to even higher standards and be required to be licensed themselves.

It is my understanding that many Tribes have implemented this requirement and adopted gaming ordinances with specific language addressing this issue and those can be found on the website of the National Indian Gaming Commission.

Your attention and consideration in regards to this very important concern is greatly appreciated.
Yaw^ko.


Racquel Hill



Legislative Operating Committee

August 19, 2015

Comprehensive Policy Governing Boards, Committees and Commissions Amendments

Submission Date: 9/17/14

☐ Public Meeting:
☐ Emergency Enacted:
 Expires:

LOC Sponsor: Jennifer Webster

Summary: *This item was carried over into the current term by the LOC. Amendments were requested to: prohibit individuals from serving on multiple boards, committees and commissions at one time; set term limits; and prohibit Tribal employees from serving on tribal boards, committees and commissions. In addition, the OBC directs that the appointment process be reviewed.*

9/10/14 OBC: Motion by Lisa Summers to direct the Tribal Secretary's Office to send formal correspondence to the Land Claims Commission requiring them to submit their reports by Friday and to request the LOC to bring back a recommendation on how to amend the Comprehensive Policy Governing Boards, Committees, and Commissions to include the withholding of stipends payments to Boards, Committees, and Commissions who do not provide their reports in a timely manner, seconded by Fawn Billie. Motion carried unanimously.

9/17/14 LOC: Motion by Jennifer Webster to add the Comprehensive Policy Governing Boards, Committees and Commissions Amendments to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.

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

4/22/15 OBC: Motion by Lisa Summers to direct the Comprehensive Policy Governing Boards, Committees, and Commissions appointment process be sent back to the Legislative Operating Committee for amendments and to bring back a recommendation on clarifying the process, seconded by Fawn Billie. Motion carried unanimously.

5/6/15 LOC: Motion by Jennifer Webster to defer the Comprehensive Policy Governing Boards, Committees and Commission to a Legislative Operating Committee work meeting; seconded by David P. Jordan, motion carried unanimously.

5/27/15 OBC: Motion by Jennifer Webster to accept the report from the Secretary's Office as information and to request the LOC to make the necessary policy amendments to the Comprehensive Policy Governing Boards, Committees and Commissions to address this issue, seconded by Lisa Summers. Motion carried unanimously.

6/8/15: Work Meeting held. Attendees: Danelle Wilson, Melanie Burkhart, Brandon Stevens, Rae Skenandore, David Jordan, Jacob Metoxen, Tehassi Hill, Fawn Billie, Jenny Webster, Kathy Metoxen, Candice Skenandore, Tani Thurner, Fawn Cottrell, Lynn Franzmeier, Daril Peters, Jordan Rasmussen.

8/4/15:

OBC Work Meeting held. Attendees: Jennifer Webster, Trish King, Tina Danforth, Tehassi Hill, David P. Jordan, Fawn Billie, Fawn Cottrell, Dawn Moon-Kopetsky, Krystal John, Tani Thurner.

Next Steps:

- Provide comments on the current draft, if any, and forward for a legislative analysis and fiscal impact statement.

Draft 02 – 08/19/2015
Redline to Current Policy

Comprehensive Policy Governing Boards, Committees and Commissions

Article I. Purpose and Policy
Article II. Adoption, Amendment, Repeal
Article III. Definitions
Article IV. Applications
Article V. Vacancies
Article VI. Appointed Positions
Article VII. Elected Positions

Article VIII. By-Laws of Boards, Committees and Commissions
Article IX. Minutes
Article X. Dissolution of Entities
Article XI. Stipends, Reimbursement and Compensation for Services
Article XII. Confidential Information
Article XIII. Conflicts of Interest

Article I. Purpose and Policy

1-1. It is the purpose of this ~~policy~~ Policy to govern the standard procedures regarding the appointment of persons to boards, committees and commissions, creation of by-laws, maintenance of official records, compensation, and other items related to boards, committees and commissions. This ~~policy~~ Policy does not apply to ~~the Nation's Tribal~~ corporations due to the corporate structure and autonomy of those ~~entities~~ Entities.

1-2. It is the Nation's policy to have consistent and standard procedures for choosing and appointing the most qualified persons to boards, committees and commissions, for creation of by-laws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

Article II. Adoption, Amendment, Repeal

2-1. This ~~policy~~ Policy was adopted by the Oneida Business Committee by resolution # BC-5-14-97-F and amended by resolutions # BC-09-27-06-E, ~~and~~ # BC-09-22-10-C and # BC-

2-2. ~~This~~ Policy may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council, regardless of where the original adoption took place.

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 portions.

2-4. ~~Any~~ policy, regulation, rule, resolution or motion, or portion thereof, which directly conflicts with the provisions of this policy is hereby repealed to the extent that it is inconsistent with or is contrary to this ~~policy~~ Policy. ~~Provided that meeting stipend~~ Stipends for elected ~~member~~ Members of a board, committee or commission that are in effect on [adoption date of the amendments] shall remain unaffected, but prior exceptions to this policy for appointed ~~entities~~ Entities shall be repealed to extent that meeting ~~stipend~~ Stipends are inconsistent with this policy.

Article III. Definitions

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

a. ~~3-2.~~ "Application" means any process by which a person proceeds to be appointed to a Vacancy or considered as a candidate for an election.

b. "Appointment" means the process by which a person is chosen to fill a Vacancy.

Draft 02 – 08/19/2015
Redline to Current Policy

- 38 c. "Conference" means any training, seminar, meeting, or other assembly of persons
 39 which is not an assembly of the Entity.
 40 d. "Department" means any department or area over which an Entity has direct
 41 oversight.
 42 e. "Entity" means a board, committee or commission created by the General Tribal
 43 Council or the Oneida Business Committee whose ~~member~~Members are appointed
 44 by the Oneida Business Committee or elected by ~~the General Tribal Council~~a
 45 majority of the Nation's eligible voters.
 46 f. "Financial Interest" means any profit sharing arrangements, rebates, payments,
 47 commissions, or compensation, in any form, and includes any form of ownership,
 48 regardless of ability to control the activities of the business, provided that, this does
 49 not include ownership of shares which, other than in combination others, cannot
 50 exert a controlling influence on the activities of the business and in relation to the
 51 outstanding shares, the ownership of shares represents a small part of the whole.
 52 g. "Immediate Family" means the husband, wife, mother, father, son, daughter, brother,
 53 sister, grandparent, grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-
 54 law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, first or second
 55 cousin, step-parent, or step-child.
 56 h. "Member" means any person appointed or elected to membership on an Entity.
 57 i. "Per Diem" means the payment made by the Nation to offset the costs of being out-
 58 of-town or to travel on behalf of the Nation.
 59 j. "Stipend" means that amount paid by the Nation to persons serving on boards,
 60 committees and commissions of the Nation to offset the expenses of being a member
 61 on the board, committee or commission.
 62 k. "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal,
 63 the accomplishment of which means the disbanding of the group. The goal is
 64 generally accomplished in a short time period, i.e. less than one year, but the goal
 65 itself may be long-term.
 66 l. "Transaction" means any activity wherein a provider of goods and/or services is
 67 compensated in any form.
 68 m. "Nation" means the Oneida Nation.
 69 n. "Secretary" means the current elected Secretary of the Nation or the current elected
 70 Secretary's designee.
 71 o. "Chairperson" means the current elected Chairperson of the Nation or the current
 72 elected Chairperson's designee.
 73 3-3. p. "Vacancy" means any position on any board, committee or commission caused by
 74 resignation, end of term, removal, termination, ~~or~~ creation of a new position or end
 75 of an designated interim term.
 76 3-4. "Application" means any process by which a person proceeds to be appointed to a
 77 vacancy.
 78 3-5. "Appointment" means the process by which a person is chosen to fill a vacancy.
 79 3-6. "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the
 80 accomplishment of which means the disbanding of the group. The goal is generally
 81 accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.

Draft 02 – 08/19/2015
Redline to Current Policy

3-7. ~~"Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.~~

3-8. ~~"Per Diem" means the payment made by the Tribe to offset the costs of being out of town or to travel on behalf of the Oneida Tribe of Indians of Wisconsin.~~

3-9. ~~"Stipend" means that amount paid by the Oneida Tribe of Indians of Wisconsin to persons serving on boards, committees and commissions of the Oneida Tribe of Indians of Wisconsin to offset the expenses of being a member on the board, committee or commission.~~

3-10. ~~"Official" means any person appointed or elected to membership on an entity of the Oneida Tribe.~~

Article IV. Applications

4-1. ~~The Secretary shall generate, and the Oneida Business Committee must approve, the application form required to be used by all applicants. All applications shall be generated by the Tribal Secretary's Office and approved by the Oneida Business Committee.~~

4-2. ~~The content of applications~~ Applications ~~shall be as follows~~ will contain:

a. questions designed to obtain the ~~following information~~ applicant's

1. name;

2. address;

3. phone number;

4. enrollment number; and

5. position applied for;

b. ~~applications may contain any other~~ additional questions, if necessary, to obtain information necessary to ~~making~~ make an informed decision as to the qualifications of any individual to ~~hold any~~ fill a vacancy Vacancy.

c. ~~Form A-1, attached, is the current approved application form in use and shall be placed in the Tribal Secretary's Office and other locations specified by the Tribal Secretary's Office.~~

4-3. ~~Applications~~ All applicants shall be filed their Applications with the ~~Tribal Secretary's office~~ by 4:30 p.m. of the deadline date. Postmarked envelopes are accepted as filed if postmarked by the deadline date and received by the ~~Tribal Secretary's Office~~ within five (5) business days of the deadline.

4-4. Applications for elected positions must be verified by the Election Board according to the Oneida Election Law. The Secretary shall verify all Applications for appointed positions as needed or as required by the Entity's by-laws.

4-5. At the completion of the posted deadline for filing applications Applications, the ~~Tribal Election Board~~ shall provide notice to all persons who have filed an Application for an elected position and the Secretary shall provide ~~notify~~ notice by postcard to all persons who have filed an ~~application~~ Application for an appointed position.

a. Such notice must be formatted the same for all applicants and must minimally include the following:

1. the ~~the~~ date ~~the~~ the applicant's application Application was filed; and w

2. whether the applicant meets the eligibility requirements as determined by the Entity's by-laws and it will be considered for the election or appointment;

Draft 02 – 08/19/2015

Redline to Current Policy

3. ~~A tentative date for appointment will be placed on the post card with the instruction that this is a tentative date and a note that~~ further information can be requested by ~~calling~~ contacting the ~~Tribal Secretary~~ party sending the notice and providing such contact information;

4. the applicable duties should the applicant be selected; and

5. if eligible for election/appointment: 's Office. Postcard information should be in substantially similar format as that in Figure 1.

"The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an IRS Form 1099 which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

Your application was received on:

Tentative date for appointment or election:

You application 9 is 9 is not being considered.

For more information, call the Tribal Secretary's Office at 869-2214.

4-4. Applications for elected positions shall be verified according to the Oneida Election Ordinance. Applications for appointed positions shall be verified by the Tribal Secretary's Office as needed or as required in the by-laws of the entity.

4-5. In the event that there are insufficient applicants after the deadline date has passed for appointed positions, the Tribal Chairperson may elect to either:

- a. Allow late Applications to be Include included within the applicant pool of appointed persons late applications, or
- b. Repost the Vacancy for an additional time period. In the event of reposting, prior applicants will be considered to have filed applications Applications within the deadline period.

Article V. ~~Vacaneies~~ Vacancies

5-1. This ~~article~~ Article shall governs when ~~vacaneies~~ Vacancies occur, and where and when notice of the ~~vacaneies~~ Vacancies shall ~~must~~ be posted.

5-2. The following ~~vacaneies~~ Vacancies shall ~~be are~~ effective as listed herein.

- a. End of Term. A ~~vacaney~~ Vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends ~~as of~~ according to the Entity's by-laws ~~of the entity~~.
- b. Removal. Removal is effective ~~, under adopted and approved procedures of the entity,~~ when the final action has taken place pursuant to the Entity's adopted and approved procedures. ~~Where a f~~ Final action is defined as has taken place upon the occurrence of any one (1) of the following:
 1. failure to file a timely appeal,
 2. denial of appeal, or
 3. final written opinion is filed.
- c. Resignation. A resignation is effective upon:
 1. Deliverance of a resignation letter to the ~~entity~~ Entity; or

Draft 02 – 08/19/2015
Redline to Current Policy

2. ~~The Entity's~~ Aceeptance-acceptance by motion ~~of the entity~~ of a verbal resignation.

d. Termination. A termination is effective upon a two-thirds majority vote of the entire Oneida Business Committee in favor of a Member's termination of appointment.

~~de.~~ New Positions. Vacancies on new ~~entities~~ Entities are effective upon adoption of by-laws.

~~ef.~~ Interim Positions. Vacancies of interim positions are effective upon creation of interim positions by the Oneida Business Committee or General Tribal Council.

5-3. Entities shall notify the Secretary as soon as any position(s) becomes vacant so that the Secretary may post the notice of Vacancy in order to fill the Vacancy in accordance with the requirements of this Article. ~~All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee. The following guidelines are minimum notice requirements:~~

a. ~~End of Term. Entity should be notified 60 days prior to end of term by the Tribal Secretary.~~

b. ~~Removal or Resignation. Entity should be notified as soon as final action is taken by the Oneida Business Committee or General Tribal Council to accept the resignation, or final action according to any Removal law of the Tribe.~~

5-4. ~~Notice of vacancies shall be by the Tribal Secretary's Office in the following locations:~~

a. ~~Tribal Secretary's Office~~

b. ~~The Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida Community Health Center, the South Eastern Wisconsin Oneida Tribal Services (SEOTS) building and the Highway 54 and E & EE Oneida One Stops.~~

c. ~~Kalihwisaks~~

d. ~~Minutes of the Oneida Business Committee, and~~

e. ~~Any reasonable location requested by the entity.~~

5-~~4~~5. ~~The Tribal Secretary's Office shall forward the notice of vacancy to the~~ request permission from the Oneida Business Committee for approval and direction to prior to posting notice of a Vacancy as set out in this Article and shall post notices of Vacancy within a reasonable time of the Oneida Business Committee's grant of permission, unless expressly stated otherwise in this Section. ~~The Tribal Secretary shall request permission to post notice of Vacancies and shall post such notices of vacancies at the following times based on the cause of the Vacancy as follows:~~

a. End of Term. Permission to post notice of Vacancies for positions becoming vacant due to term completions may be requested annually; the notice of Vacancy for each term completion must automatically be posted thirty (30) days prior to completion of the term in advance of each term completion.

b. Removal. Upon notice by Secretary, or other person authorized by the by-laws of the entity, to the Tribal Secretary's Office. Permission to post notice of Vacancies based on removal must be requested no later than the first Oneida Business Committee meeting following the effective date of the removal.

c. Resignation. Upon notice by the Secretary, or other person authorized by the by-laws of the entity, to the Tribal Secretary's Office. Permission to post notice of Vacancies based on resignation must be requested no later than the first Oneida Business Committee meeting following the Secretary's receipt of notice of an effective

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resignation from the Entity.

d. New Positions. ~~Upon one of the following conditions:~~If the Oneida Business Committee or General Council does not specify a date for posting new positions when creating an Entity, the Secretary shall request permission to post Vacancies for new positions no later than the first Oneida Business Committee following the latter of either the creation of the Entity or the adoption of the Entity's by-law.

~~1- if not specified, immediately upon creation of entity or adoption of by-laws, whichever is later, or~~

~~2- upon date specified when creating the entity.~~

e. Interim Members. Permission to post notice of Vacancies of interim Members must be requested no later than the first Oneida Business Committee meeting following the completion of the term the interim Member was designated to hold. Upon one of the following:

~~1- upon completion of the term designated to hold in new entity, or~~

~~2- upon completion of vacant term of the pre-existing entity~~

f. Termination of ~~appointment~~Appointment. Permission to post notice of Vacancies based on termination of Appointment must be requested no later than the first Oneida Business Committee meeting following the effective date of the termination.~~At the next Oneida Business Committee meeting following the termination of appointment.~~

5-5. At the direction of the Oneida Business Committee, the Secretary shall post notice of Vacancies in each of the following locations:

a. on the Nation's website;

b. in the Kalihwisaks; and

c. any reasonable location requested by the Entity.

5-6 In the event that there is an administrative/clerical error in the Secretary's posted notice of Vacancy, the Secretary may correct such error by reposting the notice of Vacancy as soon as practicable after noticing such error. Under these limited circumstances, the Secretary does not require the approval of the Oneida Business Committee to repost notice of Vacancy. In the event of reposting, prior applicants will be considered to have filed Applications within the deadline period.

Article VI. Appointed ~~Positions~~Entities

6-1. All appointments ~~shall~~must be made by the Oneida Business Committee at regular or special Oneida Business Committee meetings.—~~p~~Provided that, no applicant may be appointed who fails to meet the requirements set out in the entityEntity's by-laws.

a. Notwithstanding the initial determination of membership to an Entity, the Member's status as appointed or elected is based entirely on the Entity's classification as an appointed or elected Entity pursuant to the Entity's by-laws.

6-2. The following procedures ~~shall~~must be used to determine ~~who~~which applicant ~~shall~~is be appointed:

a. Within ~~Five~~ five (5) business days after close of notice, the Secretary shall deliver to the Chairperson all applicationseligible Applications, as verified by the Secretary, shall~~be delivered to the Tribal Chairperson~~ along with a summary of qualifications to hold office.

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b. When selecting an applicant(s) for appointment, the Chairperson may consider the Entity's recommendations, if such recommendations are provided. Within a reasonable time, the ~~Tribal~~ Chairperson shall either:

1. choose an applicant(s) for appointment, or
2. ask the ~~Tribal Secretary's Office~~ to re-post the notice ~~the of vacancy~~ Vacancy because of an ineligible, unqualified, or under qualified ~~applicants~~ applicant pool.

c. Once the Chairperson has made a selection, he or she shall forward the list of qualified applicants along with his or her selected choice of applicant(s) to all Council Oneida Business Committee members prior to appointment. Based on the information provided, the Oneida Business Committee shall, by a majority vote of a quorum at any regular or special Oneida Business Committee meeting, either accept or reject the Chairperson's selected applicant(s).

1. ~~Council members may accept the Tribal Chairperson's selected applicants, or~~
2. ~~Reject an applicant by majority vote of a quorum at any regular or special Oneida Business Committee meeting. If the Chairperson's applicant(s) are rejected by the Oneida Business Committee, the Oneida Business Committee shall, by a majority vote of a quorum at any regular or special Oneida Business Committee meeting:~~

- A. Approve another applicant from the list of qualified applicants; or
- B. Return the Vacancy to the Chairperson with direction to prepare another recommendation; or
- C. Direct the Vacancy to be re-posted.

6-3. All appointments are official upon taking an oath at a regular or special Oneida Business Committee meeting and all rights and delegated authorities of membership in the ~~entity~~ Entity shall vest upon taking the oath. The ~~Tribal~~ Secretary shall notify the chosen persons when they should appear for taking the oath.

- a. The Secretary shall maintain Originals originals of the signed oath shall be maintained by the Tribal Secretary's Office.
- b. The Secretary shall forward Copies copies of the oath shall be forwarded to the new member Member and the entity Entity.
- c. Wording of oaths shall must be approved by the Oneida Business Committee and kept on file by the ~~Tribal~~ Secretary's Office.

1. The following oath is the standard oath to be used unless a specific oath for the ~~entity~~ Entity is pre-approved by the Oneida Business Committee:

I, ~~*(name*)~~, do hereby promise to uphold the laws and regulations of the Oneida ~~Tribe of Indians of Wisconsin~~ Nation, the General Tribal Council, and the ~~Tribal~~ Nation's Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and with the strictest confidentiality.

I will carry out the duties and responsibilities as a member of the ~~*(entity)~~ Entity name ~~*,~~ and all recommendations shall be made in the best interest of the Oneida ~~Tribe~~ Nation as a whole.

- d. Revisions of oaths shall must be approved by the Oneida Business Committee prior to usage.
- e. All oaths shall must be sufficient to make the appointee aware of ~~their~~ his or her duty to the ~~Oneida Tribe~~ Nation and as a member Members of the ~~entity~~ Entity.

6-4. ~~The Tribal Secretary shall notify all applicants of the final status of their application.~~ The

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~~Tribal~~ Chairperson shall forward a list of all applicants to the ~~Tribal~~ Secretary and the final decision regarding the selection after the procedures in ~~see Article~~ 6-2 are completed. The Secretary shall then notify all applicants of the final status of their Application. – Provided that, the Tribal Secretary shall include on the notice to the applicant the following paragraph: Notices to those selected for appointment must include the following:

"The Oneida ~~Tribe of Indians of Wisconsin~~ Nation reports all income paid by the Oneida ~~Tribe~~ Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an ~~income report~~ IRS Form 1099 which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

6-5. *Termination of Appointment.* Appointed ~~member~~ Members of ~~entities~~ Entities serve at the discretion of the Oneida Business Committee. Upon the recommendation of the ~~Tribal~~ Chairperson, an a Member of an appointed ~~member of an entity~~ Entity may have his or her appointment terminated by the Oneida Business Committee by a two-thirds majority vote of the entire Oneida Business Committee.

a. An Appointed Entity may bring a request for termination of a Member to the Oneida Business Committee by asserting the appointed Member has failed to fulfill his or her responsibilities to the Nation as a Member and there is cause for termination based on one (1) or more of the following causes for termination:

1. Failure to meet and maintain the requisite qualifications.
2. Breach of confidentiality.
3. Accumulation of three (3) or more unexcused absences where an absence is unexcused if the appointed Member fails to provide twenty-four (24) hours of notice of an anticipated absence.
4. Accumulation of four (4) or more consecutive absences, whether excused or unexcused.
5. Any other cause for termination established in the Entity's by-laws.

a. b. The Oneida Business Committee's decision to terminate is a final and binding decision; there is no avenue for appeal of a termination of Appointment approved by the Oneida Business Committee.

Article VII. Elected ~~Positions~~ Entities

7-1. All ~~Members of~~ elected ~~positions~~ Entities, ~~unless otherwise noted in the by-laws of the entity, shall must~~ be nominated at a caucus called by the Oneida Election Board, or petition for ballot placement, in accordance with the Oneida Election Law, except for Members appointed to elected Entities pursuant to Article I.4.D. of the Entity's by-laws.

a. Notwithstanding the initial determination of membership to an Entity, the Member's status as appointed or elected is based entirely on the Entity's classification as an appointed or elected Entity pursuant to the Entity's by-laws. Provided that, when the Election Board notifies a petitioner or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included:

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~~"The Oneida Tribe of Indians of Wisconsin reports all income paid by the Tribe in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."~~

7-22. All other processes shall must be as directed in the Oneida Election Law. In addition to these processes, all applicants must be notified of the final results of the election. Notices to those elected must include the following:

"The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

7-33. All elected positions are official upon taking an oath at a regular or special Oneida Business Committee meeting and all rights and delegated authorities of membership in the ~~entity~~Entity shall vest upon taking the oath.

a. ~~Originals of the signed oath shall be maintained by the The Tribal Secretary's Office shall maintain originals of the signed oath.~~

b. The Secretary shall forward Copies copies of the oath ~~shall be forwarded~~ to the new ~~member~~Member and the ~~entity~~Entity.

c. Wording of oaths ~~shall must~~ be approved by the Oneida Business Committee and kept on file by the ~~Tribal Secretary's Office~~. The following oath is the standard oath to be used unless a specific oath for the ~~entity~~Entity is pre-approved by the Oneida Business Committee:

I, ~~*(name*)~~, do hereby promise to uphold the laws and regulations of the Oneida ~~Tribe of Indians of Wisconsin~~Nation, the General Tribal Council, and the ~~Tribal Nation's~~ Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and with the strictest confidentiality.

I will carry out the duties and responsibilities as a member of the ~~*(entity name*)~~, and all recommendations shall be made in the best interest of the Oneida ~~Tribe~~Nation as a whole.

d. Revisions of oaths ~~shall must~~ be approved by the Oneida Business Committee prior to usage.

e. All oaths ~~shall must~~ be sufficient to make the appointee aware of their duty to the ~~Tribe~~Nation and as ~~member~~Members of the ~~entity~~Entity.

Article VIII. ~~By-Laws~~laws of Boards, Committees and Commissions

8-1. By-~~Laws~~laws of all Boards, Committees and Commissions ~~shall must~~ conform to this outline. All existing ~~entities~~Entities must comply with this format and present by-laws for adoption within a reasonable time after creation of the ~~entity~~Entity, or within a reasonable time after adoption of this policy. By-laws must contain this minimum information, although more information is not prohibited.

8-2. Specifically excepted from this article are ~~Task Force~~Task Forces and ~~Ad-Hoc~~Ad Hoc Committees. However, these ~~entities~~Entities must have, at a minimum, mission or goal statements for completion of the task.

8-3. ~~There shall be the following~~All by-laws must contain the following Articles:

a. Article I. Authority.

b. Article II. Officers

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- c. Article III. Meetings
- d. Article IV. Reporting
- e. Article V. Amendments

8-4. ~~Sections~~Sub-articles. Articles ~~shall~~must be divided into "~~Sections~~" ~~as set out~~the sub-
articles provided below.

a. "Article I. Authority" is to consists of the following information:

1. Name. ~~All entities should list~~State the full name of the ~~entity~~Entity. ~~In addition, there should be listed and~~
2. Authority. ~~This section should s~~State the ~~citation and~~ name, if any, of the creation document and provide the citation for such creation document.
3. Office. ~~There should be listed~~Provide the official office or post box of the ~~entity~~Entity.
4. Membership. ~~The following information should be in this section:~~Provide the following information:
 - A. Number of ~~member~~Members;
 - B. Whether the Entity is an elected or appointed body and How
Members are elected or appointed;
 - C. How ~~vacancies~~Vacancies are filled
 - D. The requisite qualifications ~~of the member~~for Membership.
 - E. Causes for termination, if any, in addition to those contained in Article 6-5.a. hereof.

b. "Article II. Officers" is to consists of the following information:

1. Chair and Vice-Chair. This section creates the positions of the ~~entity~~Entity. Other positions may also be created here.
2. Chair duties. Because of the importance of this position, specifically list the Chairperson's those duties and limitations ~~should be specifically listed.~~
3. Vice-Chair duties. Because of the importance of this position, specifically list the Vice-Chairperson's those duties and limitations ~~should be specifically listed.~~
4. Additional Offices and Duties. ~~There should be~~Include additional ~~sections sub-articles to specifically list duties and limitations as needed~~ for every office created in ~~subsection sub-article~~ 1 above.
5. How chosen. ~~There should be s~~Specifically set outstate how a ~~member~~Member of the ~~entity~~Entity will be chosen to occupy an officer's ~~official~~ position ~~as set out in this Article.~~
6. Personnel. State the entities Entity's authority for hiring personnel, if any, and the duties of such personnel.

c. "Article III. Meetings" is to consists of the following information:

1. Regular meetings. ~~There shall be listed~~State when and where regular meetings ~~shall are to~~ be held, and, explain how notice of the agenda, documents, and minutes will be disbursed to the ~~member~~Members.
2. Emergency meetings. ~~There shall be listed~~State how ~~Emergency~~emergency meetings ~~shall may~~ be called and noticed. The Entity must include the following as part of the requirements for calling an emergency meeting.

In order to justify holding an emergency meeting, the insert Entity

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name] must provide the reason for the emergency meeting and why the matter cannot wait for a regularly scheduled meeting. The emergency meeting must be necessary to maintain order and/or protect public health and safety.

3. Quorum. ~~This section shall list~~State how many ~~member~~Members create a quorum.

4. Order of Business. ~~This section sets out~~Explain how the agenda will be set up.

5. Voting. ~~This section should list how~~Provide voting ~~shall be taken~~requirements, including the what requisite percentages ~~shall be needed to for~~passing different items.

d. "Article IV. Reporting" is to consists of the following information:

1. Agenda items. Agenda items shall must be in an identified and consistent format.

2. Minutes. ~~shall~~Minutes must be typed and in a consistent format designed to generate the most informative record of the meetings of the ~~entity~~Entity.

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 based on the meeting in which they were presented.

4. Reporting. ~~Entities~~Entities shall report to their Oneida Business Committee member who is their designated liaison intermittently as the Entity and the liaison agree to, but not less than as required in any policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. Entities shall also make quarterly reports to the Oneida Business Committee and annual and semi-annual reports to the Oneida General Tribal Council as described below: will-

~~report to the Oneida Business Committee member who is their designated liaison. This reporting format may be as the liaison and entity agree to, but not less than that required in any policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. Reports shall be made within a reasonable time after a meeting is held, or as the Oneida Business Committee member liaison and entity agree. Provided that, the agreement is to uphold the ability of the liaison to act as a support to that entity.~~

A. Quarterly Reporting: Entities shall make quarterly reports to the Oneida Business Committee based on the reporting schedule created by the Secretary, approved by the Oneida Business Committee and posted on the Nation's website. At a minimum, the quarterly reports must contain the following information:

i. Names: Provide the name of the Entity, the Member submitting the report, and the Oneida Business Committee liaison, and a list of the Members and their titles, their term expiration dates and contact information.

ii. Minutes: Any required updates to meeting minutes previously

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submitted and approved by the Oneida Business Committee including any actions that have been taken and were not included in the meeting minutes previously approved by the Oneida Business Committee.

iii. Financial Reports: Include if specifically requested by the Oneida Business Committee or if required by the Entity's by-laws.

iv. Special Events and Travel During the Reporting Period: Report any special events held during the reporting period and any travel by the Members. Travel reports must include the following:

a. Which Member(s) traveled;

b. Where the Member(s) traveled to and the travel dates;

c. The purpose for the travel and a brief explanation of how the travel benefited the Nation;

d. The cost of the travel and how the cost of the travel was covered by the Entity; and

e. Whether the cost of travel was within their budget and, if not, an explanation as to why travel costs were incurred that exceeded the Entity's budget.

v. Anticipated Travel for the Upcoming Reporting Period:

Report any travel Members are anticipating in the upcoming reporting period. Future travel reports must include the following:

a. Which Member(s) will to travel;

b. Where the Member(s) will to travel to and the anticipated travel dates;

c. The purpose for the travel and a brief explanation of how the travel will benefit the Nation;

d. The cost of the travel and how the cost of the travel will be covered by the Entity; and

e. Whether the cost of travel is within their budget and, if not, an explanation as to why the Entity anticipates incurring travel costs that exceeds its budget.

vi. Goals and Accomplishments: Provide the Entity's annual goals established in its annual report pursuant to section and how the Entity has worked towards achieving such goals during the reporting period.

vii. Meetings: Indicate when and how often the Entity is meeting and whether any emergency meetings have been held. If emergency meetings have been held, indicate the basis of the emergency and topic of the meeting.

viii. Follow-up: Report on any actions taken in response to Oneida Business Committee Oneida Business Committee and/or

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General Tribal Council directives, if any.

B. Annual Reporting: Entities shall make annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year using the format proscribed by the Secretary. At a minimum, the annual reports must contain the following information:

i. Names: Provide the name and purpose of the Entity, a list of the Members and their titles and the contact person for the Entity and their contact information including phone number, mailing address, email address, and the Entity's website.

ii. Meetings: Provide when meetings held, where they are held, at what time they are held and whether they are open or closed.

iii. Stipends: Provide the amount of the stipend that is paid per meeting.

iv. Budget: Provide the Entity's original budget for the previous fiscal year, what the actual budget was at the close of the fiscal year, and, if not within the Entity's original budget, an explanation for why the budget was exceeded.

v. Goals and Accomplishments: Provide up to three (3) accomplishments the Entity achieved in the previous fiscal year and how each accomplishment impacted the Oneida community. Also, provide three (3) strategic goals the Entity will pursue in the new fiscal year.

vi. Logo and Images: Provide the Entity's logo that may be included in the report and any other pictures or images that the Entity would like to be considered by Secretary for inclusion in the report.

vii. Department Reporting: Entities with oversight of a Department shall also provide a report on the Department overseen by the Entity; at a minimum, the report must contain the following information:

a. Names: Provide the name and purpose of the Department as well as the contact person for the Department and their contact information including phone number, mailing address, email address, and the Department's website.

b. Budget: Provide the total budget for the previous fiscal year and the funding sources including Tribal Contribution, grants, and other sources. Also provide what the actual budget was at the close of the fiscal year, and, if not within the Department's original budget, an explanation for why the budget was exceeded.

c. Employees: Provide how many employees the Department has and how many of those employees are

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enrolled Tribal members.

d. Service Base: Provide a brief description of who the Department serves as its service base.

e. Goals and Accomplishments: Provide up to three (3) accomplishments the Department achieved in the previous fiscal year and how each accomplishment impacted the Oneida community. Also, provide three (3) strategic goals the Department will pursue in the new fiscal year.

f. Logo and Images: Provide the Department's logo that may be included in the report and any other pictures or images that the Department would like to be considered by Secretary for inclusion in the report.

C. Semi-Annual Reporting: Entities shall make semi-annual reports to the Oneida General Tribal Council based on their activities during the current fiscal year using the format proscribed by the Secretary. At a minimum, the annual reports must contain the following information:

i. Names: Provide the name of the Entity and, if there have been any changes since the annual report, provide an update of the following information:

a. the purpose of the Entity;

b. a list of the Entity's Members and their titles;

c. the contact person for the Entity and their contact information including phone number, mailing address, email address, and the Entity's website.

ii. Meetings: If there have been any changes since the annual report, provide an update of when meetings held, where they are held, at what time they are held and whether they are open or closed.

iii. Stipends: If there have been any changes since the annual report, provide an update of the amount of the stipend that is paid per meeting.

iv. Goals and Accomplishments: Provide on update on the three (3) strategic goals the Entity named in its annual report.

v. Logo and Images: Provide any pictures or images that the Entity would like to be considered by Secretary for inclusion in the report and, if the Entity's logo has changed since the annual report, provide the new logo that may be included in the report.

vi. Department Reporting: Entities with oversight of a Department shall also provide a report on the Department overseen by the Entity; at a minimum, the report must contain the following information:

a. Names: Provide the name of the Department and, if there have been any changes since the annual report,

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- 614 provide an update of the Department's purpose and/or
615 the contact person for the Department and their contact
616 information including phone number, mailing address,
617 email address, and the Department's website.
618 b. Budget: Provide the total budget for the current fiscal
619 year and the funding sources including Tribal
620 Contribution, grants, and other sources.
621 c. Employees: Provide how many employees the
622 Department has and how many of those employees are
623 enrolled Tribal members.
624 d. Logo and Images: Provide any pictures or images that
625 the Department would like to be considered by
626 Secretary for inclusion in the report and, if the
627 Department's logo has changed since the annual
628 report, provide the new logo that may be included in
629 the report.
630 e. "Article V. Amendments" is to consists of:
631 1. Amendments to By-laws. ~~There should be described~~ Explain how
632 amendments to the by-laws ~~shall take place~~ may be initiated by the Entity. ~~P,~~
633 provided that, amendments must conform to the requirements of this and any
634 other policy. ~~Provided further, that amendments are~~ and must be approved by
635 the Oneida Business Committee prior to implementation.
636

637 Article IX. Minutes

- 638 9-1. All minutes ~~shall~~ must be submitted to the ~~Tribal Secretary's Office~~ within a reasonable
639 time after approval by the ~~entity~~ Entity.
640 9-2. Actions taken by an ~~entity~~ Entity are valid when minutes are approved, provided that,
641 minutes are filed ~~according in accordance with~~ to this Article; and ~~any specific directions~~
642 ~~within the Entity's~~ approved by-laws.
643 9-3. No action or approval of minutes is required by the Oneida Business Committee on
644 minutes submitted by an ~~entity~~ Entity unless specifically required by the by-laws of that
645 ~~entity~~ Entity.
646 9-4. In the event of dissolution of an ~~entity~~ Entity, all files and documents are required to be
647 forwarded to the ~~Tribal Secretary's Office~~ for proper storage and disposal.
648

649 Article X. Dissolution of Entities

- 650 10-1. ~~All entities~~ Entities of the ~~Tribe~~ Nation shall be dissolved according to this Article. ~~;~~
651 ~~however, Provided that other~~ additional specific directions may be included ~~within~~ in an Entity's
652 by-laws.
653 10-2. A ~~task force~~ Task Force or ~~ad hoc~~ Ad Hoc committee dissolves upon a set date or
654 acceptance of a final report. Unless otherwise indicated, the materials generated by a ~~task~~
655 ~~force~~ Task Force or ~~ad hoc~~ Ad Hoc committee ~~shall~~ must be forwarded to the ~~Tribal Secretary's~~
656 ~~Office~~ for proper disposal within two (2) weeks of dissolution.
657 10-3. All other ~~entities~~ Entities of the ~~Tribe~~ Nation ~~shall~~ may only be dissolved ~~only~~ by motion of

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the Oneida General Tribal Council or the Oneida Business Committee. Unless otherwise indicated, the materials generated by these ~~entities~~Entities ~~shall~~must be forwarded to the ~~Tribal Secretary's Office~~ for proper disposal within two (2) weeks of dissolution.

10-4. All ~~Chairpersons~~chairpersons and ~~Secretaries~~secretaries of dissolved ~~entities~~Entities shall be responsible for closing out open business of the ~~entity~~Entities and forwarding materials to the Secretary.

Article XI. Stipends, Reimbursement and Compensation for Service

11-1. Compensation and reimbursement for expenses shall be as set out in this Article and according to procedures for payment as set out by the ~~Oneida Tribe~~Nation ~~of Indians of Wisconsin~~.

11-2. The ~~Oneida Tribe~~Nation recognizes that persons serving on ~~entities~~Entities of the ~~Tribe~~Nation, ~~whether elected or appointed~~, incur some expense. Therefore, the ~~Tribe~~Nation, in order to attract persons to serve on ~~entities~~Entities, shall pay ~~stipend~~Stipends to these ~~member~~Members in accordance with this Article.

11-3. *Meeting Stipends for ~~Appointed Members~~ of ~~Appointed Entities~~*. Except as provided in sub-article (a) and unless otherwise declined by the ~~entity~~Entity ~~through its bylaws~~, or declined by a ~~member~~Member(s), appointed ~~member~~Members serving on ~~entities~~appointed Entities shall be paid a ~~stipend~~Stipend of no more than \$50 per month when at least one (1) meeting is conducted where a quorum has been established in accordance with the duly adopted by-laws of that ~~entity~~Entity. ~~Provided that the~~Such meeting must last for at least one (1) hour and ~~that~~ ~~member~~Members collecting ~~stipend~~Stipends must be present for at least one (1) hour of the meeting.

~~(a.)~~ Members serving on the Oneida Child Protective Board ~~shall be~~are exempt from the \$50 ~~stipend~~Stipend per month limitation and shall receive a \$50 ~~stipend~~Stipend for each meeting held in accordance with 11-3.

11-4. *Meeting Stipends for ~~Elected Members~~ of ~~Elected Entities~~*. Unless otherwise declined by the ~~entity~~Entity ~~through its bylaws~~, or declined by a ~~member~~Member(s), ~~elected member~~Members serving on ~~entities~~elected Entities shall be paid a minimum ~~stipend~~Stipend of \$50 for each meeting which has established a quorum in accordance with the duly adopted by-laws of that ~~entity~~Entity for at least one (1) hour, regardless of the length of the meeting. ~~Members~~ collecting ~~stipend~~Stipends must be present for at least one (1) hour of the meeting, regardless of the length of the meeting.

11-5. The Oneida Business Committee shall periodically review the amounts provided for meeting ~~stipend~~Stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending this Policy.

11-6. If an Entity, other than the Oneida Gaming Commission, fails to comply with the requirements of this Policy, the Oneida Business Committee may suspend the Entity's Members' Stipends until the Entity has demonstrated to the satisfaction of the Oneida Business Committee that it has attained compliance herewith.

a. If the Oneida Gaming Commission fails to comply with the requirements of this Policy in regards to requirements that are not matters governed by the Oneida Nation Gaming Ordinance, the Oneida Business Committee may impose a fine on any/all Member(s) found to be in noncompliance with this Policy. The fine must be an

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amount of no less than \$50 but not more than \$100. In addition, either in lieu of the fine or in addition to the fine, the Oneida Business Committee may suspend all employment benefits that are not essential to the Member's employment requirements as a condition of gaming licensing, for example, non-essential travel.

11-~~76~~. *Conferences and Training.* A ~~member~~Member of any ~~entity~~Entity, elected or appointed, shall be reimbursed in accordance with the ~~Tribal Oneida Travel and Expense Policy for travel~~policy for travel and ~~per~~Per diemDiem, for attending a ~~conference~~Conference or training, ~~provided that:~~

(a) ~~a.~~ A ~~member~~Member ~~shall is~~ be-eligible for a \$100 ~~stipend~~Stipend for each full day the ~~member~~Member is present at the ~~conference~~Conference or training, when attendance at the ~~conference~~Conference or training is required by law, by ~~law~~ or resolution.

(~~b~~) ~~b.~~ A ~~member~~Member ~~shall is~~ not be-eligible for a ~~conference~~Conference and training ~~stipend~~Stipend if that training is not required by law, by ~~law~~ or resolution.

(~~c~~) ~~c.~~ No ~~stipend~~Stipend payments ~~shall will~~ be made for those days spent traveling to and from the ~~conference~~Conference or training.

11-~~87~~. All ~~member~~Members of ~~entities~~Entities ~~shall are~~ be-eligible for reimbursement for normal business expenses naturally related to membership in the ~~entity~~Entity.

11-~~98~~. ~~Task Force~~Task Force ~~member~~Members and ~~member~~Members of subcommittees ~~shall are~~ not be-eligible for ~~stipend~~Stipends unless ~~a~~ specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

Article XII. Confidential Information

12-1. The ~~Oneida Tribe~~Oneida TribeNation is involved in numerous business ventures and governmental functions where it is necessary that private information be kept in the strictest confidence to assure the continued success and welfare of the ~~Tribe~~TribeNation. It is in the best interest of the ~~Oneida Tribe~~Oneida TribeNation that all ~~official~~Members maintain all information in a confidential manner ~~all information~~, whether of historical, immediate, or future use or need. The ~~Oneida Tribe~~Oneida TribeNation desires that all ~~officials~~Members who have access to the ~~Oneida Tribe~~Oneida TribeNation's confidential information be subject to specific limitations in order to protect the interest of the ~~Oneida Tribe~~Oneida TribeNation. It is the intention of the ~~Oneida Tribe~~Oneida TribeNation that no persons engaged ~~in~~ by the ~~Tribe~~TribeNation, nor their relatives or associates, benefit from the use of confidential information.

12-2. Confidential information means all information or data, whether printed, written, or oral, concerning business or customers of the ~~Oneida Tribe~~Oneida TribeNation, disclosed to, acquired by, or generated by ~~official~~Members in confidence at any time during their elected or appointed term or during their employment.

12-3. Confidential information ~~shall must~~ be considered and kept as the private and privileged records of the ~~Oneida Tribe~~Oneida TribeNation and ~~will may~~ not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.

12-4. An ~~official~~Member will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the ~~Oneida Tribe~~Oneida TribeNation shall be entitled to an injunction by

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any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of ~~the Member's~~ the relationship with the ~~Oneida Tribe~~Nation and the ~~entity~~Entity.

12-5. ~~Upon completion or termination of his/her elected or appointed term of membership in an entity, for any cause whatsoever, the official Members will shall~~ surrender to the ~~Oneida Tribe~~Nation, in good condition, all records kept by the ~~employee~~Member pertaining to Entity membership upon completion of their term of membership, for any cause whatsoever.

12-6. No ~~official Member shall may~~ disclose confidential information acquired by reason of his/her relationship or status with the ~~Oneida Tribe~~Nation for his/her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.

Article XIII, Conflicts of Interest

Subpart A. General.

13-1. The ~~Oneida Tribe~~Nation recognizes the ability of all persons to serve on ~~an entities~~Entity of the Oneida Tribe. However, it is also recognized that the delegated authority and responsibilities of an ~~entity~~Entity may cause conflict with membership on other ~~entities~~Entities or employment.

13-2. It is the policy of the ~~Oneida Tribe~~Nation to request a candidate to disclose possible conflicts ~~of interest~~ prior to election or appointment to allow ~~the any potential~~ conflicts to be resolved in a timely manner.

13-3. ~~Official~~Members shall disclose and resolve conflicts of interest in a reasonable and timely manner. Failure to resolve conflicts ~~shall may~~ result in removal from office ~~for from an elected officials Entity~~ and may result in termination ~~of from an appointment for~~ appointed ~~officials~~Entity. ~~Provided that, a~~All applicants shall submit, with the ~~application~~Application forms, a signed conflict of interest declaration disclosing all known conflicts.

13-4. This ~~article~~Article sets forth specifically prohibited conflicts of interests. However, for any individual candidate or ~~member~~Member on of an entityEntity, ~~additional~~ conflicts may arise within the by-laws of that ~~entity~~Entity or employment relationships.

13-5. No ~~official Member shall may~~ act as a consultant, agent, representative for, or hold any position as an officer, director, partner, trustee, or belong as a ~~member~~Member in a board, committee or commission, or the like without first disclosing such activity to determine possible conflicts of interest.

Subpart B. Employment Interests.

13-6. No ~~official Member shall may~~ hold office in an ~~entity~~Entity which has authority over the area in which the ~~official Member~~ is employed by the ~~Oneida Tribe~~Nation or elsewhere. The ~~Oneida Tribe~~Nation recognizes the ability of all persons to serve on ~~entities~~Entities of the ~~Oneida Tribe~~Nation, however, recognizes the conflict arising out of membership on an ~~entity~~Entity and employment in an- area over which the ~~entity~~Entity has authority.

13-7. Employment is defined for this subpart as that area which the employee supervises or is supervised in regards to a specific subject matter.

13-8. Authority of an ~~entity~~Entity is defined for this subpart as that area over which the ~~entity~~Entity has subject matter jurisdiction delegated either by the Oneida Business Committee or ~~the~~ Oneida General Tribal Council, and for which ~~that such~~ authority may be regulatory,

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oversight, or otherwise.

Subpart C. Financial Interests, Investments, and Gifts.

13-9. No ~~official~~Member, or their immediate family, may have a financial interest in any transaction between the ~~entity~~Entity and an outside party where the ~~official~~Member has a financial or familial relationship.

~~13-10. The following words are defined for the purposes of this subpart:~~

~~a. "Financial interest" means any profit sharing arrangements, rebates, payments, commissions, or compensation in any form, and shall include any form of ownership, regardless of ability to control the activities of the business. Provided that, this shall not include ownership of shares which, other than in combination with others, cannot exert a controlling influence on the activities of the business and in relation to the outstanding shares, the ownership of shares represents a small part of the whole.~~

~~b. "Transaction" means any activity wherein a provider of goods and/or services is compensated in any form.~~

~~c. "Immediate family" means the mother, father, sister, brother, daughter, son, granddaughter, grandson, grandfather, grandmother and these relationships with any spouse.~~

~~13-11~~10. As referred to in this Subpart C, ~~entity includes~~ for the purposes of defining conflicts, Entity includes the programs or enterprises over which the ~~entity~~Entity has delegated authority.

~~13-12~~11. ~~Officials~~Members shall avoid personal investment in any business with which the ~~Oneida Tribe~~Nation has or is expected to have a contractual or other business relationship. Notwithstanding the foregoing, however, an investment by an ~~official~~Member in a business with which the ~~Oneida Tribe~~Nation has dealings is permissible if the Oneida Business Committee or other delegated authority determines in writing that:

a. the investment ~~is not made or~~ cannot be considered to have been made on the basis of confidential information; and

b. the investment cannot be expected to adversely affect or influence the ~~official's~~Member's judgementjudgment in the performance of any services or obligations on behalf of the ~~Oneida Tribe~~Nation.

~~13-13~~12. ~~Official~~Members shall not use their relationship with the ~~Oneida Tribe~~Nation to exercise undue influence to obtain anything which is not freely available to all prospective purchasers.

~~13-14~~13. ~~No official~~Members may not shall accept gifts, payments for personal gain, opportunities to invest, opportunities to act as an agent, a consultant, or a representative for actual or potential purchasers, sales sources, contractors, consultants, customers or suppliers, or accept any direct or indirect benefit from any actual or potential purchaser, sales source, contractor, consultant, customer, or supplier.

~~13-15~~14. ~~No official~~Members shall may not accept any gift, entertainment, service, loan, promise of future benefits or payment of any kind which the Oneida Business Committee, or other delegated authority, determines may adversely affects or influences his or her ~~judgement~~judgment in the performance of any services, duties, obligations or responsibilities to the ~~Oneida Tribe~~Nation, or impairs confidence in the ~~Oneida Tribe~~Nation and the Nation's Entities.

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13-~~16~~15. Notwithstanding the foregoing, ~~however, officials~~ Members may accept or provide business-related meals, entertainment, gifts or favors when the value involved is insignificant and the Oneida Business Committee or other delegated authority has determined that it clearly will not place him/ or her under any obligation.

Subpart D. Competition ~~With~~ with ~~The~~ the Oneida Tribe Nation.

13-~~17~~16. ~~No official~~ Members may not ~~shall~~ enter into competition with the Oneida Tribe Nation ~~in regarding~~ the purchase or sale of any property, property rights or property interests, without prior consent of the Oneida Tribe Nation.

13-~~18~~17. An ~~official~~ Member may enter into competition with the Oneida Tribe Nation ~~where~~ when the activity engaged in is approved through an Oneida entrepreneur development program or other similar Oneida program and does not otherwise violate this ~~policy~~ Policy.

Subpart E. Use ~~Of~~ of ~~Tribal~~ the Nation's Assets.

13-~~19~~18. All bank accounts for ~~tribal~~ the Nation's funds ~~shall~~ must be maintained in the name of the Oneida Tribe Nation and will be reflected on the Oneida Tribe Nation's books in accordance with the Generally Accepted Accounting ~~Procedures~~ Principles.

13-~~20~~19. Each ~~official~~ Member shall comply with the system of internal accounting controls sufficient to provide assurances that:

- a. all transactions are executed in accordance with management's authorization; and
- b. access to assets is permitted only in accordance with management's authorization; and
- c. all transactions are recorded to permit preparation of financial statements in conformity with the ~~generally~~ Generally ~~accepted~~ Accepted ~~accounting~~ Accounting ~~principles~~ Principles or other applicable criteria.

13-~~21~~20. Any records created or obtained ~~while as an~~ as a ~~official~~ Member of an ~~entity~~ Entity ~~of the Oneida Tribe is/are~~ the property of the Oneida Tribe Nation and can only be removed or destroyed if approved by the Entity via ~~by approval from~~ a majority vote of a quorum of the entity Entity at a duly called meeting. All removal or destruction of documents must be made ~~conducted~~ in accordance with the Open Records and Open Meetings ~~law~~ Law.

Subpart F. Disclosure.

13-~~22~~21. Each ~~official~~ Member shall disclose any outside activities or interests that conflict or suggest a potential conflict with the best interests of the Oneida Tribe Nation by completely filling out the application Application for membership or informing the Oneida Business Committee or other designated authority after election or appointment of a conflict arising during membership on an entity Entity.

Subpart G. Reporting.

13-~~23~~22. All conflicts or potential conflicts that arise during membership on an entity Entity ~~shall~~ must be immediately reported to the ~~Tribal~~ Secretary of the Oneida Tribe Nation. Upon receiving information of a potential conflict of interest, the ~~Tribal~~ Secretary shall request a determination from the Oneida Law Office whether further action must be taken by the Oneida Tribe Nation regarding the status of the official Member.

13-~~24~~23. Any evidence of noncompliance with any ~~policy~~ Policy regarding the use of ~~tribal~~ the Nation's assets ~~shall~~ must be immediately reported to the internal audit staff. If the internal audit

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staff finds evidence of noncompliance, they shall notify the ~~Oneida Law Office of the Oneida~~
~~Tribe, The Oneida Business Committee and/or the Oneida Law Office who~~ will then make a
determination of further action to be taken, if any.

Subpart H. Enforcement ~~And~~ and Penalties.

13-2524. ~~Official~~Members found to be in violation of this ~~policy~~Policy may be removed
pursuant to the Removal Law, if ~~a Member of an~~ elected Entity, or have their appointment
terminated, if ~~a Member of an~~ appointed Entity.

~~a. A Member who has been terminated or removed is ineligible for Appointment or
election to any Entity for at least one (1) year from the effective date of the termination or
removal.~~

13-2625. Candidates for appointment or election to ~~an~~ office found ~~to be~~ in violation of this
policy may be disqualified from taking office.

End.

Adopted - BC-8-2-95-A

Amended - BC-5-14-97-F

Emergency Amendments - BC-04-12-06-JJ

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

Amended – BC-09-22-10-C

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Comprehensive Policy Governing Boards, Committees and Commissions

Article I. Purpose and Policy
Article II. Adoption, Amendment, Repeal
Article III. Definitions
Article IV. Applications
Article V. Vacancies
Article VI. Appointed Positions
Article VII. Elected Positions

Article VIII. By-Laws of Boards, Committees and Commissions
Article IX. Minutes
Article X. Dissolution of Entities
Article XI. Stipends, Reimbursement and Compensation for Services
Article XII. Confidential Information
Article XIII. Conflicts of Interest

Article I. Purpose and Policy

1-1. It is the purpose of this Policy to govern the standard procedures regarding the appointment of persons to boards, committees and commissions, creation of by-laws, maintenance of official records, compensation, and other items related to boards, committees and commissions. This Policy does not apply to the Nation's corporations due to the corporate structure and autonomy of those Entities.

1-2. It is the Nation's policy to have consistent and standard procedures for choosing and appointing the most qualified persons to boards, committees and commissions, for creation of by-laws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

Article II. Adoption, Amendment, Repeal

2-1. This Policy was adopted by the Oneida Business Committee by resolution # BC-5-14-97-F and amended by resolutions # BC-09-27-06-E, # BC-09-22-10-C and # BC-_____.

2-2. This Policy may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council, regardless of where the original adoption took place.

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 portions.

2-4. Any policy, regulation, rule, resolution or motion, or portion thereof, which directly conflicts with the provisions of this policy is hereby repealed to the extent that it is inconsistent with or is contrary to this Policy. Provided that meeting Stipends for elected Members of a board, committee or commission that are in effect on [adoption date of the amendments] shall remain unaffected, but prior exceptions to this policy for appointed Entities shall be repealed to extent that meeting Stipends are inconsistent with this policy.

Article III. Definitions

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

- a. "Application" means any process by which a person proceeds to be appointed to a Vacancy or considered as a candidate for an election.
- b. "Appointment" means the process by which a person is chosen to fill a Vacancy.
- c. "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the Entity.

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- d. "Department" means any department or area over which an Entity has direct oversight.
- e. "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose Members are appointed by the Oneida Business Committee or elected by a majority of the Nation's eligible voters.
- f. "Financial Interest" means any profit sharing arrangements, rebates, payments, commissions, or compensation, in any form, and includes any form of ownership, regardless of ability to control the activities of the business, provided that, this does not include ownership of shares which, other than in combination others, cannot exert a controlling influence on the activities of the business and in relation to the outstanding shares, the ownership of shares represents a small part of the whole.
- g. "Immediate Family" means the husband, wife, mother, father, son, daughter, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, first or second cousin, step-parent, or step-child.
- h. "Member" means any person appointed or elected to membership on an Entity.
- i. "Per Diem" means the payment made by the Nation to offset the costs of being out-of-town or to travel on behalf of the Nation.
- j. "Stipend" means that amount paid by the Nation to persons serving on boards, committees and commissions of the Nation to offset the expenses of being a member on the board, committee or commission.
- k. "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.
- l. "Transaction" means any activity wherein a provider of goods and/or services is compensated in any form.
- m. "Nation" means the Oneida Nation.
- n. "Secretary" means the current elected Secretary of the Nation or the current elected Secretary's designee.
- o. "Chairperson" means the current elected Chairperson of the Nation or the current elected Chairperson's designee.
- p. "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, creation of a new position or end of an designated interim term.

Article IV. Applications

4-1. The Secretary shall generate, and the Oneida Business Committee must approve, the application form required to be used by all applicants. 4-2. Applications will contain:

- a. questions designed to obtain the applicant's
 - 1. name;
 - 2. address;
 - 3. phone number;
 - 4. enrollment number; and

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- 82 5. position applied for.
- 83 b. additional questions, if necessary, to obtain information necessary to make an
- 84 informed decision as to the qualifications of any individual to fill a Vacancy.
- 85 4-3. All applicants shall file their Applications with the Secretary by 4:30 p.m. of the deadline
- 86 date. Postmarked envelopes are accepted as filed if postmarked by the deadline date and
- 87 received by the Secretary within five (5) business days of the deadline.
- 88 4-4. Applications for elected positions must be verified by the Election Board according to
- 89 the Oneida Election Law. The Secretary shall verify all Applications for appointed positions as
- 90 needed or as required by the Entity's by-laws.
- 91 4-5. At the completion of the posted deadline for filing Applications, the Election Board shall
- 92 provide notice to all persons who have filed an Application for an elected position and the
- 93 Secretary shall provide notice to all persons who have filed an Application for an appointed
- 94 position.
- 95 a. Such notice must be formatted the same for all applicants and must minimally
- 96 include the following:
- 97 1. the date the applicant's Application was filed,;
- 98 2. whether the applicant meets the eligibility requirements as determined by the
- 99 Entity's by-laws and will be considered for the election/appointment;
- 100 3. a note that further information can be requested by contacting the party
- 101 sending the notice and providing such contact information;
- 102 4. the applicable duties should the applicant be selected; and
- 103 5. if eligible for election/appointment:
- 104 "The Oneida Nation reports all income paid by the Nation in whatever form. The
- 105 Internal Revenue Service of the United States considers stipends paid to members of
- 106 boards, committees, and commissions to be income which may be offset by expenses
- 107 related to that income. You will receive an IRS Form 1099 which is also forwarded to
- 108 the Internal Revenue Service, it is also your responsibility to keep documentation of
- 109 expenses related to this income."
- 110 4-6. In the event that there are insufficient applicants after the deadline date has passed for
- 111 appointed positions, the Chairperson may elect to either:
- 112 a. Allow late Applications to be included within the applicant pool, or
- 113 b. Repost the Vacancy for an additional time period. In the event of reposting, prior
- 114 applicants will be considered to have filed Applications within the deadline period.
- 115

116 **Article V. Vacancies**

117 5-1. This Article governs when Vacancies occur, and where and when notice of the Vacancies

118 must be posted.

119 5-2. The following Vacancies are effective as listed herein.

- 120 a. End of Term. A Vacancy is effective as of 4:30 p.m. of the last day of the month in
- 121 which the term ends according to the Entity's by-laws.
- 122 b. Removal. Removal is effective when the final action has taken place pursuant to the
- 123 Entity's adopted and approved procedures. Final action has taken place upon the
- 124 occurrence of any one (1) of the following:
- 125 1. failure to file a timely appeal,
- 126 2. denial of appeal, or

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3. final written opinion is filed.
- c. Resignation. A resignation is effective upon:
1. Deliverance of a resignation letter to the Entity; or
 2. The Entity's acceptance by motion of a verbal resignation.
- d. Termination. A termination is effective upon a two-thirds majority vote of the entire Oneida Business Committee in favor of a Member's termination of appointment.
- e. New Positions. Vacancies on new Entities are effective upon adoption of by-laws.
- f. Interim Positions. Vacancies of interim positions are effective upon creation of interim positions by the Oneida Business Committee or General Tribal Council.
- 5-3. Entities shall notify the Secretary as soon as any position(s) becomes vacant so that the Secretary may post the notice of Vacancy in order to fill the Vacancy in accordance with the requirements of this Article.
- 5-4. The Secretary shall request permission from the Oneida Business Committee prior to posting notice of a Vacancy as set out in this Article and shall post notices of Vacancy within a reasonable time of the Oneida Business Committee's grant of permission, unless expressly stated otherwise in this Section. The Secretary shall request permission to post notice of Vacancies and shall post such notices based on the cause of the Vacancy as follows:
- a. End of Term. Permission to post notice of Vacancies for positions becoming vacant due to term completions may be requested annually; the notice of Vacancy for each term completion must be posted thirty (30) days in advance of each term completion.
 - b. Removal. Permission to post notice of Vacancies based on removal must be requested no later than the first Oneida Business Committee meeting following the effective date of the removal.
 - c. Resignation. Permission to post notice of Vacancies based on resignation must be requested no later than the first Oneida Business Committee meeting following the Secretary's receipt of notice of an effective resignation from the Entity.
 - d. New Positions. If the Oneida Business Committee or General Council does not specify a date for posting new positions when creating an Entity, the Secretary shall request permission to post Vacancies for new positions no later than the first Oneida Business Committee following the latter of either the creation of the Entity or the adoption of the Entity's by-law.
 - e. Interim Members. Permission to post notice of Vacancies of interim Members must be requested no later than the first Oneida Business Committee meeting following the completion of the term the interim Member was designated to hold.
 - f. Termination of Appointment. Permission to post notice of Vacancies based on termination of Appointment must be requested no later than the first Oneida Business Committee meeting following the effective date of the termination.
- 5-5. At the direction of the Oneida Business Committee, the Secretary shall post notice of Vacancies in each of the following locations:
- a. on the Nation's website;
 - b. in the Kalihwisaks; and
 - c. any reasonable location requested by the Entity.
- 5-6 In the event that there is an administrative/clerical error in the Secretary's posted notice of Vacancy, the Secretary may correct such error by reposting the notice of Vacancy as soon as

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practicable after noticing such error. Under these limited circumstances, the Secretary does not require the approval of the Oneida Business Committee to repost notice of Vacancy. In the event of reposting, prior applicants will be considered to have filed Applications within the deadline period.

Article VI. Appointed Entities

6-1. All appointments must be made by the Oneida Business Committee at regular or special Oneida Business Committee meetings, provided that, no applicant may be appointed who fails to meet the requirements set out in the Entity's by-laws.

- a. Notwithstanding the initial determination of membership to an Entity, the Member's status as appointed or elected is based entirely on the Entity's classification as an appointed or elected Entity pursuant to the Entity's by-laws.

6-2. The following procedures must be used to determine which applicant is appointed:

- a. Within five (5) business days after close of notice, the Secretary shall deliver to the Chairperson all eligible Applications, as verified by the Secretary, along with a summary of qualifications to hold office.
- b. When selecting an applicant(s) for appointment, the Chairperson may consider the Entity's recommendations, if such recommendations are provided. Within a reasonable time, the Chairperson shall either:
 1. choose an applicant(s) for appointment, or
 2. ask the Secretary to repost the notice of Vacancy because of an ineligible, unqualified, or under qualified applicant pool.
- c. Once the Chairperson has made a selection, he or she shall forward the list of qualified applicants along with his or her selected applicant(s) to all Oneida Business Committee members. Based on the information provided, the Oneida Business Committee shall, by a majority vote of a quorum at any regular or special Oneida Business Committee meeting, either accept or reject the Chairperson's selected applicant(s).
 1. If the Chairperson's applicant(s) are rejected by the Oneida Business Committee, the Oneida Business Committee shall, by a majority vote of a quorum at any regular or special Oneida Business Committee meeting:
 - A. Approve another applicant from the list of qualified applicants; or
 - B. Return the Vacancy to the Chairperson with direction to prepare another recommendation; or
 - C. Direct the Vacancy to be re-posted.

6-3. All appointments are official upon taking an oath at a regular or special Oneida Business Committee meeting and all rights and delegated authorities of membership in the Entity vest upon taking the oath. The Secretary shall notify the chosen persons when they should appear for taking the oath.

- a. The Secretary shall maintain originals of the signed oath.
- b. The Secretary shall forward copies of the oath to the new Member and the Entity.
- c. Wording of oaths must be approved by the Oneida Business Committee and kept on file by the Secretary.
 1. The following oath is the standard oath to be used unless a specific oath for

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the Entity is pre-approved by the Oneida Business Committee:

I, (name), do hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Nation's Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and with the strictest confidentiality.

I will carry out the duties and responsibilities as a member of the (Entity name), and all recommendations shall be made in the best interest of the Oneida Nation as a whole.

d. Revisions of oaths must be approved by the Oneida Business Committee prior to usage.

e. All oaths must be sufficient to make the appointee aware of his or her duty to the Nation as a Member of the Entity.

6-4. The Chairperson shall forward a list of all applicants to the Secretary and the final decision regarding the selection after the procedures in Article 6-2 are completed. The Secretary shall then notify all applicants of the final status of their Application. Notices to those selected for appointment must include the following:

"The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an IRS Form 1099 which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

6-5. *Termination of Appointment.* Appointed Members of Entities serve at the discretion of the Oneida Business Committee. Upon the recommendation of the Chairperson, a Member of an appointed Entity may have his or her appointment terminated by the Oneida Business Committee by a two-thirds majority vote of the entire Oneida Business Committee.

a. An Appointed Entity may bring a request for termination of a Member to the Oneida Business Committee by asserting the appointed Member has failed to fulfill his or her responsibilities to the Nation as a Member and there is cause for termination based on one (1) or more of the following causes for termination:

1. Failure to meet and maintain the requisite qualifications.
2. Breach of confidentiality.
3. Accumulation of three (3) or more unexcused absences where an absence is unexcused if the appointed Member fails to provide twenty-four (24) hours of notice of an anticipated absence.
4. Accumulation of four (4) or more consecutive absences, whether excused or unexcused.
5. Any other cause for termination established in the Entity's by-laws.

b. The Oneida Business Committee's decision to terminate is a final and binding decision; there is no avenue for appeal of a termination of Appointment approved by the Oneida Business Committee.

Article VII. Elected Entities

7-1. All Members of elected Entities must be nominated at a caucus called by the Oneida Election Board, or petition for ballot placement, in accordance with the Oneida Election Law, except for Members appointed to elected Entities pursuant to Article I.4.D. of the Entity's by-laws.

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a. Notwithstanding the initial determination of membership to an Entity, the Member's status as appointed or elected is based entirely on the Entity's classification as an appointed or elected Entity pursuant to the Entity's by-laws.

7-2. All other processes must be as directed in the Oneida Election Law. In addition to these processes, all applicants must be notified of the final results of the election. Notices to those elected must include the following:

"The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

7-3. All elected positions are official upon taking an oath at a regular or special Oneida Business Committee meeting and all rights and delegated authorities of membership in the Entity vest upon taking the oath.

a. The Secretary shall maintain originals of the signed oath.

b. The Secretary shall forward copies of the oath to the new Member and the Entity.

c. Wording of oaths must be approved by the Oneida Business Committee and kept on file by the Secretary. The following oath is the standard oath to be used unless a specific oath for the Entity is pre-approved by the Oneida Business Committee:

I, (name), do hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Nation's Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and with the strictest confidentiality.

I will carry out the duties and responsibilities as a member of the (entity name), and all recommendations shall be made in the best interest of the Oneida Nation as a whole.

d. Revisions of oaths must be approved by the Oneida Business Committee prior to usage.

e. All oaths must be sufficient to make the appointee aware of their duty to the Nation as Members of the Entity.

Article VIII. By-laws of Boards, Committees and Commissions

8-1. By-laws of all Boards, Committees and Commissions must conform to this outline. All existing Entities must comply with this format and present by-laws for adoption within a reasonable time after creation of the Entity, or within a reasonable time after adoption of this policy. By-laws must contain this minimum information, although more information is not prohibited.

8-2. Specifically excepted from this article are Task Forces and Ad Hoc Committees. However, these Entities must have, at a minimum, mission or goal statements for completion of the task.

8-3. All by-laws must contain the following Articles:

a. Article I. Authority.

b. Article II. Officers

c. Article III. Meetings

d. Article IV. Reporting

e. Article V. Amendments

8-4. Sub-articles. Articles must be divided into the sub-articles provided below.

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- a. "Article I. Authority" is to consist of the following information:
 1. Name. State the full name of the Entity and any short name that will be officially used.
 2. Authority. State the name, if any, of the creation document and provide the citation for such creation document.
 3. Office. Provide the official office or post box of the Entity.
 4. Membership. Provide the following information:
 - A. Number of Members;
 - B. Whether the Entity is an elected or appointed body and how Members are elected or appointed;
 - C. How Vacancies are filled
 - D. The requisite qualifications for Membership.
 - E. Causes for termination, if any, in addition to those contained in Article 6-5.a. hereof.
- b. "Article II. Officers" is to consist of the following information:
 1. Chair and Vice-Chair. This section creates the positions of the Entity. Other positions may also be created here.
 2. Chair duties. Because of the importance of this position, specifically list the Chairperson's duties and limitations.
 3. Vice-Chair duties. Because of the importance of this position, specifically list the Vice-Chairperson's duties and limitations.
 4. Additional Offices and Duties. Include additional sub-articles to specifically list duties and limitations for every office created in sub-article 1 above.
 5. How chosen. Specifically state how a Member of the Entity will be chosen to occupy an officer's position.
 6. Personnel. State the Entity's authority for hiring personnel, if any, and the duties of such personnel.
- c. "Article III. Meetings" is to consist of the following information:
 1. Regular meetings. State when and where regular meetings are to be held, and, explain how notice of the agenda, documents, and minutes will be disbursed to the Members.
 2. Emergency meetings. State how emergency meetings may be called and noticed. The Entity must include the following as part of the requirements for calling an emergency meeting.

In order to justify holding an emergency meeting, the [insert Entity name] must provide the reason for the emergency meeting and why the matter cannot wait for a regularly scheduled meeting. The emergency meeting must be necessary to maintain order and/or protect public health and safety.
 3. Quorum. State how many Members create a quorum.
 4. Order of Business. Explain how the agenda will be set.
 5. Voting. Provide voting requirements, including the requisite percentages for passing different items.
- d. "Article IV. Reporting" is to consist of the following information:

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1. Agenda items. Agenda items must be in an identified and consistent format.
2. Minutes. Minutes must be typed and in a consistent format designed to generate the most informative record of the meetings of the Entity.
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 based on the meeting in which they were presented.
4. Reporting. Entities shall report to their Oneida Business Committee member who is their designated liaison intermittently as the Entity and the liaison agree to, but not less than as required in any policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. Entities shall also make quarterly reports to the Oneida Business Committee and annual and semi-annual reports to the Oneida General Tribal Council as described below:

A. Quarterly Reporting: Entities shall make quarterly reports to the Oneida Business Committee based on the reporting schedule created by the Secretary, approved by the Oneida Business Committee and posted on the Nation's website. At a minimum, the quarterly reports must contain the following information:

i. Names: Provide the name of the Entity, the Member submitting the report, and the Oneida Business Committee liaison, and a list of the Members and their titles, their term expiration dates and contact information.

ii. Minutes: Any required updates to meeting minutes previously submitted and approved by the Oneida Business Committee including any actions that have been taken and were not included in the meeting minutes previously approved by the Oneida Business Committee.

iii. Financial Reports: Include if specifically requested by the Oneida Business Committee or if required by the Entity's by-laws.

iv. Special Events and Travel During the Reporting Period: Report any special events held during the reporting period and any travel by the Members. Travel reports must include the following:

a. Which Member(s) traveled;

b. Where the Member(s) traveled to and the travel dates;

c. The purpose for the travel and a brief explanation of how the travel benefited the Nation;

d. The cost of the travel and how the cost of the travel was covered by the Entity; and

e. Whether the cost of travel was within their budget and, if not, an explanation as to why travel costs were incurred that exceeded the Entity's budget.

v. Anticipated Travel for the Upcoming Reporting Period:

Report any travel Members are anticipating in the upcoming

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reporting period. Future travel reports must include the following:

- a. Which Member(s) will to travel;
- b. Where the Member(s) will to travel to and the anticipated travel dates;
- c. The purpose for the travel and a brief explanation of how the travel will benefit the Nation;
- d. The cost of the travel and how the cost of the travel will be covered by the Entity; and
- e. Whether the cost of travel is within their budget and, if not, an explanation as to why the Entity anticipates incurring travel costs that exceeds its budget.
- vi. Goals and Accomplishments: Provide the Entity's annual goals established in its annual report pursuant to section and how the Entity has worked towards achieving such goals during the reporting period.
- vii. Meetings: Indicate when and how often the Entity is meeting and whether any emergency meetings have been held. If emergency meetings have been held, indicate the basis of the emergency and topic of the meeting.
- viii. Follow-up: Report on any actions taken in response to Oneida Business Committee Oneida Business Committee and/or General Tribal Council directives, if any.

B. Annual Reporting: Entities shall make annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year using the format proscribed by the Secretary. At a minimum, the annual reports must contain the following information:

- i. Names: Provide the name and purpose of the Entity, a list of the Members and their titles and the contact person for the Entity and their contact information including phone number, mailing address, email address, and the Entity's website.
- ii. Meetings: Provide when meetings held, where they are held, at what time they are held and whether they are open or closed.
- iii. Stipends: Provide the amount of the stipend that is paid per meeting.
- iv. Budget: Provide the Entity's original budget for the previous fiscal year, what the actual budget was at the close of the fiscal year, and, if not within the Entity's original budget, an explanation for why the budget was exceeded.
- v. Goals and Accomplishments: Provide up to three (3) accomplishments the Entity achieved in the previous fiscal year and how each accomplishment impacted the Oneida community. Also, provide three (3) strategic goals the Entity will pursue in the new fiscal year.

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vi. Logo and Images: Provide the Entity's logo that may be included in the report and any other pictures or images that the Entity would like to be considered by Secretary for inclusion in the report.

vii. Department Reporting: Entities with oversight of a Department shall also provide a report on the Department overseen by the Entity; at a minimum, the report must contain the following information:

- a. Names: Provide the name and purpose of the Department as well as the contact person for the Department and their contact information including phone number, mailing address, email address, and the Department's website.
- b. Budget: Provide the total budget for the previous fiscal year and the funding sources including Tribal Contribution, grants, and other sources. Also provide what the actual budget was at the close of the fiscal year, and, if not within the Department's original budget, an explanation for why the budget was exceeded.
- c. Employees: Provide how many employees the Department has and how many of those employees are enrolled Tribal members.
- d. Service Base: Provide a brief description of who the Department serves as its service base.
- e. Goals and Accomplishments: Provide up to three (3) accomplishments the Department achieved in the previous fiscal year and how each accomplishment impacted the Oneida community. Also, provide three (3) strategic goals the Department will pursue in the new fiscal year.
- f. Logo and Images: Provide the Department's logo that may be included in the report and any other pictures or images that the Department would like to be considered by Secretary for inclusion in the report.

C. Semi-Annual Reporting: Entities shall make semi-annual reports to the Oneida General Tribal Council based on their activities during the current fiscal year using the format proscribed by the Secretary. At a minimum, the annual reports must contain the following information:

- i. Names: Provide the name of the Entity and, if there have been any changes since the annual report, provide an update of the following information:
 - a. the purpose of the Entity;
 - b. a list of the Entity's Members and their titles;

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- 482 c. the contact person for the Entity and their contact
483 information including phone number, mailing address,
484 email address, and the Entity's website.
- 485 ii. Meetings: If there have been any changes since the annual
486 report, provide an update of when meetings held, where they are
487 held, at what time they are held and whether they are open or
488 closed.
- 489 iii. Stipends: If there have been any changes since the annual
490 report, provide an update of the amount of the stipend that is paid
491 per meeting.
- 492 iv. Goals and Accomplishments: Provide an update on the three
493 (3) strategic goals the Entity named in its annual report.
- 494 v. Logo and Images: Provide any pictures or images that the
495 Entity would like to be considered by Secretary for inclusion in
496 the report and, if the Entity's logo has changed since the annual
497 report, provide the new logo that may be included in the report.
- 498 vi. Department Reporting: Entities with oversight of a
499 Department shall also provide a report on the Department
500 overseen by the Entity; at a minimum, the report must contain the
501 following information:
- 502 a. Names: Provide the name of the Department and, if
503 there have been any changes since the annual report,
504 provide an update of the Department's purpose and/or
505 the contact person for the Department and their contact
506 information including phone number, mailing address,
507 email address, and the Department's website.
- 508 b. Budget: Provide the total budget for the current fiscal
509 year and the funding sources including Tribal
510 Contribution, grants, and other sources.
- 511 c. Employees: Provide how many employees the
512 Department has and how many of those employees are
513 enrolled Tribal members.
- 514 d. Logo and Images: Provide any pictures or images that
515 the Department would like to be considered by
516 Secretary for inclusion in the report and, if the
517 Department's logo has changed since the annual
518 report, provide the new logo that may be included in
519 the report.
- 520 e. "Article V. Amendments" is to consist of:
- 521 1. Amendments to By-laws. Explain how amendments to the by-laws may be
522 initiated by the Entity, provided that, amendments must conform to the
523 requirements of this and any other policy and must be approved by the Oneida
524 Business Committee prior to implementation.
- 525

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Article IX. Minutes

9-1. All minutes must be submitted to the Secretary within a reasonable time after approval by the Entity.

9-2. Actions taken by an Entity are valid when minutes are approved, provided that, minutes are filed in accordance with this Article and the Entity's approved by-laws.

9-3. No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an Entity unless specifically required by the by-laws of that Entity.

9-4. In the event of dissolution of an Entity, all files and documents are required to be forwarded to the Secretary for proper storage and disposal.

Article X. Dissolution of Entities

10-1. Entities of the Nation shall be dissolved according to this Article; however, additional specific directions may be included in an Entity's by-laws.

10-2. A Task Force or Ad Hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a Task Force or Ad Hoc committee must be forwarded to the Secretary for proper disposal within two (2) weeks of dissolution.

10-3. All other Entities of the Nation may only be dissolved by motion of the Oneida General Tribal Council or the Oneida Business Committee. Unless otherwise indicated, the materials generated by these Entities must be forwarded to the Secretary for proper disposal within two (2) weeks of dissolution.

10-4. All chairpersons and secretaries of dissolved Entities shall be responsible for closing out open business of the Entities and forwarding materials to the Secretary.

Article XI. Stipends, Reimbursement and Compensation for Service

11-1. Compensation and reimbursement for expenses shall be as set out in this Article and according to procedures for payment as set out by the Nation.

11-2. The Nation recognizes that persons serving on Entities of the Nation incur some expense. Therefore, the Nation, in order to attract persons to serve on Entities, shall pay Stipends to these Members in accordance with this Article.

11-3. *Meeting Stipends for Members of Appointed Entities.* Except as provided in sub-article (a) and unless otherwise declined by the Entity, or declined by a Member(s), appointed Members serving on appointed Entities shall be paid a Stipend of no more than \$50 per month when at least one (1) meeting is conducted where a quorum has been established in accordance with the duly adopted by-laws of that Entity. Such meeting must last for at least one (1) hour and Members collecting Stipends must be present for at least one (1) hour of the meeting.

a. Members serving on the Oneida Child Protective Board are exempt from the \$50 Stipend per month limitation and shall receive a \$50 Stipend for each meeting held in accordance with 11-3.

11-4. *Meeting Stipends for Members of Elected Entities.* Unless otherwise declined by the Entity, or declined by a Member(s), Members serving on elected Entities shall be paid a minimum Stipend of \$50 for each meeting which has established a quorum in accordance with the duly adopted by-laws of that Entity for at least one (1) hour, regardless of the length of the meeting. Members collecting Stipends must be present for at least one (1) hour of the meeting,

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570 regardless of the length of the meeting.

571 11-5. The Oneida Business Committee shall periodically review the amounts provided for
572 meeting Stipends and, based on the availability of funds, shall adjust those amounts accordingly
573 by amending this Policy.

574 11-6. If an Entity, other than the Oneida Gaming Commission, fails to comply with the
575 requirements of this Policy, the Oneida Business Committee may suspend the Entity's
576 Members' Stipends until the Entity has demonstrated to the satisfaction of the Oneida Business
577 Committee that it has attained compliance herewith.

- 578 a. If the Oneida Gaming Commission fails to comply with the requirements of this
579 Policy in regards to requirements that are not matters governed by the Oneida Nation
580 Gaming Ordinance, the Oneida Business Committee may impose a fine on any/all
581 Member(s) found to be in noncompliance with this Policy. The fine must be an
582 amount of no less than \$50 but not more than \$100. In addition, either in lieu of the
583 fine or in addition to the fine, the Oneida Business Committee may suspend all
584 employment benefits that are not essential to the Member's employment
585 requirements as a condition of gaming licensing, for example, non-essential travel.

586 11-7. *Conferences and Training*. A Member of any Entity, elected or appointed, shall be
587 reimbursed in accordance with the Oneida Travel and Expense Policy for travel and Per Diem
588 for attending a Conference or training, provided that:

- 589 a. A Member is eligible for a \$100 Stipend for each full day the Member is present at
590 the Conference or training, when attendance at the Conference or training is required by
591 law, by-law or resolution.
592 b. A Member is not eligible for a Conference and training Stipend if that training is not
593 required by law, by-law or resolution.
594 c. No Stipend payments will be made for those days spent traveling to and from the
595 Conference or training.

596 11-8. All Members of Entities are eligible for reimbursement for normal business expenses
597 naturally related to membership in the Entity.

598 11-9. Task Force Members and Members of subcommittees are not eligible for Stipends unless
599 a specific exception is made by the Oneida Business Committee or the Oneida General Tribal
600 Council.

601
602 **Article XII. Confidential Information**

603 12-1. The Nation is involved in numerous business ventures and governmental functions where
604 it is necessary that private information be kept in the strictest confidence to assure the continued
605 success and welfare of the Nation. It is in the best interest of the Nation that all Members
606 maintain all information in a confidential manner, whether of historical, immediate, or future
607 use or need. The Nation desires that all Members who have access to the Nation's confidential
608 information be subject to specific limitations in order to protect the interest of the Nation. It is
609 the intention of the Nation that no persons engaged by the Nation, nor their relatives or
610 associates, benefit from the use of confidential information.

611 12-2. Confidential information means all information or data, whether printed, written, or oral,
612 concerning business or customers of the Nation, disclosed to, acquired by, or generated by
613 Members in confidence at any time during their elected or appointed term or during their

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employment.

12-3. Confidential information must be considered and kept as the private and privileged records of the Nation and may not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.

12-4. A Member will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the Member's relationship with the Nation and the Entity.

12-5. Members shall surrender to the Nation, in good condition, all records kept by the Member pertaining to Entity membership upon completion of their term of membership, for any cause whatsoever.

12-6. No Member may disclose confidential information acquired by reason of his/her relationship or status with the Nation for his/her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.

Article XIII. Conflicts of Interest

Subpart A. General.

13-1. The Nation recognizes the ability of all persons to serve on an Entity. However, it is also recognized that the delegated authority and responsibilities of an Entity may cause conflict with membership on other Entities or employment.

13-2. It is the policy of the Nation to request a candidate to disclose possible conflicts of interest prior to election or appointment to allow any potential conflicts to be resolved in a timely manner.

13-3. Members shall disclose and resolve conflicts of interest in a reasonable and timely manner. Failure to resolve conflicts may result in removal from office from an elected Entity and may result in termination from an appointed Entity. All applicants shall submit, with the Application forms, a signed conflict of interest declaration disclosing all known conflicts.

13-4. This Article sets forth specifically prohibited conflicts of interests. However, for any individual candidate or Member of an Entity, additional conflicts may arise within the by-laws of that Entity or employment relationships.

13-5. No Member may act as a consultant, agent, representative for, or hold any position as an officer, director, partner, trustee, or belong as a Member in a board, committee or commission, or the like without first disclosing such activity to determine possible conflicts of interest.

Subpart B. Employment Interests.

13-6. No Member may hold office in an Entity which has authority over the area in which the Member is employed by the Nation or elsewhere. The Nation recognizes the ability of all persons to serve on Entities of the Nation, however, recognizes the conflict arising out of membership on an Entity and employment in an area over which the Entity has authority.

13-7. Employment is defined for this subpart as that area which the employee supervises or is supervised in regards to a specific subject matter.

13-8. Authority of an Entity is defined for this subpart as that area over which the Entity has

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subject matter jurisdiction delegated either by the Oneida Business Committee or the Oneida General Tribal Council, and for which such authority may be regulatory, oversight, or otherwise.

Subpart C. Financial Interests, Investments, and Gifts.

13-9. No Member, or their immediate family, may have a financial interest in any transaction between the Entity and an outside party where the Member has a financial or familial relationship.

13-10. As referred to in this Subpart C, for the purposes of defining conflicts, Entity includes the programs or enterprises over which the Entity has delegated authority.

13-11. Members shall avoid personal investment in any business with which the Nation has or is expected to have a contractual or other business relationship. Notwithstanding the foregoing, however, an investment by a Member in a business with which the Nation has dealings is permissible if the Oneida Business Committee or other delegated authority determines in writing that:

a. the investment cannot be considered to have been made on the basis of confidential information; and

b. the investment cannot be expected to adversely affect or influence the Member's judgment in the performance of any services or obligations on behalf of the Nation.

13-12. Members shall not use their relationship with the Nation to exercise undue influence to obtain anything which is not freely available to all prospective purchasers.

13-13. Members may not accept gifts, payments for personal gain, opportunities to invest, opportunities to act as an agent, a consultant, or a representative for actual or potential purchasers, sales sources, contractors, consultants, customers or suppliers, or accept any direct or indirect benefit from any actual or potential purchaser, sales source, contractor, consultant, customer, or supplier.

13-14. Members may not accept any gift, entertainment, service, loan, promise of future benefits or payment of any kind which the Oneida Business Committee, or other delegated authority, determines may adversely affects or influences his or her judgment in the performance of any services, duties, obligations or responsibilities to the Nation, or impairs confidence in the Nation and the Nation's Entities.

13-15. Notwithstanding the foregoing, Members may accept or provide business-related meals, entertainment, gifts or favors when the value involved is insignificant and the Oneida Business Committee or other delegated authority has determined that it clearly will not place him or her under any obligation.

Subpart D. Competition with the Nation.

13-16. Members may not enter into competition with the Nation regarding the purchase or sale of any property, property rights or property interests, without prior consent of the Nation.

13-17. A Member may enter into competition with the Nation when the activity engaged in is approved through an Oneida entrepreneur development program or other similar Oneida program and does not otherwise violate this Policy.

Subpart E. Use of the Nation's Assets.

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13-18. All bank accounts for the Nation's funds must be maintained in the name of the Nation and will be reflected on the Nation's books in accordance with the Generally Accepted Accounting Principles.

13-19. Each Member shall comply with the system of internal accounting controls sufficient to provide assurances that:

- a. all transactions are executed in accordance with management's authorization; and
- b. access to assets is permitted only in accordance with management's authorization; and
- c. all transactions are recorded to permit preparation of financial statements in conformity with the Generally Accepted Accounting Principles or other applicable criteria.

13-20. Any records created or obtained as a Member of an Entity are the property of the Nation and can only be removed or destroyed if approved by the Entity via a majority vote of a quorum of the Entity at a duly called meeting. All removal or destruction of documents must be conducted in accordance with the Open Records and Open Meetings Law.

Subpart F. Disclosure.

13-21. Each Member shall disclose any outside activities or interests that conflict or suggest a potential conflict with the best interests of the Nation by completely filling out the Application for membership or informing the Oneida Business Committee or other designated authority after election or appointment of a conflict arising during membership on an Entity.

Subpart G. Reporting.

13-22. All conflicts or potential conflicts that arise during membership on an Entity must be immediately reported to the Secretary. Upon receiving information of a potential conflict of interest, the Secretary shall request a determination from the Oneida Law Office whether further action must be taken by the Nation regarding the status of the Member.

13-23. Any evidence of noncompliance with any Policy regarding the use of the Nation's assets must be immediately reported to the internal audit staff. If the internal audit staff finds evidence of noncompliance, they shall notify the Oneida Law Office. The Oneida Business Committee and/or the Oneida Law Office will then make a determination of further action to be taken, if any.

Subpart H. Enforcement and Penalties.

13-24. Members found to be in violation of this Policy may be removed pursuant to the Removal Law, if a Member of an elected Entity, or have their appointment terminated, if a Member of an appointed Entity.

- a. A Member who has been terminated or removed is ineligible for Appointment or election to any Entity for at least one (1) year from the effective date of the termination or removal.

13-25. Candidates for appointment or election to an office found to be in violation of this policy may be disqualified from taking office.

End.

Adopted - BC-8-2-95-A
Amended - BC-5-14-97-F
Emergency Amendments - BC-04-12-06-JJ

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749 Amended - BC-9-27-06-E (permanent adoption of emergency amendments)
750 Amended – BC-09-22-10-C
751
752



Legislative Operating Committee

August 19, 2015

Rulemaking Law

Submission Date: 09/17/14

☐ Public Meeting:
☐ Emergency Enacted:
 Expires:

LOC Sponsor: Tehassi Hill

Summary: *This item was carried over into the current term by the LOC. Originally submitted to the LOC on April 13, 2012; the proposal seeks a consistent process for the adoption of administrative rules by Tribal agencies that have been granted rulemaking authority under other Tribal laws.*

9/17/14 LOC: Motion by Tehassi Hill to add the Rulemaking Law to the Active Files List with Tehassi Hill as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- Review the current draft to provide comments, if any, and consider forwarding for a legislative analysis and fiscal impact statement.

Chapter 17

Administrative Rules

17.1. Purpose and Policy
 17.2. Adoption, Amendment, Repeal
 17.3. Definitions
 17.4. General
 17.5. Preparation of Proposed Rules

17.6. Public Comment Period on Proposed Rules
 17.7. Oneida Business Committee Review and Promulgation
 17.8. Effective Date of Rules
 17.9. Emergency Rules
 17.10. Judicial Review of a Rule

17.1. Purpose and Policy

17.1-1. *Purpose.* The purpose of this law is to provide a process for the adoption and amendment of administrative rules.

17.1-2. *Policy.* It is the policy of the Nation to ensure:

- (a) There are efficient, effective and democratic processes for enacting and revising administrative Rules.
- (b) That Authorized Agencies having Rule Making Authority act in a responsible and consistent manner when enacting and revising the administrative Rules of the Nation.

17.2. Adoption, Amendment, Repeal

17.2-1. This law was adopted by the Oneida Business Committee by resolution _____.

17.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

17.2-3. 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.

17.2-4. 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.

17.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

17.3. Definitions

17.3-1. 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 use.

(a) “Authorized Agency” means any board, committee, commission, department, or officer of the Nation that has been granted Rule Making Authority.

(b) “Day(s)” means calendar day(s), unless otherwise specifically stated.

(c) “Fiscal Impact Statement” means an estimate of the total fiscal year financial effects associated with a proposed Rule and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an individual or agency to comply with the Rule after implementation.

(d) “Oneida Register” means the free legal periodical published on the Nation’s website which contains, at a minimum, agency regulations, proposed legislation and notices, and either the Oneida Code of Laws or directions to obtain free access to the Oneida Code of Laws.

(e) “Rule(s)” means any exercise of Rule Making Authority by an Authorized Agency in the form of a rule, regulation, policy or any other tool designed to exercise the Authorized Agency’s delegated Rule Making Authority in order to implement, interpret and/or enforce a law or policy of the Nation. A Rule does not include statements, interpretations, decisions, rules, regulations, policies, procedures or other matters

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concerning internal management of an agency or which do not affect the private rights or interests of individuals outside of the agency.

(f) “Rule Making Authority” means the delegation of authority to Authorized Agencies found in the Nation’s laws other than this Law which allow Authorized Agencies to implement, interpret and/or enforce a law or policy of the Nation.

(f) “Statement of Effect” means a legislative and legal analysis which explains the effects that adopting a Rule would have on the Nation.

(g) “Nation” means the Oneida Nation.

17.4. General

17.4-1. *Administrative Rule Making.* Only Authorized Agencies may promulgate Rules; this Law does not confer Rule Making Authority. Authorized Agencies shall adhere to the Rule making procedures as provided in this Law. Authorized Agencies may promulgate Rules interpreting the provisions of any law enforced or administered by it; provided that, a Rule may not exceed the Rule Making Authority granted under the law for which the Rule is being promulgated.

17.4-2. *Agency Solicitation of Comment on General Subject Matter.* For the purpose of soliciting public comment, an Authorized Agency may hold a public meeting on the general subject matter of a possible or anticipated Rule before preparing a proposed Rule. However, a public meeting under this subsection does not satisfy the requirements of Section 17.6 hereof with respect to promulgation of a specific proposed Rule.

17.4-3. *Substantial Compliance.* Any Rule hereafter adopted is valid only if adopted in substantial compliance with this Law, however Rules already in effect at the time of this Law’s adoption will remain in effect unless directed to updated based on this Law’s requirements by the Oneida Business Committee. Any amendments made to Rules already in effect must follow the requirements of this law.

(a) Authorized Agencies shall forward to the Oneida Legislative Reference Office any Rules in effect at the time this Law is adopted within thirty (30) days of its adoption and the Oneida Legislative Reference Office shall publish all such Rules in the Oneida Register within thirty (30) days of its receipt thereof.

17.4-4. *Statute of Limitations.* No Rule can be contested for purpose of non-compliance with the procedural requirements of this Law, as now or hereafter amended, if one (1) year has elapsed from the effective date of the Rule.

17.5. Preparation of Proposed Rules

17.5-1. *Form and Style.* In preparing a proposed Rule, Authorized Agencies shall substantially adhere to the form and style required by the Legislative Operating Committee.

(a) At a minimum, all Rules must be numbered in the following consistent manner “1-1(a)(1)(A)(i)” where:

- (1) “1-1” means the first section.
- (2) “(a)” means the first subsection.
- (3) “(1)” means the second subsection.
- (4) “(A)” means the third subsection.
- (5) “(i)” means the fourth subsection.

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(6) All other numbering after the fourth subsection must be in a logical manner.

17.5-2. *Summary Report.* The Authorized Agency shall prepare a summary report regarding each proposed Rule, which must be attached to the proposed Rule when presented for public comment and for adoption through the Oneida Legislative Operating Committee and ultimately the Oneida Business Committee. The summary report must include:

- (a) the name of the proposed Rule;
- (b) a reference to the law that the proposed Rule interprets, along with a list of any other related laws, policies or rules that may be affected by the proposed Rule;
- (c) a brief summary of the proposed Rule and any changes made to the proposed Rule based on the public comment period required by Section 17.6 hereof, if applicable;
- (d) a Statement of Effect for the Rule which the Legislative Reference Office shall prepare upon request by the Authorized Agency; and
- (e) all information available related to how the proposed Rule may affect the Authorized Agency's budget and any other budgets that may be affected by the proposed rule.

17.6. Public Comment Period on Proposed Rules

17.6-1. A proposed Rule, except a Rule promulgated under the emergency Rules exemptions under Section 17.9, must be preceded by notice and a public comment period. The proposed rule and notice for a proposed rule must be published on the Oneida Register and the notice must consist of:

- (a) the summary report required under Section 17.5-2;
- (b) the date of publication;
- (c) the date until which written comments will be accepted, which must be at least thirty (30) days after publication; and
- (d) a statement that:
 - (1) comments on the proposed Rule will be accepted by the Authorized Agency for at least thirty (30) days after publication of the notice, will be reviewed by the Authorized Agency and, at the Authorized Agency's discretion may be incorporated into the proposed Rule before it is presented for adoption; and
 - (2) the Authorized Agency may present the proposed Rule to the Oneida Legislative Operating Committee, which once approved, will forward to the Oneida Business Committee for adoption without conducting public meeting, unless a request for a public meeting, which must be signed by at least five (5) Citizens of the Nation affected by the proposed Rule, is received by the Authorized Agency within thirty (30) days of the publication of the notice.

17.6-2. *Public Meetings.* An Authorized Agency may hold a public meeting regarding a proposed Rule, but a public meeting is not required, except as described in Section 17.6-1(d)(2). When a public meeting on a proposed Rule is scheduled by an Authorized Agency, it must be held in accordance with the following requirements.

- (a) The Authorized Agency shall set a date for the public meeting and have the notice published in the Kalihwisaks and in the Oneida Register not less than ten (10) business days prior to the meeting. If the public meeting is scheduled based on a request pursuant to Section 17.6-1(d)(2), the public meeting must be held within thirty (30) days of receiving the request.

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(b) The notice must include:

(1) a reference to the law that the proposed Rule interprets, along with a list of any other related laws, policies or rules;

(2) the terms, substance or a description of the subjects and issues involved, and instructions for obtaining a copy of the proposed Rule and its summary report;

(3) the date, time, and place of the scheduled public meeting and the date until which written comments will be accepted.

(c) The Authorized Agency shall hold a public meeting at the date, time and place designated in the meeting notice.

(d) The Authorized Agency holding the public meeting shall have a representative present at the meeting who shall briefly describe the Rule which is the subject of the public meeting and the nature of the Rule's procedures, and then open the meeting for comments. The presiding Authorized Agency's representative is not required to comment or respond to comments at the meeting, but may, at his/her discretion, offer clarity.

(e) *Registration.* The Authorized Agency shall create and bring to the public hearing a sign-in sheet; persons attending the public meeting shall register at the meeting by signing the sign-in sheet.

(d) The public meeting must be recorded and the Authorized Agency shall hold the record open for the submission of written comments for a minimum of five (5) business days following the public meeting. Persons who provide oral comments shall state their name for the record. The Authorized Agency may extend the comment period as it deems appropriate by posting an amended Notice of Public Meeting which identifies the extended comment period ending date.

17.6-3. *Public Comments.* The Authorized Agency shall fully consider all comments received during the public comment period and during any public meeting held regarding a proposed Rule.

17.7. Oneida Legislative Operating Committee and Business Committee Review and Promulgation

17.7-1. After a public meeting, if any, is held and the public comment period has expired, the Authorized Agency shall submit the proposed Rule and the summary report required under Section 17.5-2 to the Oneida Legislative Operating Committee for consideration. The Oneida Legislative Operating Committee shall review the proposed Rule and direct the Agency to make revisions, if any, it deems appropriate and shall also direct the Oneida Finance Administration to prepare a Fiscal Impact Statement for the proposed Rule within sixty (60) days. Once the Fiscal Impact Statement for the proposed Rule is submitted, the Legislative Operating Committee shall review the proposed Rule, the summary report, and the Fiscal Impact Statement and take one (1) of the following actions:

(a) forward the Rule, with or without required revisions, to the Oneida Business Committee to be considered for adoption; or

(b) return the proposed Rule to the Authorized Agency with recommendations.

(1) If substantial modifications are made to the proposed Rule based on the recommendations of the Oneida Legislative Operating Committee, the Authorized

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Agency may, at its discretion, present the proposed Rule for an additional public comment period, which, if offered, must be executed pursuant to Section 17.6.

(2) The proposed Rule must then be brought back to the Oneida Legislative Operating Committee to consider forwarding to the Oneida Business Committee for adoption accompanied by the summary report required under Section 17.5-2. If substantial changes have been made to the proposed Rule, the Oneida Legislative Operating Committee may, at its discretion, request an updated Fiscal Impact Statement from the Oneida Finance Administration.

(A) Once the Oneida Legislative Operating Committee approves the Authorized Agency's draft of the Rule, it shall forward the approved draft of the Rule to the Oneida Business Committee to be considered for adoption.

17.7-2. The Oneida Business Committee shall review the proposed Rule, the summary report and the Fiscal Impact Statement take one (1) of the following actions:

(a) Adopt the Rule, with or without changes;

(b) Reject the proposed Rule; or

(c) Return the proposed Rule to the Authorized Agency with recommendations.

(1) If substantial modifications are made to the proposed Rule based on the recommendations of the Oneida Business Committee, the Authorized Agency may, at its discretion, present the proposed Rule for an additional public comment period, which, if offered, must be executed pursuant to Section 17.6.

(2) The proposed Rule must then be brought back to the Oneida Business Committee to consider adoption accompanied by the summary report required under Section 17.5-2. and the Fiscal Impact Statement. If substantial changes have been made to the proposed Rule, the Oneida Business Committee may, at its discretion, request an updated Fiscal Impact Statement from the Oneida Finance Administration.

(A) Once the Oneida Business Committee approves the Authorized Agency's Rule, it shall adopt the Rule by resolution.

17.8. Effective Date of Rules

17.8-1. Unless otherwise specified in the adopted Rule, a Rule is effective upon approval by the Oneida Business Committee. The Rule shall be published in the Oneida Register upon its approval. A failure to publish an approved Rule by its effective dates does not change the effective date of the Rule.

17.9. Emergency Rules

17.9-1. An Authorized Agency may present the Oneida Legislative Operating Committee with a proposed emergency Rule without a public comment period being held if it finds there is an emergency situation that requires the enactment or amendment of a Rule for the preservation of the public health, safety, or general welfare of the Reservation population. The Legislative Operating Committee shall review the proposed emergency Rule, the summary report and the reasoning suggested for the emergency situation and take one (1) of the following actions:

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(a) reject the proposed emergency Rule on the basis that there is not a valid emergency;
or

(b) accept that there is a valid basis for an emergency and forward to the Oneida Business Committee for adoption with any revisions required by the Oneida Legislative Operating Committee.

17.9-2. If the proposed emergency Rule is forwarded to the Oneida Business Committee, the Oneida Business Committee shall review the proposed emergency Rule, the summary report and the reasoning suggested for the emergency situation and take one (1) of the following actions:

(a) reject the proposed emergency Rule on the basis that there is not a valid emergency;
or

(b) accept that there is a valid basis for an emergency and adopt the proposed emergency Rule with any revisions required by the Oneida Business Committee.

17.9-3. As soon as possible after emergency enactment, the regular procedures as provided under this law for permanent enactment of a Rule must be implemented, if permanent enactment is desired.

17.9-4. An emergency Rule becomes effective immediately upon its approval by the Oneida Business Committee and remains in effect for a period of up to six (6) months, with an opportunity for a one-time emergency extension of up to six (6) months. An emergency Rule will:

(a) expire when six (6) months have passed since the emergency Rule went into effect and an emergency Rule extension has not been approved; or

(b) expire when six (6) months have passed since the emergency Rule extension went into effect; or

(c) no longer be in effect when a law is permanently adopted in the emergency Rule's place before the emergency Rule expires under (a) or (b).

17.9-3. The emergency Rule must be published in the Oneida Register.

17.10. Judicial Review of a Rule

17.10-1. Any person or agency aggrieved by the promulgation of a Rule under this law, is entitled to judicial review by the Oneida Judiciary. The Authorized Agency that promulgated the Rule shall transmit the entire record of the Rule currently under judicial review to the Oneida Judiciary.

17.10-2. The Oneida Judiciary may uphold promulgation of the Rule; remand the case for further proceedings; or it may reverse the Rule, in whole or in part, if the substantial rights of petitioners have been prejudiced because the Rule is:

(a) In violation of a provision of the Nation's Constitution;

(b) In excess of the Authorized Agency's Rule Making Authority or is otherwise unlawful;

(c) Clearly erroneous in view of the entire record; or

(d) Arbitrary or capricious.

End.



Legislative Operating Committee

August 19, 2015

Back Pay Policy

Submission Date: 6/11/15

☐ Public Meeting:
☐ Emergency Enacted:
 Expires:

LOC Sponsor: David P. Jordan

Summary: *This request was submitted to clarify two conflicting provisions related to whether health insurance coverage continues during involuntary separation/terminations, and to require reinstated employees to reimburse CHS dollars used if an employee claims medical treatment from CHS prior to reinstatement.*

6/17/15 LOC: Motion by David P. Jordan to add the Back Pay Policy Amendments to the active files list with himself as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- Review memorandum and defer to Sponsor to continue work and bring back when ready.

Oneida Nation

Legislative Reference Office

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**Committee Members**

Brandon Stevens, Chairperson
Tehassi Hill, Vice Chairperson
Fawn Billie, Councilmember
David P. Jordan, Councilmember
Jennifer Webster, Councilmember

Memorandum

To: Legislative Operating Committee
From: David P. Jordan, Councilmember
Date: August 19, 2015
Re: Back Pay Policy Amendments

A handwritten signature in dark ink, appearing to read "David P. Jordan", is written over the "From:" line of the memorandum header.

On June 11, 2015, Melinda Danforth, on behalf of the Oneida Business Committee, submitted a request to amend the Back Pay Policy to the Legislative Operating Committee (LOC). On June 17, 2015, the LOC added Back Pay Policy Amendments to the active files list, with myself as the sponsor. Approximately sixty days have passed since the original submission and this memorandum serves as an update as to where the legislation is at in the LOC process.

The request included two requested changes to the Policy: including an added provision and a clarification of another with a notation that the Nation had been using the Law Office's interpretation of the provision. The Legislative Reference Office has since met with the Law Office and is working on clarifying several other portions of the law to conform to the Law Office's interpretation.

I am asking that you defer this item back to my office for further work and I will bring back the Law when it is ready.

Requested Action

Motion to accept the memorandum regarding the status of the Back Pay Policy Amendments as FYI.



Legislative Operating Committee

August 19, 2015

Petition: Cornelius - 4 Resolutions (Investigate 7 Gens, 7 Gens Return Money, Freedom of Press, Impose Tax on OBC)

Submission Date: May 13, 2015

☐ Public Meeting:
☐ Emergency Enacted:

LOC Sponsor: David P. Jordan

Summary: *The Petition is to allow the petitioner to hold a special GTC meeting to report on 7 Gens and present four (4) resolutions to be voted on by GTC.*

5/13/15 OBC: Motion by Trish King to acknowledge receipt of the petition submitted by Frank Cornelius, seconded by Fawn Billie. Motion carried unanimously.

Motion by Trish King to send the verified petition to the Law, Finance, Legislative Reference and Direct Report Offices for legal, financial, legislative and administrative analyses to be completed; to direct the Law, Finance and Legislative Offices to submit the analyses to the Tribal Secretary within 60 days and a that a progress report is submitted in 45 days, seconded by David Jordan.

Motion by David Jordan to direct the Direct Report Offices to submit the appropriate administrative analyses to the Tribal Secretary within 30 days, seconded by Trish King. Motion carried unanimously.

5/20/15 LOC: Motion by Fawn Billie to accept the Petition: Cornelius- Special GTC meeting to address 4 Resolutions and to add to the active files list; seconded by Tehassi Hill. Motion carried unanimously.

Note: David P. Jordan will be the sponsor

Motion by Fawn Billie to forward a memorandum to the OBC addressing concerns that the Resolutions are not attached to petition; seconded by Tehassi Hill. Motion carried unanimously.

5/27/15 OBC: Motion by David Jordan to direct the Tribal Secretary to reach out to Petitioner Frank Cornelius to request the four resolutions mentioned in the petition be submitted in 30 days, seconded by Lisa Summers. Motion carried unanimously.

6/24/15 OBC: Motion by Fawn Billie to defer this item to the next regular Business Committee meeting and direct the Tribal Secretary to work with the petitioner to find a solution to the concerns, seconded by Tehassi Hill. Motion carried unanimously.

7/8/15 OBC: Motion by Tehassi Hill to accept the update as information and defer this item to the July 22, 2015, regular Business Committee meeting as agreed upon by the Business Committee members and the petitioner, seconded by David Jordan. Motion carried unanimously.

7/22/15 OBC: Motion by Brandon Stevens to table this item, seconded by David Jordan. Motion carried unanimously.

8/5/15 LOC: Motion by David P. Jordan to accept the status update memorandum regarding the Petition: Cornelius- 4 Resolutions (Investigate 7 Gens, 7 Gens Returns Money, Freedom of Press, Impose Tax on OBC) as FYI and forward to the Oneida Business Committee; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- Accept the attached Statements of Effect on each of the four resolutions and forward to the Oneida Business Committee.

Oneida Nation Legislative Reference Office

Krystal L. John, Staff Attorney
 Douglass A. McIntyre, Staff Attorney
 Taniquelle J. Thurner, Legislative Analyst
 Candice E. Skenandore, Legislative Analyst



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Statement of Effect *Investigation into Oneida Seven Generations Corporation*

Summary

This Resolution has three components. First, it states that the Oneida “General Tribal Council (GTC) directs the Chairperson to request the superintendent of the Bureau of Indian Affairs (BIA) to conduct an outside forensic Federal audit or investigation into the Seven Generations’ operation for possible fraud in their land transactions or other financial improprieties.” Secondly, it requires that the GTC “be informed of the following:

- A. Who are the leaders in all limited liability companies
- B. Who are all the investors, Indian and non-Indian
- C. Who are the stockholders
- D. Who are the attorneys
- E. Are the LLC officials receiving stipends or a salary
- F. What is the relationship of the Business Committee, past and present, to the Seven Generations Corporation, LLC’s, or investors, if any.
- G. How many LLC’s do we have
- H. How are the owners
- I. Who are the board members
- J. How much do they get paid
- K. What do they use for collateral
- L. Is Seven Generations’ assets co-mingled with tribal property
- M. Is Seven Generations’ money co-mingled with tribal money.”

Lastly, this Resolution requires that the Oneida Business Committee (OBC) “withdraw[s] Seven Generations’ charter immediately.”

Submitted by: Krystal L. John, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

This Petition was submitted to the Tribal Secretary’s Office on April 28, 2015, and was verified by the Enrollment Department. This Petition was placed on the OBC agenda and accepted at the May 13, 2015 OBC meeting. This Petition requests a special GTC meeting allowing the Petitioner to present on and address four Resolutions, including the subject Resolution.

Procedural Update

On May 27, 2015, the OBC received a memorandum from the LOC stating that this Petition did not include any of the four resolutions the Petition referenced. At that meeting it was directed that the Tribal Secretary reach out to the Petitioner in order to request the resolutions and that

they be submitted within 30 days. On June 24, 2015, Chief Counsel expressed concerns relating to the validity of the Petition because it was not possible to determine whether those whom had signed the Petition had actually seen and endorsed any resolutions because they were not attached to the verified Petition. The Petitioner asserted that there had not been any resolutions included with his original Petition, but that he could return with resolutions if they were required. The OBC directed the Tribal Secretary to work with the Petitioner relating the resolutions.

At the July 22, 2015 OBC meeting the Tribal Secretary presented a memorandum to the OBC stating that a meeting was held with the Petitioner on June 29, 2015 during which it was agreed that the Tribal Secretary would research whether any resolutions could have possibly been submitted with the Petition. The memorandum stated that further research confirmed that her office had not received any resolutions with the original Petition. Lastly, the memorandum stated that the Petitioner submitted a report to the Tribal Secretary, June 29, 2015; the report was attached to the Secretary's July 22, 2015 memorandum as a handout. At the July 22, 2015 OBC meeting, discussion ensued and the Petitioner asserted that he had in fact presented resolutions to the Tribal Secretary's Office and the Tribal Secretary's office maintained that she had not yet received any resolutions. On July 22, 2015, at 11:35 AM the Tribal Secretary's office received the Petitioner's four resolutions.

The First Component of this Resolution – Chairperson Request the BIA to Conduct an Outside Forensic Federal Audit or Investigation into the Seven Generations' Operation

In regards to the first component of this Resolution, the proposed GTC directive that the chairperson request the superintendent of the BIA to conduct an outside forensic Federal audit or investigation into the Seven Generations' operation for possible fraud in their land transactions or other financial improprieties, adoption has no legislative impact.

The Second Component of this Resolution – GTC be Informed of Information Pertaining to Seven Generations Corporation and Other Businesses Owned by the Nation

In regards to the second component of this Resolution, that the GTC be informed of items A-M listed in the Summary section above, it is possible that items requested to be disclosed to the GTC would conflict with the Limitations Upon Access and Exceptions to the Open Records and Meetings (Law) pursuant to section 7.4, specifically, subsections (b) and (e). Subsection (b) exempts "[c]ontracts or other agreements which specifically prohibit disclosure of the content of the contract or agreement to third parties." Subsection (e) exempts "[t]rade secrets and commercial or financial information obtained from a person or business, or such information belonging to the Tribe where the trade secrets or information are proprietary, privileged, or confidential or where disclosure of the trade secrets or information may cause competitive harm. Nothing contained in this paragraph shall be construed to prevent a person or business from consenting to disclosure."

Without a closer look at the information requested to be disclosed to the GTC, it is impossible to determine if the third component of the Resolution would violate the Open Records and Meetings (Law), however, section 7.4-6 of the subject law requires that if an authority, which in

this case would be the OBC, “is unsure about whether a document may be released, the authority shall consult with the Oneida Law Office prior to release.”

The Third Component of this Resolution – Require the OBC to Withdraw Seven Generations Corporation’s Charter Immediately

In regards to the third component of this Resolution, which requires that the OBC withdraw Seven Generations’ charter immediately, the Nation does not have a Corporate Code adopted, so there is no legislative impact. The withdrawal of the corporate charter must be pursuant to the charter itself.

Conclusion

Adoption of the first and third components of the Resolution would not affect any current legislation of the Nation; however, the second component may conflict with the Open Records and Meeting (Law).

Oneida Nation Legislative Reference Office

Krystal L. John, Staff Attorney
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Statement of Effect *Imposing a Tax on the Business Committee*

Summary

This Resolution alleges that the Oneida Business Committee (OBC) (1) has not followed the General Tribal Council's (GTC) motions made on December 13, 2015 and (2) has violated GTC Resolution 11-15-08-C by not reporting back to the GTC. As a consequence, the Petition requests that the GTC resolve to "impose a tax on all the Business Committee members who voted not to dissolve 7 Generations but only restructure pay \$5,000 as reimbursement to the Tribe for spending millions of dollars of our money on 7 Generations; and both the Chairwoman and Tribal Attorney pay twice that amount, for having knowledge of the law and as an accessory, pay \$10,000 each." This Resolution requires that those required to pay the subject tax "start paying the tax from their personal accounts to the Oneida Tribal general account within 60 days from now or have the Tribe cancel their per capita until it is all repaid."

Submitted by: Krystal L. John, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

This Petition was submitted to the Tribal Secretary's Office on April 28, 2015, and was verified by the Enrollment Department. This Petition was placed on the OBC agenda and accepted at the May 13, 2015 OBC meeting. This Petition requests a special GTC meeting allowing the Petitioner to present on and address four resolutions, including the subject Resolution.

Procedural Update

On May 27, 2015, the OBC received a memorandum from the LOC stating that this Petition did not include any of the four resolutions the Petition referenced. At that meeting it was directed that the Tribal Secretary reach out to the Petitioner in order to request the resolutions and that they be submitted within 30 days. On June 24, 2015, Chief Counsel expressed concerns relating to the validity of the Petition because it was not possible to determine whether those whom had signed the Petition had actually seen and endorsed any resolutions because they were not attached to the verified Petition. The Petitioner asserted that there had not been any resolutions included with his original Petition, but that he could return with resolutions if they were required. The OBC directed the Tribal Secretary to work with the Petitioner relating the resolutions.

At the July 22, 2015 OBC meeting the Tribal Secretary presented a memorandum to the OBC stating that a meeting was held with the Petitioner on June 29, 2015 during which it was agreed that the Tribal Secretary would research whether any resolutions could have possible been

submitted with the Petition. The memorandum stated that further research confirmed that her office had not received any resolutions with the original Petition. Lastly, the memorandum stated that the Petitioner submitted a report to the Tribal Secretary, June 29, 2015; the report was attached to the Secretary's July 22, 2015 memorandum as a handout. At the July 22, 2015 OBC meeting, discussion ensued and the Petitioner asserted that he had in fact presented resolutions to the Tribal Secretary's Office and the Tribal Secretary's office maintained that she had not yet received any resolutions. On July 22, 2015, at 11:35 AM the Tribal Secretary's office received the Petitioner's four resolutions.

The First Component of this Resolution – Direct a Tax be Paid by OBC Members and Tribal Attorney

The first component of this Resolution proposes a GTC directive that a tax be imposed on “the Business Committee members who voted not to dissolve 7 Generations but only restructure pay \$5,000 as reimbursement to the Tribe for spending millions of dollars of our money on 7 Generations; and both the Chairwoman and Tribal Attorney pay twice that amount, for having knowledge of the law and as an accessory, pay \$10,000 each.” The Nation has no tax law or policy; this component of the resolution has no legislative impact.

The Second Component of this Resolution – When and How the Tax may be Paid

In regards to the second component of this Resolution, that those required to pay the subject tax “start paying the tax from their personal accounts to the Oneida Tribal general account within 60 days from now or have the Tribe cancel their per capita until it is all repaid,” the Per Capita and the Oneida Judiciary Rules of Civil Procedure will govern how per capita payments may be attached for the collection of a debt owed to the Nation. This component of the resolution has no legislative impact.

Conclusion

Adoption of this Resolution would not affect any current legislation of the Nation.

Oneida Nation Legislative Reference Office

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Statement of Effect *Enforcing Salaries for Oneida Seven Generation Corporation*

Summary

This first component of this Resolution would “set a maximum limit on total salaries of 25% and the operational costs per year for all of the four (4) Seven Generations employees, commencing back in 2008 to date of dissolution, according to the original charter.” The second component of this Resolution would “direct[s] the Tribal Attorney to take any and all action necessary to have the employees return the excess profit back to the Tribe in accordance with Article IX(B) using the Federal Courts if necessary, and to commence immediately.”

Submitted by: Krystal John, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

This Petition was submitted to the Tribal Secretary’s Office on April 28, 2015 and was verified by the Enrollment Department. This Petition was submitted to the OBC agenda and accepted at the May 13, 2015 meeting. This Petition requests a special GTC meeting allowing the Petitioner to present on and address four resolutions, including the subject Resolution.

Procedural Update

On May 27, 2015, the OBC received a memorandum from the LOC stating that this Petition did not include any of the four resolutions the Petition referenced. At that meeting it was directed that the Tribal Secretary reach out to the Petitioner in order to request the resolutions and that they be submitted within 30 days. On June 24, 2015, Chief Counsel expressed concerns relating to the validity of the Petition because it was not possible to determine whether those whom had signed the Petition had actually seen and endorsed any resolutions because they were not attached to the verified Petition. The Petitioner asserted that there had not been any resolutions included with his original Petition, but that he could return with resolutions if they were required. The OBC directed the Tribal Secretary to work with the Petitioner relating the resolutions.

At the July 22, 2015 OBC meeting the Tribal Secretary presented a memorandum to the OBC stating that a meeting was held with the Petitioner on June 29, 2015 during which it was agreed that the Tribal Secretary would research whether any resolutions could have possibly been submitted with the Petition. The memorandum stated that further research confirmed that her office had not received any resolutions with the original Petition. Lastly, the memorandum stated that the Petitioner submitted a report to the Tribal Secretary, June 29, 2015; the report was attached to the Secretary’s July 22, 2015 memorandum as a handout. At the July 22, 2015 OBC

meeting, discussion ensued and the Petitioner asserted that he had in fact presented resolutions to the Tribal Secretary's Office and the Tribal Secretary's office maintained that she had not yet received any resolutions. On July 22, 2015, at 11:35 AM the Tribal Secretary's office received the Petitioner's four resolutions.

The First Component of this Resolution – Set a Maximum Limit on Total Salaries of all Seven Generations Corporation's Employees

The first component of this Resolution would "set a maximum limit on total salaries of 25% and the operational costs per year for all of the four (4) Seven Generations employees, commencing back in 2008 to date of dissolution, according to the original charter." The Nation currently has no Corporate Code and therefore adoption of this component of the Resolution would have no impact on current legislation of the Nation.

The Second Component of this Resolution – Direct Tribal Attorney to Take any and all Action Necessary to Have the Employees Return Excess Profit to the Tribe

In regards to the second component of this Resolution, which "direct[s] the Tribal Attorney to take any and all action necessary to have the employees return the excess profit back to the Tribe in accordance with Article IX(B) using the Federal Courts if necessary, and to commence immediately," adoption would not have any impact on current legislation of the Nation.

Conclusion

Adoption of this Resolution would not affect any current legislation.

Oneida Nation Legislative Reference Office

Krystal L. John, Staff Attorney
Douglass A. McIntyre, Staff Attorney
Taniquelle J. Thurner, Legislative Analyst
Candice E. Skenandore, Legislative Analyst



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

Statement of Effect ***Freedom of Speech, Press and Assembly***

Summary

This Resolution alleges that the Oneida Business Committee (OBC) has not followed the General Tribal (GTC) Resolution # 11-15-08-A. In order to secure freedom of press and speech, the Petitioner requests that GTC direct that the Kalihwisaks will print any article from any Oneida unedited, not to exceed 400 words and that the Kalihwisaks will print a disclaimer regarding such articles to prevent legal suites from being entered against the newspaper.

Submitted by: Krystal John, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

This Petition was submitted to the Tribal Secretary's Office on April 28, 2015 and was verified by the Enrollment Department. This Petition was submitted to the OBC agenda and accepted at the May 13, 2015 meeting. This Petition requests a special GTC meeting allowing the Petitioner to present on and address four resolutions, including the subject Resolution.

Procedural Update

On May 27, 2015, the OBC received a memorandum from the LOC stating that this Petition did not include any of the four resolutions the Petitioner referenced. At that meeting it was directed that the Tribal Secretary reach out to the Petitioner in order to request the resolutions and that they be submitted within 30 days. On June 24, 2015, Chief Counsel expressed concerns relating to the validity of the Petition because it was not possible to determine whether those whom had signed the Petition had actually seen and endorsed any resolutions because they were not attached to the verified Petition. The Petitioner asserted that there had not been any resolutions included with his original Petition, but that he could return with resolutions if they were required. The OBC directed the Tribal Secretary to work with the Petitioner relating the resolutions.

At the July 22, 2015 OBC meeting the Tribal Secretary presented a memorandum to the OBC stating that a meeting was held with the Petitioner on June 29, 2015 during which it was agreed that the Tribal Secretary would research whether any resolutions could have possibly been submitted with the Petition. The memorandum stated that further research confirmed that her office had not received any resolutions with the original Petition. Lastly, the memorandum stated that the Petitioner submitted a report to the Tribal Secretary, June 29, 2015; the report was attached to the Secretary's July 22, 2015 memorandum as a handout. At the July 22, 2015 OBC meeting, discussion ensued and the Petitioner asserted that he had in fact presented resolutions to

the Tribal Secretary's Office and the Tribal Secretary's office maintained that she had not yet received any resolutions. On July 22, 2015, at 11:35 AM the Tribal Secretary's office received the Petitioner's four resolutions.

The First Components of this Resolution – Direct the Kalihwisaks to Print any Article from any Oneida Unedited, Not to Exceed 400 Words

The first component of this Resolution directs the Kalihwisaks to print any article not exceeding 400 words submitted from any Oneida as submitted, without edits. The Nation currently has no law or policy relating to the Kalihwisaks' content selection and editorial processes. Therefore, adoption of this component of the Resolution would have no impact on current legislation of the Nation.

The Second Component of this Resolution – Direct the Kalihwisaks to Print a Legal Disclaimer with Each Article Submitted

In regards to the second component of this Resolution, which directs the Kalihwisaks to print a disclaimer regarding submitted articles to prevent legal suites from being entered against the newspaper, adoption would not have any impact on current legislation of the Nation.

Conclusion

Adoption of this Resolution would not affect any current legislation of the Nation.



Legislative Operating Committee

August 5, 2015

Oneida Flag Policy

Submission Date: April 22, 2015

☐ Public Meeting:
☐ Emergency Enacted:

LOC Sponsor: Jennifer Webster

Summary: *The OBC requested that the LOC develop a flag code policy. ONVAC received complaints from non-Tribal members about how the Tribal Flag is displayed. ONVAC's concerns are there is no protocol for those who oversee flag responsibilities to follow, no one is identified as the person that has the authority to lower the flag to half-staff, what should the height and position of the Tribal Flag be compared to the US Flag, etc.*

- 4/22/15 OBC:** Motion by Jennifer Webster to request the Legislative Operating Committee to develop a flag code policy and consider adding it to the active files list, seconded by Lisa Summers. Motion carried unanimously
- 5/6/15 LOC:** Motion by Jennifer Webster to add the Tribal Flag Code to the active files list with herself as the sponsor and defer the Tribal Flag Code to a Legislative Operating Committee work meeting; seconded by Fawn Billie. Motion carried unanimously.
- 6/8/15:** Work Meeting held. Attendees included John Breuninger, Kerry Metoxen, Lynn Franzmeier, Candice Skenandore, Brandon Stevens, Tehassi Hill, Jenny Webster, Fawn Billie, Danelle Wilson, David Jordan, Apache Danforth, RC Metoxen.
- 6/30/15:** Work Meeting held. Attendees included John Breuninger, Douglass McIntyre, Candice Skenandore.
- 7/1/15 LOC:** Motion by David P. Jordan to accept the memorandum regarding the Flag Code update as FYI; seconded by Tehassi Hill. Motion carried unanimously.
- 7/24/15:** Work meeting held. Attendees included Jennifer Webster, David P. Jordan, Candice Skenandore, Douglass McIntyre.
- 8/5/15 LOC:** Motion by Tehassi Hill to defer the Oneida Flag Policy for a legislative analysis and a fiscal impact statement and bring back in two weeks; seconded by David P. Jordan. Motion carried unanimously.

Next Steps:

- Review the legislative analysis and consider an extension for the financial impact statement.

Oneida Flag Policy

Article I. Purpose and Policy
Article II. Adoption, Amendment, Repeal
Article III. Definitions
Article IV. General
Article V. Procedures

Article VI. Display of the Oneida Flag within the Reservation
Article VII. Respect for Flag
Article VIII. Display of the Oneida Flag off Reservation

<i>Analysis by the Legislative Reference Office</i>					
Title	Oneida Flag Policy (Policy)				
Requester	OBC/ONVAC	Drafter	Douglass McIntyre	Analyst	Candice E. Skenandore
Reason for Request	The OBC deferred the Policy to the LOC because ONVAC was receiving complaints from non-Tribal members on how the Tribal Flag is displayed. ONVAC has concerns that there is no protocol for those who oversee flag responsibilities.				
Purpose	This Policy governs the proper rules, display and customs of the Nation's flag as well as other the flags of other Sovereigns including the U.S. Flag <i>[See 1-1]</i> .				
Authorized/ Affected Entities	All Oneida entities and Oneida-owned buildings within the Reservation that currently possess or will possess flag poles, stationary flagstaffs or other means to display a flag must adhere to this Policy <i>[See 4-2]</i> .				
Due Process	An employee can grieve any disciplinary action pursuant to Oneida's personnel policies and procedures <i>[See Personnel Policies and Procedures, Section V.D.3]</i> .				
Related Legislation	Where the Policy is ambiguous or does not address a situation, the Federal Flag Code can be used as a guide <i>[See 4-1]</i> .				
Enforcement	Violating this Policy may result in discipline pursuant the Oneida Nation's personnel policies and procedures <i>[See 5-2]</i> .				

Overview

After receiving a number of complaints on how the Oneida Nation Flag (Flag) and US flag are flown, the Oneida Nation Veteran's Affairs Committee (ONVAC) requested that legislation be developed to provide for a consistent way in which the Oneida Nation displays the Flag. On April 22, 2015, the Oneida Business Committee (OBC) made a motion to "request the Legislative Operating Committee to develop a flag code policy . . ." The Federal Flag Code was used as guide in developing this Policy. In addition, collaboration with ONVAC representatives also played a role in creating this Policy. This Policy:

- Requires all current and future Oneida Nation entities and Oneida Nation-owned buildings on the Reservation that fly the Flag to do so pursuant to this Policy *[See 4-2]*.
- Identifies who is responsible for Flag duties and if an employee violates this Policy, he/she can be disciplined *[See 5-1 & 5-2]*.
- Lists the requirements for how the Flag is to be displayed *[See Article VI]*.
- Explains how the Flag is to be respected *[See Article VII]*.
- Identifies how the Flag is to be displayed outside of the Reservation *[See VIII]*.

Considerations

The Legislative Operating Committee may want to consider the following:

- The Policy states that the supervisor of each Oneida-owned building must appoint a designee that will be responsible for the duties set within this Policy *[See 5-1]*. Buildings such as the Skenandoah building, houses a number of Division

Directors, Area Managers and supervisors. The LOC may want to consider specifying that the building manager or their equivalent shall appoint a designee to perform the duties set within this Policy.

- The Policy requires that every classroom display the Flag *[See 6-1 (d)]*. The Oneida Nation High School will need to approximately 20 flags in order to comply with this Policy. It is unknown how many, if any, Flags are needed for the Elementary School or Head Start.
- When a nation's flag is displayed, Federal Flag Code requires that flag to be flown at the same height as the US flag. This Policy is only requiring the US flag be flown at the same height as the Flag and does not allow flags of other nations to be flown at the same height as the Flag *[See 6-3 (a) and CRS Report for Congress: The United States Flag § 7 (g)]*.
- If a Flag pin is worn, it must be worn on left lapel near the heart *[See 7-1 (k)]*. This requirement is also found within the Federal Flag Code; however, the US flag has a union which is to be placed over the heart. The Flag does not have a union; therefore, the LOC may want to decide if this provision is necessary.
- Because the Oneida Nation has a number of buildings which have uneven flag poles, the LOC may want to consider adding language to the Policy that states that until it is financially feasible to change the existing flag poles to allow the Flag and US flag to fly at the same height, the US flag shall fly from the highest flag pole, when appropriate, and the Flag shall fly furthest right to show prominence. In addition, any future flag poles shall be constructed in such a way that complies with this Policy.
- Defining the term "employee" *[See 5-3]*.
- Defining "Oneida-owned building" to either include or exclude buildings owned by Oneida Nation Corporations *[See 4-2, 5-1]*.

Miscellaneous

A public meeting has not been held. Please refer to the fiscal impact statement for any financial impacts.

Article I. Purpose and Policy

1-1. The purpose of this Policy is ~~to govern~~ for the Oneida Nation to exercise its fundamental right to exercise self-determination and set forth the proper rules, display and customs of the flag of the Oneida Nation, the flag of the United State of America and of other Sovereigns displayed by the Nation's entities and employees.

1-2. It is the policy of the ~~Oneida~~ Nation to proudly display the rich cultural heritage of the Oneida Nation as a sovereign nation and to provide the respect and dignity owed to the flags of the Oneida Nation, the United States of America and the flags of other Sovereigns.

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 forth 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 provisions of this Policy shall control.

2-5 This Policy is adopted under the Constitution of the Oneida Nation.

Article III. Definitions

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

(a) "Half-staff" means the position of the flag when it is one-half (1/2) the distance between the top and bottom of the staff.

(b) "Nation" means the Oneida Nation.

(c) "Oneida Flag" means the flag of the Oneida Nation.

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

(e) "Sovereigns" means any other Indian Nation, State or localities

Article IV. General

4-1. ~~This~~Where the Policy is ~~an embodiment of the Oneida Nation's fundamental right to exercise self-determination.~~

~~4-2. The Nation endorses~~ambiguous or does not address a situation, the ~~United States~~ Federal Flag Code ~~with the exception of the changes made within this Policy~~may be used as a guide.

~~4-3.~~ All Oneida Nation entities and Oneida owned buildings within the Reservation that currently possess flagpoles, stationary flagstaves or other means to display a flag and those entities and ~~those~~ Oneida owned buildings that later establish the means to display a flag ~~will~~shall adhere to this Policy.

Article V. Procedures

5-1. The supervisor of each Oneida owned building described in section 4-3 ~~will~~shall appoint a designee responsible for the duties under this Policy.

~~5-2. Complaints concerning the failure to follow this Policy will first be forwarded to the Oneida Business Committee and then to the Oneida Veteran's Department which is hereby delegated authority to conduct investigations regarding alleged violations of this policy. The Oneida Veteran's Department will report the findings of the investigation to the Oneida Business Committee.~~

~~5-3 Failure to abide by~~2. Employees found violating this Policy may ~~be~~ subject ~~the~~ designee named pursuant to section 5-1 to discipline ~~under~~in accordance with the Nation's personnel procedures and policies.

Article VI. Display of the Oneida Flag within the Reservation

6-1. *Location, time and occasions for display.* As the Oneida Flag represents the Nation's sovereignty, it should be displayed ~~as follows:~~according to the following requirements:

- (a) The Oneida ~~Nation flag should~~Flag must be displayed on all days.
- (b) ~~It is the universal custom to display the flag~~The Oneida Flag must only be displayed from sunrise to sunset on buildings and on stationary flagstaffs in the open. However, when a patriotic effect is desired, the flag may be displayed twenty-four (24) hours a day if ~~it~~the Oneida Flag is an all-weather flag and ~~it~~the Oneida Flag is properly illuminated during the hours of darkness.
- ~~(c) The Oneida Flag shall be proudly displayed on or near all government-owned buildings within the interior bounds of the Reservation possessing the equipment to display the flag.~~
- (d) The Oneida Flag shall be displayed during school days near every schoolhouse and inside each classroom.
- (e) The Oneida Flag shall be displayed in ~~or~~and near every polling place within the Reservation on election days.

6-2. *Conduct during hoisting, lowering or passing of the Flag.* The Oneida Flag shall be hoisted briskly and lowered ceremoniously.

6-3. *Position of the Flag.* ~~As~~ The position of a flag among others is an important symbol of prominence and sovereignty, therefore the following ~~should~~requirements must be adhered to:

- (a) ~~No other flag, except~~Only the flag of the United States, ~~shall~~may ever be displayed at the same height as the Oneida Flag.
- (b) ~~No~~The Oneida Flag shall be displayed to the furthest right, ~~in a position of to show~~ superior prominence, ~~of~~.
- ~~(c) When~~ the Oneida Flag.
- ~~(e) When flags of two or more nations are and the United States flag are both~~ displayed, they are to be flown from separate staffs of the same height: and the flags shall be of approximately equal size.
- (d) When ~~the other~~ flags are flown from adjacent staffs, the Oneida Flag shall be hoisted first and lowered last.
- (e) When flags of other ~~Indian Nations, States, cities, or localities,~~Sovereigns or pennants of societies are flown on the same halyard with the Oneida Flag, the ~~latter~~Oneida Flag shall always be at the top.

6-4. *Manner of Display.* The ~~flag should~~Oneida Flag must be displayed as follows:

- (a) ~~The Oneida Flag,~~ When carried in a procession with another flag or flags, the Oneida Flag shall be either on the marching right; that is, the Flag's own right, or, if there is a line of other flags, ~~or~~ in front of the center of that line.
- (b) ~~The flag of~~When the Oneida ~~Nation, when it~~Flag is displayed with another flag against a wall from crossed staffs, the Oneida Flag shall be on the right, the flag's own right, and its staff shall be in front of the staff of the other flag.
- (c) The Oneida Flag shall only be displayed horizontally against a wall, the Oneida Flag shall be placed in the upright position. When displayed in a window, the flag shall be displayed in the upright position facing the appropriate way to an observer ~~in~~outside the ~~street~~building.

- (d) When the Oneida Flag is displayed over the middle of the street, ~~it~~the Oneida Flag shall be suspended horizontally and must be placed in the upright position.
- (e) When used on a speaker's platform, the flag, if displayed flat, shall be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, the ~~flag of the Oneida Nation shall~~Flag must hold the position of superior prominence, in advance of the audience, and in the position of honor at the ~~clergyman's~~clergy's or speaker's right as he or she faces the audience. Any other flag so displayed shall be placed on the left of the clergyman or speaker or to the right of the audience.
- (f) When the Oneida Flag is suspended across a corridor or lobby ~~in a building with only one main entrance~~, it shall be suspended ~~vertically with~~in the ~~union of~~upright position facing the ~~flag to the observer's left upon entering. If the building has more than one main entrance, the flag shall be suspended vertically near the center of the corridor or lobby with the union to the north, when entrances are to the east and west or to the east when entrances are to the north and south. If there are entrances in more than two directions, the union shall be to the east.~~main entrance.
- (g) The Oneida Flag shall form a distinctive feature of the ceremony of unveiling a statue or monument, but it shall never be used as the covering for the statue or monument.
- 6-5. *Display of Respect.* At certain times, the Oneida Flag shall be lowered to Half-staff as a sign of respect. In doing so, the ~~Oneida~~ Flag shall be first hoisted to the peak for an instant and then lowered to the Half-staff position. The Oneida Flag shall be again raised to the peak before it is lowered for the day.
- (a) On the following days, the ~~flag must~~Oneida Flag shall be lowered to Half-staff:
- (i) Oneida Code Talker Day
 - (ii) Memorial Day but only until noon, which it shall be raised to top of the staff again.
- (b) As a sign of respect, when the United States flag is lowered to Half-staff, the Oneida Flag ~~will~~shall also be lowered.
- (c) By a directive of the Chairperson, or ~~the the Vice chairperson~~his or her designee if the Chairperson is not available, the Oneida Flag shall be flown at Half-staff upon the death of a tribal member and remain at Half-staff until after the funeral.
- (d) The Oneida Flag may be lowered to Half-staff by directive of the Chairperson for other reasons he or she deems needed.

Article VII. Respect for Flag

7-1. No disrespect shall be shown to the flag of the Oneida Nation, the United States flag or flags of any other Sovereigns.

- (a) During the ceremony of hoisting or lowering the flag or when the flag is passing in a parade or in review, all persons present shall face the flag and stand at attention.
- (b) The Oneida Flag and United States flag shall not be dipped to any person or thing. Regimental colors, State flags, and organization or institutional flags ~~are~~toshall be dipped as a mark of honor.

- (c) The Oneida Flag shall never be displayed upside down.
- (d) The Oneida Flag shall never touch anything beneath it, such as the ground, the floor, or water.
- (e) The Oneida Flag shall never be carried flat or horizontally, but always aloft and free.
- (f) The Oneida Flag shall never be ~~festooned~~draped, drawn back, ~~not tied~~ up, ~~in folds~~folded, but always allowed to fall free.
- (g) The Oneida Flag shall never be fastened, displayed, used, or stored in such a manner as to permit it to be easily torn, soiled, or damaged in any way.
- (h) The Oneida Flag shall never be used as a covering for a ceiling.
- (i) The Oneida Flag shall never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature besides the Oneida Flag's design.
- (j) The Oneida Flag shall never be used as a receptacle for receiving, holding, carrying, or delivering anything.
- (k) No part of the Oneida Flag shall ever be used as a costume or athletic uniform. However, ~~a~~an Oneida Flag patch may be affixed to the uniform of military personnel, ~~firemen, policemen~~firefighter, police officer, and members of patriotic organizations. ~~The flag represents a living country and is itself considered a living thing. Therefore,~~
The lapel Flag pin being a replica, shall be worn on the left lapel near the heart.
- (l) The Oneida Flag, when it is in such condition that it is no longer a fitting emblem for display, shall be destroyed in a dignified way, preferably by burning.

Article VIII. Display of the Oneida Flag off Reservation

8-1. When outside of the boundaries of the ~~Oneida Nation~~ Reservation, the proper display protocol of the jurisdiction shall be followed.

End.

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: August 5, 2015
- 2) Contact Person(s): Councilmember David P. Jordan Dept: LOC
 Phone Number: x4483 Email: DJordan1@Oneidanation.org
- 3) Agenda Title: Compliance and Enforcement Law
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
see attached memo

List any supporting materials included and submitted with the Agenda Request Form

- 1) memorandum 3) GTC 8-8-94-A
 2) GTC 11-15-08-D 4) _____
- 5) Please List any laws, ordinances or resolution that might be affected:
Most Tribal law, with listed exceptions.
- 6) Please List all other departments or person(s) you have brought your concern to:
N/A
- 7) Do you consider this request urgent? ☒ Yes ☐ No
 If yes, please indicate why: There is currently no consistency in enforcement for tribal law or OBC/GTC directives.

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester: _____

Please send this form and all supporting materials to:

LOC@oneidanation.org
 or
Legislative Operating Committee (LOC)
 P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376

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
David P. Jordan, Councilmember
Jennifer Webster, Councilmember

Memorandum

To: Legislative Operating Committee
From: David P. Jordan, LOC Councilmember
Date: August 6, 2015
Re: Compliance and Enforcement Law

This memorandum is being submitted to provide information about the proposed Compliance and Enforcement Law.

This would be a new Tribal law that would establish a Compliance Office, which would be responsible for:

- Tracking GTC and OBC directives and identifying a specific party as responsible for carrying out each directive; and reporting to the OBC and GTC about whether and when directives are carried out. This authority is added in response to frequent GTC requests for such an authority. See GTC resolution 11-15-08-D, for example.
- Continuously reviewing Tribal Law, and all rules promulgated thereunder; to ensure they are current, enforceable, and being administered properly; and taking action when they are not. This authority would address GTC directives for the enforcement of Tribal law – See GTC resolution 8-8-94-A, for example.
- Providing recommendations to the LOC regarding what changes need to be made to Tribal laws, and providing administrative analyses to the LOC for legislative proposals, as directed.
- Enforcing Tribal law – The Office would have authority to enforce all Tribal law (with some exceptions for certain types of laws), and would be required to establish a broad fine/penalty schedule to cover all violations that currently do not have a specific penalty. This enables the Office to fill in gaps where there is no current enforcement authority
 - Where there is already enforcement authority, the Office would still be authorized to enforce Tribal law - in accordance with Enforcement Agreements executed by the Office and existing enforcement entity and approved by the OBC. Depending on what the existing enforcement entity and the Office agree to, the Office could be treated as a designee with full authority to enforce a particular law, or could take over all enforcement responsibilities; or could be limited to only investigating and reporting violations to the current enforcement entity.
- Implementing a Tribe-wide system for logging Tribal law violations and enforcement actions.

Requested Action

Add the Compliance and Enforcement Law to the Active Files list with myself as sponsor.



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

Oneida Tribe of Indians of Wisconsin

BUSINESS COMMITTEE



P.O. Box 365 • Oneida, WI 54155
Telephone: 920-869-4364 • Fax: 920-869-4040



UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

GTC Resolution 11-15-08-D

General Tribal Council Directives

- Whereas,** the Oneida General Tribal Council is the duly recognized governing body of the Oneida Tribe of Indians of Wisconsin, and
- Whereas,** the Oneida General Tribal Council has been delegated the authority of Article IV, Section I of the Oneida Tribal Constitution, and
- Whereas,** the Oneida Business Committee may be delegated duties and responsibilities by the Oneida General Tribal Council and is at all times subject to the review powers of the Oneida General Tribal Council, and
- Whereas,** the Oneida General Tribal Council has given directions for the Oneida Business Committee to carry out such as to mail a Benefits book with all tribal benefits with the guidelines so that every tribal member knows if they have a right to said benefits, and
- Whereas,** the Oneida Business Committee has refused to carry out this and other directives that are for the benefit of the Oneida tribal member.

Now Therefore Be It Resolved, that the Oneida Business shall see to it that all Oneida General Tribal directives back to 1994 plus resolution 7-6-93-A must be carried out by the end of fiscal year 2010.

Be It Further Resolved, Oneida General Tribal Council directs the Legislative Operating Committee to develop an amendment to the removal law which identifies that an elected official is subject to removal for failure to carry out a Oneida General Tribal Council directive and that this be presented to the Oneida General Tribal Council no later than the July 2009 semi-annual meeting.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida General Tribal Council in session with a quorum of 1,254 members present at a meeting duly called, noticed and held on the 15th day of November 2008, that the foregoing resolution was duly adopted at such meeting by a unanimous vote of those present and that said resolution has not been rescinded or amended in any way.

Patricia Hoeft

Patricia Hoeft, Tribal Secretary
ONEIDA BUSINESS COMMITTEE

Oneida Tribe of Indians of Wisconsin

Post Office Box 365

Phone: (414) 869-2214

Oneida, WI 54155



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



UGWA DEMOLUM YATEHE
Because of the help of
this Oneida Chief in
cementing a friendship
between the six nations
and the colony of
Pennsylvania, a new
nation, the United States
was made possible.

GENERAL TRIBAL COUNCIL RESOLUTION NO. GTC 08-08-94-A

Resolution to resolve and enforce compliance with Tribal Laws, and those of the Tribal Personnel Policies and Procedures Manual.

WHEREAS, the Oneida General Tribal Council is the duly recognized governing body of the Oneida Tribe of Indians of Wisconsin,

WHEREAS, the Oneida Business Committee may be delegated duties and responsibilities by the Oneida General Tribal Council and is at all times subject to the review powers of the Oneida General Tribal Council, and

WHEREAS, the General Tribal Council has been delegated the authority of Article IV, Section I of the Oneida Tribal Constitution, and

WHEREAS, the Oneida Tribe of Indians of Wisconsin is a treaty Tribe recognized by the laws of the United States of America, and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin; and

WHEREAS, the Oneida General Tribal Council has been made aware of numerous violations of the Tribal Personnel Policies and Procedures Manual concerning employee conditions of employment and their rights to Due process as employees of the Oneida Tribe, and

WHEREAS, the Oneida General Tribal Council directs the Oneida Business Committee to follow and enforce the Oneida Constitution and related regulatory acts of the Oneida Tribe of Indians of Wisconsin, and

WHEREAS, the Oneida General Tribal Council deems it necessary to reassert its commitment to protect and insure the Constitutional rights of Tribal Members and employees, and

WHEREAS, the Oneida Business Committee has been delegated authority of Article V, Section 1 of the Oneida Tribal Constitution by the Oneida General Tribal Council, and the Administrative Procedures Act, Resolution 08-19-91-A, and

NOW THEREFORE BE IT RESOLVED: that the Oneida General Tribal Council directs that the Oneida Business Committee, and related entities of the Oneida Tribe of Indians of Wisconsin, strictly obey and adhere to and enforce all Tribal Laws, Codes, policies, procedures and regulations adopted and officially recognized by the Oneida Tribe, and

BE IT FURTHER RESOLVED: that the Oneida General Tribal Council directs that any person, persons, or groups of persons, proven to violate these laws, codes, policies, procedures and regulations, and directives may be sanctioned or prosecuted.

BE IT FURTHER RESOLVED: that the Oneida General Tribal Council directs that any person, persons or groups of persons, proven to be in violation of Tribal Laws codes, policies and procedures, regulations and directives to be subjected to immediate sanctions as provided for by Oneida Tribal Law and otherwise, and

BE IT FURTHER RESOLVED: That the Oneida General Tribal Council directs the Gaming Monitoring Committee consisting of the Ad Hoc Task Force Chairperson, the five Community Members of the Ad Hoc Task Force and one member of the Oneida Business Committee to monitor the General Manager, Gaming Manager, Gaming Enterprises and Gaming Employees for compliance with the attached directives and with monthly reports in the tribal newspaper over a twelve month period.

BE IT FINALLY RESOLVED: that the Oneida General Tribal Council adopts the directives attached as directions to the General Manager, the Gaming Commission and the Gaming Enterprise Management for improving the gaming working conditions.

Chapter 6 Compliance and Enforcement Law

6.1. Purpose and Policy
6.2. Adoption, Amendment, Repeal
6.3. Definitions
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6.5. Code Compliance Office

6.6. Legislative and Rulemaking Compliance
6.7. Directive Compliance
6.8. Enforcement
6.9. Reporting

6.1. Purpose and Policy

6.1-1. *Purpose.* The purposes of this Law are to establish processes for:

- (a) the consistent development, implementation application and enforcement of Tribal laws and policies, as well as regulations and procedures established by entities delegated the responsibility to administer and/or enforce Tribal law.
- (b) ensuring that Oneida Business Committee and General Tribal Council directives are tracked and carried out.

6.1-2. *Policy.* It is the policy of the Tribe that all Tribal law, including directives issued by a governing body, must be fully implemented and enforced.

6.2. Adoption, Amendment, Repeal

6.2-1. This Law was adopted by the Oneida Business Committee by resolution ____

6.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

6.2-3. 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.

6.2-4. 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.

6.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

6.3. Definitions

6.3-1. 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) "Compliance" means conformity with Tribal law, as well as with regulations and procedures promulgated under authority of Tribal law.
- (b) "Directive" means an instruction or command which requires that a specific action or activity occur, or not occur; and which is issued through formal action taken by the Oneida Business Committee and/or General Tribal Council.
- (c) "Entity" means any Tribal organization, division, branch, board, committee, commission or office of the Tribal government or a Tribal enterprise that performs specific functions or operations on behalf of the Tribe; but does not include Tribally-owned corporate boards and/or corporations.
 - (1) "Rulemaking Entity" means an entity that has been delegated the authority to implement, administer, and/or enforce Tribal law.
- (d) "Office" means the Code Compliance Office, which is established by this Law as the entity responsible for administering and enforcing this Law.

(e) “Rule” means any duly adopted regulation, procedure, fee schedule, fine schedule and any similar written document that is established in accordance with, or in furtherance of, Tribal Law; and which applies to or affects persons outside of the Rulemaking entity.

(f) “Tribal Law” means all laws, ordinances, codes, and policies duly adopted by the Oneida Business Committee or General Tribal Council; and includes the Oneida Constitution, which is the highest law of the land.

6.4. Application

6.4-1. This Law is established to ensure regulatory compliance by:

(a) Tribal entities that have been delegated responsibility to administer and/or enforce Tribal law, and

(b) the persons and entities subject to Tribal law.

6.4-2. *Exclusions.* This Law shall not apply to the following categories of Tribal Law, including any rules or procedures established in furtherance of such laws:

(a) *Employment law.* Laws and policies exclusively governing Tribal employees and the workplace. The Human Resources Department

(b) *Gaming-related law.* The Oneida Nation Gaming Ordinance and any related legislation.

(c) *Judicial system establishment law.* Tribal laws establishing the Judiciary or Family Court, or establishing rules of procedure for those bodies. Further, this Law shall not apply to provisions within any Tribal Law that identify process or procedure for the Judicial system.

(d) *Tribal family law.* Tribal law governing family actions, including but not limited to laws governing marriage, divorce, child custody, guardianship or paternity. Provided that, this Law shall apply to the administration and enforcement of licensing requirements established in the Marriage Law.

(f) *New York law:* Laws governing the New York Lands; including Tribal Environmental Quality Review and any related law hereinafter adopted.

6.4-3. Nothing in this Law shall be construed to waive the Tribe’s sovereign immunity.

6.4-4. This Law shall not restrict or limit the authority of any entity to enforce or administer Tribal law, where such authority is expressly granted by Tribal law. Provided that, and in accordance with the Indian Civil Rights Act, 25 USC 1302(a):

(a) *Double Jeopardy.* No person or entity shall be subject to duplicate enforcement actions for a single violation. Provided that, when a single act violates more than one (1) Tribal Law or rule, then a violator may be subject to different enforcement actions in accordance with each Law or rule that is violated, unless the Law or rule states otherwise.

(b) *Due Process.* No person or entity shall be subject to penalty for noncompliance with any law or rule unless that law or rule clearly identifies the permitted or prohibited activity, and has been duly adopted in accordance with Tribal law.

6.5. Code Compliance Office

6.5-1. There is hereby established a Code Compliance Office, which is authorized to administer and enforce this Law. This Office shall report directly to the Oneida Business Committee, and shall have responsibilities as identified throughout this law.

6.5-2. The Office shall:

(a) Maintain a compilation of all Tribal laws as well as the rules, forms and/or other documents created in accordance with each law not exempted by 6.4-2.

(b) Maintain telephone and e-mail access for persons to submit public comments, request information and report violations or make complaints; and regularly publish notice of the Office's contact information.

6.5-3. Within a reasonable period of time after this Law is adopted, all Tribal entities shall provide the Office with a report identifying all authority and responsibilities that have been delegated to that entity, including the source of such authority and responsibilities. Each entity shall also provide copies of the following materials to the Office, and shall have an ongoing duty to provide the Office with updated copies whenever new materials are created or changes are made to existing:

- (a) Organizational documents such as bylaws, charters, memoranda of agreement; and
- (b) All rules, procedures and forms created and used by that entity in carrying out its responsibilities under Tribal law.
- (c) Any other information as requested by the Office.

6.6. Legislative and Rulemaking Compliance.

6.6-1. The Office shall submit administrative analyses, as requested by the Legislative Operating Committee, for legislative proposals being considered or processed by that Committee. An administrative analysis may address various issues, including but not limited to:

- (a) identifying what rules, if any, would need to be created or amended, to support the proposed law;
- (b) identifying enforcement mechanisms or the lack thereof; and
- (c) discussing potential considerations or concerns with the proposal, from an administrative or enforcement perspective.

6.6-2. Tribal law. The Office shall continuously review Tribal laws and hearing body decisions and provide recommendations or proposals to the Legislative Operating Committee regarding:

- (a) new law, resolutions and/or other legislation that would support or improve existing Tribal law, or improve the Tribal infrastructure, and
- (b) changes to existing Tribal law to address any matters including but not limited to:
 - (1) compliance with the Legislative Procedures Act, and/or the requirements of other Tribal law;
 - (2) obsolete, missing, or unenforceable provisions
 - (3) requirements which are not being carried out, including where Tribal law does not sufficiently address enforcement;
 - (4) authority and/or responsibilities are not expressly delegated to a specific entity or person;
 - (5) how to improve existing rules and processes
 - (6) changes to reflect interpretations made by a Tribal hearing body, or clarifications to ensure provisions are correctly interpreted in the future.
 - (7) changes to improve the quality and flow of the document, including typographical or spelling errors and compliance with Tribal drafting and formatting standards.
 - (8) any other changes to improve the quality or application of Tribal law.

6.6-3. *Rulemaking.* All rules and forms shall be adopted, approved, or otherwise implemented in accordance with the Legislative Procedures Act and any other applicable requirements set out in Tribal law.

- (a) The Office shall review rules and forms established by Rulemaking Entities, to ensure that such rules and forms:
 - (1) are continuously updated and current

- (2) provide for complete and consistent application and enforcement
 - (3) meet the requirements of, and do not conflict with, this Law and other Tribal Law, and
 - (4) do not exceed the scope of authority granted by law to the Rulemaking Entity.
- (b) When reviewing a Rulemaking Entity's rules and forms, the Office shall identify any issues of actual noncompliance with this Law or other Tribal laws and policies; and may also identify additional recommendations related to the rules and forms, including but not limited to, creating additional rules or forms; and/or suggestions for improving existing rules, forms, or processes. The Office shall provide written findings of noncompliance and any recommendations to the Rulemaking Entity and/or to any other entity not in compliance.
- (1) Actual noncompliance shall be addressed in accordance with 6.9-2.
 - (2) If a Rulemaking Entity does not implement Office recommendations, the Office may present the recommendations to the Legislative Operating Committee in accordance with 6.6-2, with a request for further action.

67. Directive Compliance.

6.7-1. The Office shall track directives issued by General Tribal Council and the Oneida Business Committee, and shall submit reports as identified below. The Office shall periodically check on the progress of all responsible parties in carrying out directives, and verify that each directive is being carried out appropriately and in a timely fashion.

6.7-2. *Responsible parties.* If a directive does not identify a specific person as responsible for carrying out that directive, the Office shall identify the party that would be most appropriate, and, within ten (10) business days after the directive is issued, shall notify that person that s/he is be responsible for ensuring the directive is carried out.

(a) If the party objects to being identified as the responsible person, s/he may submit an objection to the Oneida Business Committee within ten (10) business days of receiving notice, identifying why s/he should not be responsible for ensuring the directive is carried out, and requesting that the Oneida Business Committee delegate the responsibility to another person.

(1) If the Oneida Business Committee declines to delegate the responsibility to another party, then that decision is final and not subject to appeal.

(2) If the Oneida Business Committee delegates the responsibility to another person, then the Tribal Secretary shall provide notice to the Office within five (5) business days. The Office shall notify the person in writing within ten (10) business days. Any person delegated responsibilities in accordance with this subsection may appeal the delegation in accordance with (a).

6.7-3. *Failure to carry out directives.* If the Oneida Business Committee or General Tribal Council finds that a responsible person or an entity has failed to carry out a directive issued by that body, then it may order that person or a representative of the entity to appear before it to explain the failure. After providing the person or entity with an opportunity to explain the failure, the Oneida Business Committee or General Tribal Council may:

(a) issue any and all orders necessary to ensure compliance, including setting deadlines for specific actions to occur, or directing additional or corrective action.

(b) impose penalties upon any person and/or Tribal entity that is partly or wholly responsible for an unreasonable failure to carry out the directive. Penalties that may be imposed shall include, but are not limited to:

(1) *Penalties for an individual or individuals.*

(A) *Disciplinary Action.* Directing that disciplinary action be taken against an employee.

(B) *Termination of appointment.* The Oneida Business Committee may terminate an official's appointment, and the General Tribal Council may direct the Oneida Business Committee to terminate an Official's appointment.

(C) *Removal.* If an elected official is found by either the Oneida Business Committee or General Tribal Council to have knowingly and unreasonably failed to carry out a directive, then that entity may order that the removal process be commenced. Such an order shall be treated as a signed, verified petition for the purpose of the Removal Law, and the remainder of the removal process shall be conducted in accordance with the Removal Law.

(D) *Fines.* A monetary fine, in an amount not to exceed \$200 per day, until the directive is carried out

(E) *Tribal Benefits.* Suspension or revocation of specific Tribal privileges or benefits for a specified period not to exceed two (2) years, including but not limited to, eligibility for Tribal employment or to serve on a specific Tribal Board, Committee or Commission; eligibility for scholarship funding and/or per capita payments.

(6) Penalties for Tribal entities. Entities may be subject to penalties including, but not limited to:

(A) Budget reduction

(B) Withholding meeting or other stipend payments from members of boards, committees and commissions;

(C) Reassignment of responsibilities or authorities, except that the Oneida Business Committee shall not reassign responsibilities or authorities established by the General Tribal Council.

6.8. Enforcement.

6.9-1. Both the general public and Tribal entities shall comply with applicable Tribal law and duly adopted rules. When noncompliance or a violation should occur, the Office shall be authorized to take enforcement action in accordance with this Law. In furtherance of this, the Office:

(a) May receive reports and complaints, and conduct investigations into possible violations of Tribal law and rules. Officers are hereby authorized to inspect both records and premises to carry out their duties, subject to confidentiality requirements and any restrictions established by other Tribal law.

(b) Shall create a standard schedule of fines, penalties and other enforcement actions; which may be imposed for any violation of all Tribal law or rules for which no specific penalty exists. This schedule shall be adopted by the Oneida Business Committee.

(c) Shall maintain central database of violations of all Tribal law and rules to which this Law applies, including:

(1) investigations,

(2) enforcement actions taken and any penalties imposed,

(3) any hearings and appeals, and the outcomes of each.

(d) Shall work with all Tribal entities delegated enforcement authority to ensure adequate recordkeeping of enforcement actions, and establish, by regulation, Tribe-wide processes for:

- (1) communicating and sharing information related to enforcement actions, including requirements for submitting reports for the central database identified in (c).
- (2) forwarding or transferring reports of violations to the appropriate enforcement agency.
- (3) ensuring that all Tribal law and rules are consistently enforced.

6.8-2. *Enforcement against Tribal Entities.* If a Tribal entity fails to comply with requirements pertaining to the establishment of rules and/or other documents, or fails to fulfill its delegated responsibilities to administer or enforce Tribal law; the Office shall first attempt to informally work with the Tribal entity to resolve the noncompliance. If the noncompliance cannot be resolved within a reasonable period of time, the Office shall provide a written Notice of Noncompliance to the entity which identifies the specific actions that must be taken to come into compliance, and which sets a reasonable deadline for compliance. If the Rulemaking Entity does not come into compliance by the stated deadline, the Office shall submit a Report of Noncompliance to the Oneida Business Committee.

(a) When the Office submits a Report of Noncompliance, the Oneida Business Committee shall direct the parties involved to appear before the Committee and to provide information regarding the matter. If the Oneida Business Committee determines that an entity is not in compliance with Tribal Law, or has committed a violation of Tribal Law; the Committee may take such corrective action as is necessary to secure compliance or to prevent future noncompliance, including but not limited to:

- (1) Withholding a board, committee or commission's stipends for a specified period of time;
- (2) Budget reductions.
- (2) directing that a Tribal employee be disciplined in accordance with the Personnel Policies and Procedures, if the noncompliance is caused by an employee.
- (3) restructuring an entity and/or reassigning an entity's authorities/responsibilities to another entity, by amending Tribal law, as appropriate.
- (4) Termination of appointment, if the noncompliance is caused by an appointed official.
- (5) Seeking removal, if the noncompliance is caused by an elected official.

(b) No penalty shall be imposed upon a person or entity unless the person or entity was provided with notice and an opportunity to respond to the allegations and to provide evidence.

6.8-3. *Enforcement of Tribal laws and rules.* The Office is authorized to enforce all Tribal Law and rules to which this Law applies. The Office is further authorized to represent the Tribe's interests before the Judiciary, in bringing and defending enforcement actions as authorized by Tribal law. Provided that, if another Tribal entity has been delegated enforcement authority for a particular law or rule, the Office's enforcement activity shall be in accordance with an enforcement agreement, as identified in (a).

(a) *Enforcement Agreements.* Each existing Tribal entity with enforcement authority shall execute an enforcement agreement with the Office that enables the Office to monitor for noncompliance and violations, and to take enforcement action on behalf of, or in

conjunction with, the entity that has been delegated enforcement authority. Such enforcement agreements shall become effective upon approval by the Oneida Business Committee. An enforcement agreement may authorize the Office to do any or all of the following:

- (a) Report violations or noncompliance to the entity which has been delegated enforcement authority.
- (b) Issue a Notice of Noncompliance, which identifies the violation and a deadline for coming into compliance, if applicable.
- (c) Issue warnings and/or citations that impose fines and/or other penalties as authorized by a duly adopted penalty schedule.
- (c) File complaints and notify management and/or the Human Resources Department when Tribal employees violate a Law or rule in the course of their duties.
- (d) Take any other enforcement action that is authorized by Tribal law to be taken by the Tribal entity with enforcement authority.

6.8-4. *Judiciary.*

- (a) Any person or entity that is subject to enforcement action or penalties imposed by the Office in accordance with this Law, may appeal such action or penalties to the Judiciary.
- (b) The Judiciary is hereby authorized to impose penalties as authorized by Tribal Law for violations; and to issue orders as necessary to secure compliance with Tribal Law and rules; including
 - (1) cease and desist orders,
 - (2) restraining orders,
 - (3) writs of mandamus,
 - (4) directing that a Tribally-issued license, permit, certification, or other grant of authority be suspended or revoked, and
 - (5) any other action that the Judiciary deems appropriate and not prohibited by Tribal law.

6.8-5. The Oneida Police Department is hereby expressly authorized and directed to enforce such cease-and-desist or related orders as may from time to time be properly issued by the Judiciary.

6.9. **Reporting**

6.9-1. *Enforcement Actions*

- (1) *General Tribal Council.* The Office shall provide semi-annual reports to the General Tribal Council, identifying the number of investigations conducted and the number of enforcement actions, including fines and other penalties, imposed in relation to each Tribal Law to which this Law applies.
- (2) *Oneida Business Committee.* The Office shall provide quarterly reports to the Oneida Business Committee, with information as directed by the Oneida Business Committee.
- (3) *Legislative Operating Committee.* The Office shall provide reports to the Legislative Operating Committee, as directed by that entity.

6.7-4. *General Tribal Council and Oneida Business Committee Directives*

- (a) The Office shall provide reports on General Tribal Council directives at the Semi-Annual and Annual General Tribal Council meetings, and at any other time as directed by the General Tribal Council.
- (b) The Office shall provide quarterly reports to the Oneida Business Committee regarding the directives issued by that entity.

(c) *Required Information.* Each report provided in accordance with (a) and (b) shall contain, at a minimum, the following information:

- (1) all directives that have not been completely carried out, including the person(s) or entity responsible for carrying out each directive.
- (2) any recommendations that may help a particular directive be carried out in a more timely or efficient manner.
- (3) any other information directed by General Tribal Council (for GTC directives) or the Oneida Business Committee (for OBC directives).

End.

BC-_____ (Adoption of the Code Compliance and Enforcement Law)

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: ~~June 2, 2015~~ Aug 11, 2015
- 2) Contact Person(s): Councilman David Jordan Dept: LOC
Phone Number: x4483 Email: DJordan1@Oneidanation.org
- 3) Agenda Title: Tribal Secured Transactions Law
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
See attached memorandum.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Draft Law
- 2) Article - Filing Systems
- 3) Joint Compacts - Crow Tribe and Rocky Boy
- 4) _____
- 5) Please List any laws, ordinances or resolution that might be affected:
Garnishment Law
- 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: It is important to expand our exercise of our sovereign authority as much as possible.

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester: _____

Please send this form and all supporting materials to:

LOC@oneidanation.org
or
Legislative Operating Committee (LOC)
P.O. Box 365
Oneida, WI 54155
Phone 920-869-4376

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
David P. Jordan, Councilmember
Jennifer Webster, Councilmember

Memorandum

To: Legislative Operating Committee
From: David P. Jordan, Councilmember
Date: June 3, 2015
Re: Secured Transactions Law

During the 2008-2011 term, a proposed Secured Transactions law was added to the Active Files List, however, the item was not completed before the end of the term, and was not carried over into the following term.

I am submitting this proposal for the LOC to consider adding the Secured Transactions Law to the Active Files List for processing again.

A Tribal Secured Transactions Law would enable the Tribe to further reclaim our independence and contribute to our economic development, through the establishment of a Tribal office for recording security interests, and through the creation of our own law to govern the perfection and priority of security interests, and various related issues.

Please let me know if you have any questions.

Next Steps: Add the Secured Transactions Law to the Active Files List and to schedule a work meeting to discuss next steps.

Chapter 50

Oneida Nation Secured Transactions Act

50.1. Purpose and Policy	50.15. Accessions and Commingled Goods
50.2. Adoption, Amendment, Repeal	50.16. Rights of Third Parties
50.3. Definitions	50.17. Restrictions on Assignment
50.4. Choice of Law, Sovereign Immunity, Application of Other Laws	50.18. Financing Statements and Other Records on Filing
50.5. Scope and Application	50.19. Default
50.6. Establishment of the Recording Office	50.20. Collection and Enforcement by Secured Party
50.7. Lease Distinguished From Security Interest	50.21. Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus
50.8. General Standards and Concepts	50.22. Secured Party's Limited Right to take Possession after default.
50.9. Purchase Money Security Interest	50.22. Disposition of Collateral after Default
50.10. Effectiveness, Attachment, Rights and Duties	50.23. Application of Proceeds of Disposition; Liability for Deficiency, Right to Surplus
50.11. Perfection	50.24. Disposition and Redemption of Collateral
50.12. General Priority Rules	50.25. Remedies
50.13. Specific Priority Rules	
50.14. Priority of Specific Security Interests	

50.1. Purpose and Policy

50.1-1. *Purpose.* The purpose of this Law is to promote economic development and the continued expansion of commercial practices involving the Tribe by establishing a system for creating, recording, and releasing security interests in personal property and fixtures.

50.1-2. *Policy.* It is the policy of the Tribe to reassert its sovereign authority by ensuring that there is a standardized process for recognizing and establishing security interests under Tribal law.

50.2. Adoption, Amendment, Repeal

50.2-1. This Law was adopted by the Oneida Business Committee by resolution _____

50.2-2. This Law may be amended or repealed by the Oneida General Tribal Council or Oneida Business Committee pursuant to the procedures set out in Tribal law.

50.2-3. 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.

50.2-4. 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.

50.2-5. This Law is adopted under authority of the Constitution of the Oneida Nation.

50.3. Definitions

50.3-1. 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, with due consideration for consistency in meaning with uniform principles of commercial and contract law operative in the United States.

(a) "Accession" means that a good physically united with other goods in such a manner that the identity of the original goods is not lost.

(b) "Account," when used as a noun,

(1) means a right to payment of a monetary obligation, whether or not earned by performance:

(A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;

- (B) for services rendered or to be rendered;
 - (C) for a policy of insurance issued or to be issued;
 - (D) for a secondary obligation incurred or to be incurred;
 - (E) for energy provided or to be provided;
 - (F) for the use or hire of a vessel under a charter or other contract;
 - (G) arising out of the use of a credit or charge card or information contained on or for use with the card; or
 - (H) as winnings in a lottery or other game of chance operated or sponsored by a tribe or State.
- (2) includes health-care-insurance receivables; and
 - (3) shall not include:
 - (A) rights to payment evidenced by chattel paper or an instrument;
 - (B) commercial tort claims;
 - (C) deposit accounts;
 - (D) securities or investment accounts, including assets held in investment accounts;
 - (E) letter-of-credit rights or letters of credit; or
 - (F) rights to payment for money or funds advanced or sold, other than rights arising out of, or related to, the use of a credit or charge card.
- (c) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term shall not include a person obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.
- (d) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade.
- (e) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind, if the purchase comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. The term shall not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- (f) "Cash proceeds" means money, checks, deposit accounts, or similar proceeds.
- (g) "Certificated security" means a security that is represented by a certificate.
- (h) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.
- (i) "Chattel paper" means a record(s) that evidence both a monetary obligation and one
- (1) of the following:
 - (1) a security interest in specific goods,
 - (2) a security interest in specific goods and software used in the goods,
 - (3) a security interest in specific goods and license of software used in the goods,
 - (4) a lease of specific goods, or
 - (5) a lease of specific goods and license of software used in the goods.
- (j) "Collateral" means the property subject to a security interest, and proceeds to which a

79 security interest attaches; including but not limited to: accounts, chattel paper, payment
80 intangibles, promissory notes that have been sold; and goods that are the subject of a
81 consignment.

82 (k) "Commercially reasonable" means that an action is done in a manner which is an
83 acceptable practice in a commercial, arms-length transaction, even if a greater amount
84 could have been obtained at a different time or in a different method from that selected by
85 the secured party.

86 (l) "Commercial tort claim" means a claim arising in tort that shall not include damages
87 arising out of personal injury to or the death of an individual; where either:

88 (1) the claimant is an organization; or

89 (2) the claimant is an individual and the claim arose in the course of the
90 individual's business or profession.

91 (m) "Commingled goods" means goods that are physically united with other goods in
92 such a manner that their identity is lost in a product or mass.

93 (n) "Consignee" means a merchant to which goods are delivered in a consignment.

94 (o) "Consignment" means a transaction, regardless of its form, in which a person delivers
95 goods to a merchant for the purpose of sale, and where:

96 (1) the merchant is not an auctioneer, and

97 (2) the merchant deals in goods of that kind under a name other than the name of
98 the person making delivery; and

99 (3) the merchant is not generally known by its creditors to be substantially
100 engaged in selling the goods of others, and

101 (4) with respect to each delivery, the aggregate value of the goods is three
102 thousand dollars (\$3,000) or more at the time of delivery; and

103 (5) the goods are not consumer goods immediately before delivery; and

104 (6) the transaction does not create a security interest that secures an obligation.

105 (p) "Consignor" means a person that delivers goods to a consignee in a consignment.

106 (q) "Consumer" means an individual who enters into a transaction primarily for personal,
107 family or household purposes.

108 (1) "Consumer goods" means goods that are used or bought for use primarily for
109 personal, family, or household purposes.

110 (2) "Consumer transaction" means a transaction in which an individual incurs an
111 obligation primarily for personal, family, or household purposes; and a security
112 interest secures the obligation.

113 (r) "Continuation statement" means an amendment of a financing statement which
114 identifies by file number the initial financing statement to which it relates; and which
115 indicates that it is a continuation statement for, or that it is filed to continue the
116 effectiveness of, the identified financing statement.

117 (s) "Contract" means the total legal obligation that results from the parties' agreement.

118 (t) "Debtor" means:

119 (1) a person having an interest, other than a security interest or other lien, in the
120 collateral, whether or not the person is an obligor on the debt secured; or

121 (2) a seller of accounts, chattel paper, payment intangibles, or promissory notes, or

122 (3) a consignee.

123 (w) "Days" means calendar days, unless otherwise provided.

124 (x) "Document" means a record that in the regular course of business or financing is

125 treated as adequately evidencing that the person in possession or control of the record is
 126 entitled to receive, control, hold, and dispose of the record and the goods the record
 127 covers. The term includes, but is not limited to, a bill of lading, transport document, dock
 128 warrant, dock receipt, warehouse receipt, and order for delivery of goods.

129 (y) "Equipment" means goods other than inventory, farm products, or consumer goods.

130 (z) "Farm products" means goods, other than standing timber, with respect to which the
 131 debtor is engaged in a farming operation and which are crops grown, growing, or to be
 132 grown, including but not limited to: crops; livestock, born or unborn, including wild
 133 game and aquatic goods produced in aquacultural operations; supplies used or produced
 134 in a farming operation; or products of crops or livestock in their unmanufactured states.

135 (aa) "Financing statement" means a record(s) composed of an initial financing statement
 136 and any filed record relating to the initial financing statement.

137 (bb) "Fixture filing" means the filing of a financing statement covering goods that are, or
 138 are to become, fixtures.

139 (cc) "Fixtures" means goods that have become so related to particular real property that
 140 an interest in them arises under real property law.

141 (dd) "General intangible" means any personal property other than accounts, chattel paper,
 142 commercial tort claims, deposits accounts, documents, goods, instruments, securities,
 143 investment accounts, letter-of-credit rights, letters of credit, and oil, gas, or other minerals
 144 before extraction.

145 (ee) "Goods" means all things that are movable when a security interest attaches,
 146 including but not limited to: fixtures; standing timber that is to be cut and removed under
 147 a conveyance or contract for sale; the unborn young of animals; crops grown, growing or
 148 to be grown; manufactured homes; and computer programs embedded in goods and any
 149 supporting information provided in connection with a transaction relating to the program,
 150 if the program is associated with the goods in such a manner that it customarily is
 151 considered part of the goods; or if by becoming the owner of the goods, a person acquires
 152 a right to use the program in connection with the goods. The term shall not include a
 153 computer program embedded in goods that consist solely of the medium in which the
 154 program is embedded; or accounts, chattel paper, commercial tort claims, deposit
 155 accounts, documents, general intangibles, instruments, securities, investment accounts,
 156 letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before
 157 extraction.

158 (ff) "Health-care-insurance receivable" means an interest in, or claim under, a policy of
 159 insurance which is a right to payment of a monetary obligation for health-care goods or
 160 services provided or to be provided.

161 (gg) "Instrument" means a negotiable instrument or any other writing that evidences a
 162 right to the payment of a monetary obligation, and is not itself a security agreement or
 163 lease, and is of a type that in ordinary course of business is transferred by delivery with
 164 any necessary indorsement or assignment. The term shall not include a security or an
 165 investment account; a letter of credit; or a writing that evidences a right to payment
 166 arising out of the use of a credit or charge card or information contained on or for use
 167 with the card.

168 (hh) "Inventory" means goods, other than farm products, which:

169 (1) are leased by a person as lessor;

170 (2) are held by a person for sale or lease or to be furnished under a contract of

service;

(3) are furnished by a person under a contract of service; or

(4) consist of raw materials, work in process, or materials used or consumed in a business.

(ii) "Investment account" means a financial account maintained by an investment intermediary to which securities or commodity contracts are or may be credited by agreement.

(jj) "Investment intermediary" means a securities intermediary or a commodity intermediary under applicable law.

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

(ll) "Lien creditor" means:

(1) a creditor that has acquired a lien on the property involved by attachment, levy, or the like

(2) an assignee for benefit of creditors from the time of assignment;

(3) a trustee in bankruptcy from the date of the filing of the petition; or

(4) a receiver in equity from the time of appointment.

(mm) "Manufactured home" means any structure meeting the definitional requirements found in 42 U.S.C ' 5402, as may be amended from time to time.

(nn) "Manufactured-home transaction" means a secured transaction:

(1) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(2) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(oo) "Non-consumer transaction" means any transaction that is not a consumer transaction.

() "Obligor" means a person that, with respect to an obligation secured by a security interest in collateral,

(1) owes payment or other performance of the obligation,

(2) has provided property other than the collateral to secure payment of other performance of the obligation, or

(3) is otherwise accountable in whole or in part for payment or other performance of the obligation.

(pp) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(qq) "Person" means an individual, corporation, business trust, estate, trust, partnership, Limited Liability Company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(rr) "Place of business" means a place where a debtor conducts its affairs.

(ss) "Proceeds" means the following property:

(1) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(2) whatever is collected on, or distributed on account of, collateral;

(3) rights arising out of collateral;

- (4) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
- (5) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.
- (tt) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.
- (uu) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, gift, or any other voluntary transaction creating an interest in property.
- (vv) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral.
- (ww) "Purchase-money obligation" means an obligation incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.
- (xx) "Record," when used as a noun, means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.
- (yy) "Registered organization" means an organization organized solely under the law of this Tribe, a single State, or the United States; and as to which this Tribe, the State, or the United States must maintain a public record showing the organization to have been organized.
- (zz) "Secondary obligor" means an obligor to the extent that the obligor's obligation is secondary; or to the extent that the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.
- (aaa) "Secured party" means:
- (1) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
 - (2) a consignor;
 - (3) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
 - (4) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest is created or provided for; or
 - (5) a person that holds a security interest arising under other applicable law.
- (bbb) "Security agreement" means an agreement that creates or provides for a security interest.
- (ccc) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation.
- (ddd) "Send," in connection with a record or notification, means to transmit by any usual means of communication, or to cause the record or notification to be received within the time that it would have been received if properly sent by any usual means of communication.
- (eee) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term shall not include a computer program that is included in the definition of goods.

(fff) "State" means a state of the United States, including any district, territory or insular possession subject to the jurisdiction of the United States, and any political subdivision, or any department, agency, or instrumentality thereof.

(ggg) "Tribal business day" means Monday through Friday 8:00 a.m. to 4:30 p.m., except for recognized holidays as listed on the official calendar of the Tribe.

(hhh) "Tribe" or "Tribal" means the Oneida Tribe of Indians of Wisconsin.

50.4. Choice of Law, Sovereign Immunity, Application of other Laws

50.4-1. The sovereign immunity of neither the Oneida Nation nor of any of its agencies or instrumentalities is waived with respect to any provision of any transaction subject to this Law, absent a recorded, properly ratified, express waiver of sovereign immunity. The fact that the law of another Indian tribe or nation, state, or country is applicable shall not waive the sovereign immunity of this Tribe or of any agency or instrumentality thereof.

50.4-2. Except as otherwise provided and unless preempted by federal law, if a transaction bears a reasonable relation to this Tribe and also to another Indian tribe or nation, State, or country, the parties may agree that the law either of this Tribe or of such other tribe or nation, State, or country governs their rights and duties. In the absence of an effective agreement, this Law applies to all transactions bearing an appropriate relation to this Tribe. The fact that the law of another Indian tribe or nation, State, or country is applicable shall not affect the jurisdiction or venue of this Tribe nor shall it waive the sovereign immunity of this Tribe or of any agency or instrumentality thereof.

50.4-3. A transaction subject to this Law is subject to any applicable rule of law which establishes a different rule for consumers, and

(1) any other applicable tribal, federal or State statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit; and

(2) any consumer-protection statute or regulation.

In case of conflict between this Law and such a rule of law, statute, or regulation; the rule of law, statute, or regulation prevails.

50.4-4. Where this Law is silent on an issue, provisions of Chapter 409, Wisconsin Statutes, may be incorporated and/or used for interpretation; and if those provisions are also silent, then the Uniform Commercial Code – Secured Transactions may be incorporated.

50.5. Scope and Application

50.5-1. *Security interest in secured obligation.* The application of this Law to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Law shall not apply.

50.5-2. Except as otherwise provided herein, this Law applies to the following transactions and activities falling under Tribal jurisdiction:

(a) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

(c) a consignment; and

(d) any other commercial activities, to the extent those commercial activities are implicated in (a), (b) or (c), including but not limited to, sales or leases of goods, other transactions in goods, negotiable instruments, bank deposits and collections, funds

transfers, letters of credit, documents of title, and investment securities.

50.5-3. *Inapplicability.*

(a) *Liens.* This Law shall not apply to the following liens:

- (1) a landlord's lien;
- (2) a Tribal lien;
- (3) a lien given by law for services or materials, however this Law may apply with respect to priority of the lien;

(b) *Assignments.* This Law shall not apply to an assignment of:

- (1) a claim for wages, salary, or other compensation of an employee;
- (2) accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
- (3) a right to payment under a contract to an assignee that is also obligated to perform under the contract;
- (4) a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
- (5) a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
- (6) a claim arising in tort, other than a commercial tort claim, except as provided in 50.11-9 with respect to proceeds and priorities in proceeds, and
- (7) a deposit account, except as provided in 50.11-9 with respect to proceeds and priorities in proceeds.

(c) *Other Exclusions.* This Law shall not apply to:

- (1) any property interest that is subject to federal restrictions regarding sale, transfer, or encumbrance;
- (2) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
- (3) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than a health-care-insurance receivable and any subsequent assignment of the right to payment, except as specific provisions apply with respect to proceeds and priorities in proceeds.
- (4) a right of recoupment or set-off, but provisions governing agreements not to assert defenses against assignees apply with respect to defenses or claims of an account debtor;
- (5) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
 - (A) a fixture filing; and
 - (B) security agreements covering personal and real property.

50.6. Establishment of the Recording Office

50.6-1. There is hereby created the Oneida Recording Office, which shall be responsible for the administration of this Law. In addition to other duties as identified throughout this Law, the Office shall:

- (a) Promulgate and make available the following, provided that, any Recording Office requirements, including fee schedules, which would affect individuals outside the Recording Office and do not relate to the internal management of the Recording Office shall require Oneida Business Committee approval.

(1) Regulations as necessary for the effective implementation and enforcement of this Law, including but not limited to,

(A) Identifying what information shall be provided in a financing statement in addition to that required by this Law, and

(B) Requirements for what information shall be provided for termination statements and for other records that assign, continue or otherwise amend a record.

(2) An implementation manual providing guidance to persons entering into transactions governed by this Law.

(3) Uniform filing forms.

(4) A fee schedule for filing and indexing records, which shall be adopted by Oneida Business Committee resolution.

(b) Accept and maintain filings of financing statements and other records relating to a security interest, in accordance with this Law.

50.7. Lease Distinguished from Security Interest

50.7-1. Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(a) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(b) A transaction in the form of a lease shall not create a security interest merely because:

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods:

(5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

50.8. General Standards and Concepts

50.8-1. The following standards and concepts shall apply to the creation, application and interpretation of all secured transactions to which this Law applies:

(a) *Obligation of Good Faith.* Every contract or duty within this Law imposes, with respect to its performance or enforcement, an obligation that each party be honest and act in a manner that is consistent with reasonable commercial standards of fair dealing.

(b) *Sufficiency of Description.* Except as otherwise provided in this Law, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described, except:

(1) In a security agreement, a description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import shall not reasonably identify the collateral.

(2) A description only by type of collateral is an insufficient description of:

(A) a commercial tort claim; or

(B) in a consumer transaction, any collateral.

(c) *Notice and Knowledge.*

(1) *Knowledge.* “Knowledge” or “Knows” means actual knowledge.

(2) *Notice.* a person has “notice” of a fact if the person:

(A) has actual knowledge of it;

(B) has received a notice or notification of it; or

(C) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(3) *Notification, Giving Notice.* A person “notifies” or “gives” a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it. If no specific timeline is identified by law, regulation or court order, whether a notification is sent within a reasonable time is a question of fact.

(4) *Receiving Notice.*

(A) *Person.* A person “receives” a notice or notification when it comes to that person’s attention; or is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(B) *Organization.* Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised due diligence by maintaining reasonable routines for communicating significant information to the person conducting the transaction and ensuring reasonable compliance with the routines. Due diligence only requires an individual acting for the organization to communicate information when the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction

would be materially affected by the information.

(d) *Course of Performance, Course of Dealing, Usage of Trade.* Course of performance; course of dealing; and usage of trade of which the parties to an agreement are or should be aware; are relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and/or may supplement or qualify the terms of the agreement.

(1) Interpretation.

(A) Course of performance - the agreement of the parties involves repeated occasions for performance by a party; and the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection. Subject to other applicable law, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(B) Course of dealing - the conduct of previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(C) Usage of trade - any practice or method of dealing, including local custom or Oneida Tribal tradition, so regularly observed in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question.

(i) Evidence of a relevant usage of trade offered by a party is not admissible unless that party has given the other party sufficient notice to prevent unfair surprise to the other party.

(ii) The existence and scope of a usage of trade shall be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(2) *Application.* Except as otherwise provided by this Law, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade shall be construed whenever reasonable as consistent with each other. However, if such a construction is unreasonable:

(A) express terms prevail over course of performance, course of dealing, and usage of trade;

(B) course of performance prevails over course of dealing and usage of trade; and

(C) course of dealing prevails over usage of trade.

(e) *Commercially Reasonable.* An action shall be presumed to be commercially reasonable if it is:

(1) A disposition of collateral that is made:

(A) in the usual manner on any recognized market, or

(B) at the price current in any recognized market at the time of the disposition; or

- (C) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.
- (2) A collection, enforcement, disposition, or acceptance that has been approved:
- (A) in a judicial proceeding;
 - (B) by a bona fide creditors' committee;
 - (C) by a representative of creditors; or
 - (D) by an assignee for the benefit of creditors.

Provided that, such approval need not be obtained, and lack of approval shall not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

50.9. Purchase Money Security Interest

50.9-1. In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

50.9-2. *Purchase-money security interest in goods.* A security interest in goods is a purchase-money security interest:

- (a) to the extent that the goods are purchase-money collateral with respect to that security interest;
- (b) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and
- (c) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

50.9-3. *Purchase-money security interest in software.* A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if the debtor acquired its interest in the software for the principal purpose of using the software in the goods, and in an integrated transaction in which it acquired an interest in the goods.

50.9-4. *Consignor's inventory purchase-money security interest.* The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

50.9-5. *Application of payment in non-consumer transaction.* In a non-consumer transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment shall be applied:

- (a) in accordance with any reasonable method of application to which the parties agree;
- (b) if none, then in accordance with the intention of the obligor manifested at or before the time of payment;
- (c) if none, then in the following order:
 - (1) to obligations that are not secured; and
 - (2) if more than one (1) obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

50.9-6. In a non-consumer transaction, a purchase-money security interest shall not lose its status

as such, even if:

- (a) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;
- (b) collateral that is not purchase-money collateral also secures the purchase-money obligation; or
- (c) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

50.10. Effectiveness, Attachment, Rights and Duties

50.10-1. Except as otherwise provided in this Law or other applicable law, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

50.10-2. Attachment and Enforceability.

(a) *Attachment*. A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) *Enforceability*. Except as otherwise provided in this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (1) value has been given;
- (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) one (1) of the following conditions is met:
 - (A) the debtor has signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
 - (B) the collateral is in the possession of the secured party pursuant to the debtor's security agreement and this Law; or
 - (C) the collateral is a security or an investment account and the secured party has control pursuant to the debtor's security agreement.

(c) *Exceptions*. This section is subject to:

- (1) a collecting bank's interest in items under applicable law or agreement,
- (2) any recognized security interest of a letter-of-credit issuer or nominated person under applicable law or agreement,
- (3) a security interest arising under recognized sales and leases law, and
- (4) a security interest in a security or in an investment account arising due to the purchase or delivery of the financial asset.

(d) *When a Secured Party Is Deemed to Have Control: Specific Rules*

(1) A secured party shall be deemed to have control of a certificated security in registered form when the certificate is delivered to the purchaser, and either indorsed to the secured party or in blank by an effective indorsement; or registered in the name of the secured party, upon original issue or registration of transfer by the issuer.

(2) A secured party shall be deemed to have control of an investment account, when:

- (A) the secured party has become the holder of the investment account;
- (B) the investment intermediary has agreed that it shall comply with

- orders relating to the investment account originated by the secured party without further consent by the holder of the investment account;
- (C) another person has control of the investment account on behalf of the secured party or, having previously acquired control of the account, acknowledges that it has control on behalf of the secured party; or
- (D) a security interest has been granted by the holder of the investment account to the holder's own investment intermediary.
- (3) A secured party shall be deemed to have control of with respect to mutual fund shares that are not in an investment account, when:
- (A) the mutual fund shares have been delivered to the secured party under applicable law; or
- (B) the issuer of the mutual fund shares has agreed that it shall comply with instructions originated by the secured party without further consent by the debtor.
- (e) *Proceeds*. The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by this Law.
- (f) *Lien securing right to payment*. The attachment of a security interest in a right to payment or performance secured by a security interest, mortgage or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.
- (g) *Certain items credited to investment account*. The attachment of a security interest in an investment account is also attachment of a security interest in any securities or commodity contracts credited to the investment account.
- (h) *Whether other persons bound*. Law other than this Law determines when and if another person becomes bound by a security agreement entered into by a debtor.
- 50.10-3. *After-acquired collateral*. A security agreement may create or provide for a security interest in after-acquired collateral. However, a security interest shall not attach under a term constituting an after-acquired property clause to:
- (a) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten (10) days after the secured party gives value; or
- (b) a commercial tort claim.
- 50.10-4. *Future advances*. A security agreement may provide that collateral secures or that accounts, chattel paper, or payment intangibles are sold in connection with future advances or other value, whether or not the advances or value are given pursuant to commitment.
- 50.10-5. *Rights and Duties when Collateral is in Secured Party's Possession or Control*
- (a) *Duty of care*. A secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession.
- (b) *Right of repledge*. A secured party having possession or control of securities or control of an investment account may create a security interest in the collateral, except that if the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, this provision shall not apply unless the secured party is entitled under an agreement:
- (1) to charge back uncollected collateral; or
- (2) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral.

50.10-6. *Additional Duties of Certain Secured Parties.* In cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value, the following shall apply:

(a) *Duty of secured party in control of investment account.* Within ten (10) Tribal business days after receiving a signed demand by the debtor, a secured party having control of an investment account shall send to the investment intermediary with which the investment account is maintained a signed statement that releases the investment intermediary from any further obligation to comply with instructions originated by the secured party.

(b) *Duty of secured party if account debtor has been notified of assignment.* Within ten (10) Tribal business days after receiving a signed demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under 50.16-3, a signed record that releases the account debtor from any further obligation to the secured party.

(1) *Exception.* This shall not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

50.10-7. *Request for Accounting, List of Collateral or Statement of Account.*

(a) A debtor may sign a record indicating what the debtor believes to be the aggregate amount of unpaid indebtedness as of specified date and send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(b) A secured party, other than a buyer of accounts, chattel paper, payment intangibles or promissory notes or a consignor, shall comply with such a request within ten (10) Tribal business days after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor the secured party may indicate that fact in the reply and need not approve or correct an itemized list of such collateral. If the secured party no longer has an interest in the obligation or collateral at the time the request is received, the secured party shall disclose the name and address of any known successor in interest. A successor in interest is not subject to this section until a request is received by the successor.

(c) A debtor is entitled to such statement once every six (6) months without charge. The secured party may require payment of a charge not exceeding twenty-five dollars (\$25) for each additional statement furnished.

50.11. Perfection

50.11-1. *Perfection of Security Interest.* Except as otherwise provided herein, a security interest is perfected if it has attached and all of the applicable requirements for perfection set forth in this Law have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(a) *Security interest in collateral.* Except as otherwise provided in this section, this Law governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral if the security interest is created pursuant to this Law; or from the time that the debtor becomes subject to the jurisdiction of this Tribe; or from the time that the collateral is transferred to a person that thereby becomes a debtor and is subject to the

jurisdiction of this Tribe.

(1) Except as otherwise provided herein, while goods are located in a jurisdiction, the local law of that jurisdiction governs perfection of a security interest in the goods by filing a fixture filing; and perfection of a security interest in timber to be cut.

(2) This section shall not determine the law governing matters not expressly referred to herein, including attachment, validity, characterization, and enforcement.

(b) *Security interests in goods covered by a certificate of title.* This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(1) *When goods covered by certificate of title.* Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(2) *Applicable law.* The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

50.11-2. *Continuity of Perfection.*

(a) *Continuous perfection; perfection by different methods.* A security interest is perfected continuously if it is originally perfected by a particular method under this Law and is later perfected by another method under this Law, without an intermediate period when it was unperfected.

(b) *Lien securing right to payment.* Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(c) *Certain items credited to investment account.* Perfection of a security interest in an investment account also perfects a security interest in any securities or commodity contracts credited to the investment account.

50.11-3. *Perfection Upon Attachment.* The following security interests are perfected when they attach:

(a) a purchase-money security interest in consumer goods, except as otherwise provided by applicable statutes, regulations or treaties;

(b) a sale of a payment intangible or a promissory note,

(c) a security interest created by an assignment:

(1) of accounts which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts;

(2) of a health-care-insurance receivable to the provider of the health-care goods or services

(3) of a beneficial interest in a decedent's estate; and

(4) by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

50.11-4. *Filing Requirements.*

(a) *General rule: perfection by filing.* A financing statement shall be filed to perfect all security interests, except that the filing of a financing statement is not necessary to perfect a security interest:

(1) that is perfected under 50.11-2(b),

(2) that is perfected when it attaches in accordance with this Law;

(3) in property subject to a statute, regulation, or treaty in accordance with 50.11-5.

(4) in goods in possession of a bailee which is perfected under Section 50.11-6(d)(1) or (2);

(5) in certificated securities, negotiable documents, goods, or instruments which is perfected without filing or possession under 50.11-6;

(6) in collateral in the secured party's possession under 50.11-7,

(7) in a security or an investment account perfected by control under 50.11-8,

(8) in proceeds perfected under 50.11-9; or

(9) that is perfected under 50.11-10.

(10) As otherwise provided by this Law.

(b) *Assignment of perfected security interest.* If a secured party assigns a perfected security interest, a filing under this Law is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

50.11-5. *Perfection of Security Interests in Property Subject to certain statutes, regulations and treaties.*

(a) *Security interest subject to other law.* Except as otherwise provided in (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) any law of the United States whose requirements for a security interest obtaining priority over the rights of a lien creditor with respect to the property preempt the provisions of this Law requiring that security interests be perfected by filing;

(2) any Tribal certificate-of-title statute covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on the certificate as a condition or result of perfection, and any central filing statute other than the one provided by this Law]; or

(3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest obtaining priority over the rights of a lien creditor with respect to the property.

(b) *Compliance with other law.* Compliance with the requirements of a statute, regulation, or treaty described in (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Law. Except as otherwise provided herein, a security interest in property subject to a statute, regulation, or treaty described in (a) may be perfected only by compliance with those requirements, and a

security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) *Duration and renewal of perfection.* Except as otherwise provided in this Law, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Law.

(d) *Inapplicability to certain inventory.* During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section shall not apply to a security interest in that collateral created by that person.

50.11-6. *Other Perfection Requirements.*

(a) *Perfection by filing.* A security interest in chattel paper, negotiable documents, instruments, securities, or investment accounts may be perfected by filing.

(b) *Possession of money.* Except as otherwise provided in 50.11-9, a security interest in money may be perfected only by the secured party taking possession in accordance with this Law.

(c) *Goods covered by negotiable document.* While goods are in the possession of a bailee that has issued a negotiable document covering the goods, a security interest in the goods may be perfected by perfecting a security interest in the document. A security interest perfected in the document has priority over any security interest in the goods that becomes perfected by another method during that time.

(d) *Goods covered by nonnegotiable document.* While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

- (1) issuance of a document in the name of the secured party;
- (2) the bailee's receipt of notification of the secured party's interest; or
- (3) filing as to the goods.

(e) *Temporary perfection.* Temporary perfection expires as established herein. After expiration, perfection depends upon compliance with this Law.

(1) *New value.* A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under a signed security agreement.

(2) *Goods or documents made available to debtor.* A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

- (A) ultimate sale or exchange; or
- (B) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(3) *Delivery of security certificate or instrument to debtor.* A perfected security interest in a certificated security or instrument remains perfected for twenty (20)

days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of ultimate sale or exchange; or for the purpose of presentation, collection, enforcement, renewal, or registration of transfer.

50.11-7. *When possession by secured party perfects security interest without filing.*

(a) *Perfection by possession.* A secured party may perfect a security interest in certificated securities, negotiable documents, goods, instruments, money, or chattel paper by taking possession of the collateral. If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(1) *Exception.* With respect to goods covered by a certificate of title issued by this Tribe or a State, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances identified in 50.11-1.

(b) *Collateral in possession of person other than debtor.* With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession signs a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having signed a record acknowledging that it shall hold possession of collateral for the secured party's benefit.

(c) *Acknowledgment not required.* A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(d) *Effectiveness of acknowledgment; no duties or confirmation.* If a person acknowledges that it holds possession for the secured party's benefit:

(1) the acknowledgment is effective in accordance with this section, even if the acknowledgment violates the rights of a debtor; and

(2) unless the person otherwise agrees or law other than this Law otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

50.11-8. *Perfection by control.* A security interest in a security or an investment account may be perfected by control.

50.11-9. *Secured Party's Rights on Disposition of Collateral, and in Proceeds.*

(a) *Disposition of collateral: continuation of security interest; proceeds.* Except as otherwise provided in this Law and any applicable law related to entrustment of goods:

(1) a security interest continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest; and

(2) security interest attaches to any identifiable proceeds of collateral.

(b) *When commingled proceeds identifiable.* Proceeds that are commingled with other property are identifiable proceeds if:

(1) if the proceeds are goods, to the extent provided by this Law; and

(2) if the proceeds are not goods, to the extent that the secured party identifies the

proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this Law with respect to commingled property of the type involved.

(c) *Perfection of security interest in proceeds.* A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) *Continuation of perfection.* A perfected security interest in proceeds becomes unperfected on the twenty-first (21st) day after the security interest attaches to the proceeds unless:

(1) the following conditions are satisfied:

(A) a filed financing statement covers the original collateral;

(B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) the proceeds are not acquired with cash proceeds;

(2) the proceeds are identifiable cash proceeds; or

(3) the security interest in the proceeds is perfected other than under (c) when the security interest attaches to the proceeds or within twenty (20) days thereafter.

(e) *When perfected security interest in proceeds becomes unperfected* If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:

(1) when the effectiveness of the filed financing statement lapses or is terminated in accordance with this Law, or

(2) the twenty-first (21st) day after the security interest attaches to the proceeds.

50.11-10. *Continued Perfection of Security Interest Following Change in Governing Law.*

(a) *General rule: effect on perfection of change in governing law.* A security interest to which this Law becomes applicable that is perfected pursuant to the law of another jurisdiction remains perfected until the earliest of:

(1) the time perfection would have ceased under the law of that jurisdiction;

(2) the expiration of one hundred twenty (120) days after the debtor becomes subject to the jurisdiction of this Tribe; or

(3) the expiration of one (1) year after a transfer of collateral to a person that thereby becomes a debtor and is subject to the jurisdiction of this Tribe.

(b) *Security interest perfected or unperfected under law of this Tribe.* If a security interest described in (a) becomes perfected under the law of this Tribe before the end of the applicable period, it remains perfected thereafter until perfection lapses in accordance with this Law. Otherwise, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) *Goods covered by certificate of title from this Tribe.* A security interest to which this Law becomes applicable which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this Tribe remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered. However, the security interest becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value, if the applicable requirements of this Law relating to perfection by compliance with other law or by possession, are not satisfied before the earlier of:

(1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this Tribe; or

(2) the expiration of one hundred twenty (120) days after the goods had become so covered.

(d) *When debtor subject to jurisdiction of this Tribe for purposes of this section.* For purposes of this section only, a debtor becomes subject to the jurisdiction of this Tribe if:

(1) the debtor is an individual whose principal residence comes to be within this jurisdiction or who becomes a member of this Tribe;

(2) the debtor is an organization, other than a registered organization, and its sole place of business or, if it has more than one (1) place of business, its chief executive office, comes to be within this jurisdiction; or

(3) the debtor comes to be

(A) a registered organization that is organized solely under the law of this Tribe; or

(B) incorporated under a Tribal charter issued to a tribe by the United States Secretary of the Interior

(e) *Continuation of jurisdiction: cessation of existence.* For the purposes of (d),

(1) a person other than a registered organization continues to be subject to the jurisdiction of this Tribe notwithstanding the fact that it ceases to exist, have a residence, or have a place of business; and

(2) a registered organization continues to be subject to the jurisdiction of this Tribe notwithstanding

(A) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such; or

(B) the dissolution, winding up, or cancellation of the existence of the registered organization.

50.12. General Priority Rules.

50.12-1. *Subordination to certain lien creditors and purchasers.* A security interest is subordinate to the rights of:

(a) a person that becomes a lien creditor before the security interest is perfected;

(b) a buyer of tangible personal property (including instruments and tangible documents or chattel paper), a lessee of goods, a licensee of a general intangible, or a buyer of accounts or general intangibles or securities; where the buyer took the property without knowledge of the personal property and before it was perfected; where such property

(1) gives value; and

(2) in the case of a buyer of tangible personal property, a lessee of goods, or a buyer of a security certificate, acquires possession;

(c) a secured party entitled to priority under 50.12-3.

50.12-2. *Purchase-money grace period.* Notwithstanding 50.12-1, a purchase money secured party that files a financing statement before or within twenty (20) days after the debtor acquires possession of the collateral has priority over the rights of a buyer, lessee or lien creditor which arise between the time the security interest attaches and the time of filing.

50.12-3. *General rule for priority among conflicting secured parties.* Priority among conflicting security interests in the same collateral is determined as follows:

(a) Conflicting perfected security interests in the same collateral rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(b) A perfected security interest has priority over a conflicting unperfected security interest.

(c) The first security interest to attach has priority if conflicting security interests are unperfected.

50.12-4. *Time of perfection for proceeds.* The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds, except as provided in 50.13.

50.12-5. *Priority in proceeds.* Except as provided elsewhere in this part, a security interest that has priority under 50.13-4, 50.13-5, or 50.13-10 also has priority over a conflicting security interest in proceeds if

(a) the security interest in proceeds is perfected;

(b) the proceeds are cash proceeds or of the same type as the collateral; and

(c) in the case of proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

50.12-6. *First-to-file rule for certain collateral.* If a security interest in chattel paper, negotiable documents, instruments, securities or investment accounts is perfected by a method other than filing, and if the proceeds are not cash proceeds, chattel paper, negotiable documents, instruments, securities, investment accounts or letter of credit rights, then priority in the proceeds is determined by the order of any filing.

50.12-7. *Deferral to other applicable law.* If applicable law other than this Law gives a security interest or right of set-off to a collecting bank, an issuer or nominated person with respect to a letter of credit, a buyer, seller, or lessee of goods, or in personal property that is not subject to this Law, that law governs in the event of conflict with the provisions of this Law.

50.12-8. This Law shall not preclude subordination by agreement by a person entitled to priority.

50.13. Specific Priority Rules

50.13-1. *Consignee deemed to have rights of consignor.* For the purpose of this Law, while goods are in the possession of a consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer. If the perfection and priority rules of this Law result in the consignor having priority over a creditor of the consignee, law other than this Law determines the rights and title of the consignee with regard to that creditor.

50.13-2. *Ordinary course buyers, licensees and lessees take free.* Except as otherwise provided in this subsection, a buyer in ordinary course of business, a person that takes a non-exclusive license of a general intangible in ordinary course of business, or a person that takes a lease of goods in ordinary course of business, takes its interest in the collateral free of a security interest in the collateral created by the seller, licensor, or lessor, even if the security interest is perfected and the buyer, licensee or lessee knows of its existence. Whether a licensee or lessee takes its interest in ordinary course of business is to be determined by criteria parallel to those for a buyer in ordinary course of business. This subsection shall not apply to a buyer of goods in the possession of the secured party.

50.13-3. *Buyer of consumer goods takes free.* A buyer of goods from a person who used or

bought the goods for use primarily for personal, family or household purposes takes free of a security interest, even if perfected, if the buyer buys

(a) without knowledge of the security interest;

(b) for value;

(c) primarily for the buyer's personal, family, or household purposes; and

(d) in the case of goods having a value of five thousand dollars (\$5,000) or more, before the filing of a financing statement covering the goods. Provided that, this subsection shall not apply to a buyer of goods in the possession of the secured party.

50.13-4. *Purchaser of chattel paper or instrument.*

(a) A purchaser of chattel paper or an instrument has priority over a security interest if

(1) the purchaser, in good faith and in the ordinary course of the purchaser's business, gives new value and takes possession of the collateral;

(2) the collateral does not indicate that it has been previously assigned to an identified person other than the purchaser; and

(3) the purchaser is otherwise without knowledge that the purchase violates the rights of the secured party.

(b) A purchaser with priority in chattel paper also has priority in proceeds of the chattel paper to the extent that

(1) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the security interest in the proceeds is unperfected; or

(2) as otherwise provided by this Law.

50.13-5. *Holder in due course and others protected.* This Law shall not limit the rights of, or impose liability on, a holder in due course of a negotiable instrument, a holder to which a negotiable document has been duly negotiated, or a person protected against the assertion of a claim to investment property under other applicable law. Filing under this Law is not notice of a claim or defense to the holder or protected person.

50.13-6. *Priority of future advances.*

(a) With respect to a conflicting security interest, the priority of an advance under a security agreement is determined under 50.12-2, except that perfection dates from the time the advance is made if the security interest securing it is perfected only by attachment or as temporary perfection in accordance with this Law, and is not made pursuant to a commitment entered into before or while the security interest is perfected by another means.

(b) With respect to a lien creditor, the security interest securing an advance is subordinate if the advance is made more than forty-five (45) days after the person becomes a lien creditor, unless the advance is made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

(c) With respect to a buyer of goods other than a buyer in ordinary course of business, and with respect to a lessee of goods that does not take its lease in ordinary course of business, the security interest securing an advance is subordinate if the advance is made after the earlier of the time the secured party acquires knowledge of the purchase or forty-five (45) days after the purchase, unless the advance is made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the forty-five (45)-day period.

(d) Paragraphs (a) and (b) of this subsection shall not apply to a security interest held by a

person that is a consignor or a buyer of accounts, chattel paper, payment intangibles or promissory notes.

50.13-7. *Purchase money super-priority.* The following rules govern the priority of a purchase money security interest and a conflicting security interest in collateral and its proceeds:

(a) A perfected purchase-money security interest in goods other than inventory or livestock that are farm products has priority over a conflicting security interest, and a perfected security interest in identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty (20) days thereafter.

(1) *Exception.* A perfected purchase-money security interest in inventory or livestock that are farm products has priority over a conflicting security interest if the purchase-money security interest is perfected when the debtor acquires possession of the goods and the purchase-money secured party sends timely and appropriate notice to the holder of the conflicting security interest, provided that no such notice is required unless the holder of the conflicting security interest has filed a financing statement covering the same types of goods:

(A) before the purchase-money security interest is perfected by filing; or

(B) if the purchase-money security interest is temporarily perfected under 50.11-6(e)(2) before the beginning of the applicable twenty (20)-day period.

(b) If a purchase-money secured party has priority in inventory under this paragraph, it also has priority in chattel paper or an instrument constituting proceeds, in proceeds of the chattel paper except as otherwise provided in this section, and in identifiable cash proceeds received on or before delivery of the goods to a buyer. If a purchase-money secured party has priority in livestock that are farm products, it also has priority in their identifiable proceeds and products in their unmanufactured states.

(c) *Software.* A perfected purchase-money security interest in software has priority over a conflicting security interest, and a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods.

50.13-8. *Priority among Purchase Money Security Interests.* Notwithstanding the rest of this subsection, if two (2) or more purchase-money security interests are perfected in the same collateral, the security interest securing an obligation for the price has priority, and otherwise priority is determined by 50.12-2.

50.13-9. *Transferee of money or funds takes free.* A transferee of money or of funds from a deposit account takes the money or funds free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

50.13-10. *Priority of interest perfected by control; possession of certificated security in registered form.* A security interest in a security or an investment account perfected by control has priority over a security interest perfected in another way. Multiple security interests perfected by control rank according to time of acquiring control; however, a security interest held by an investment intermediary in the investment account that it maintains has priority regardless of time of acquiring control. A security interest in a certificated security in registered form that is perfected by possession and not by control has priority over a conflicting security interest perfected by a method other than control.

50.13-11. *Possessory liens*. A lien created by statute or rule of law which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business and whose effectiveness depends on the person's possession of the goods has priority over a security interest in the goods unless the lien is created by a statute or rule of law that expressly provides otherwise.

50.14 Priority of Specific Security Interests.

50.14-1. *Security interest in fixtures*. A security interest under this Law may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest shall not exist under this Law in ordinary building materials incorporated into an improvement on land.

50.14-2. *Security interest in fixtures under real property law*. This Law shall not prevent creation of an encumbrance upon fixtures under real property law.

50.14-3. *General rule: subordination of security interest in fixtures*. In cases not governed by specific rules in this section, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

50.14-4. *Fixtures purchase-money priority*. Except as otherwise provided herein, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

- (a) the security interest is a purchase-money security interest;
- (b) the interest of the encumbrancer or owner arises before the goods become fixtures; and
- (c) the security interest is perfected by an appropriate filing before the goods become fixtures or within twenty (20) days thereafter.

50.14-5. *Priority of security interest in fixtures over interests in real property*. A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

- (a) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:
 - (1) is perfected by an appropriate filing before the interest of the encumbrancer or owner is of record; and
 - (2) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;
- (b) before the goods become fixtures, the security interest is perfected by any method permitted by this Law and the fixtures are readily removable:
 - (1) factory or office machines;
 - (2) equipment that is not primarily used or leased for use in the operation of the real property; or
 - (3) replacements of domestic appliances that are consumer goods;
- (c) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Law; or
- (d) the security interest is:
 - (1) created in a manufactured home in a manufactured-home transaction; and
 - (2) perfected pursuant to statute, regulation, or treaty in accordance with 50.11-5.

50.14-6. A security interest in fixtures, whether or not perfected, has priority over a conflicting

interest of an encumbrancer or owner of the real property if:

(a) the encumbrancer or owner has, in a signed record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner, provided that, such a security interest continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

50.14-7. *Construction mortgage.* A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates.

(a) Except as otherwise provided in this section, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

50.14-8. *Priority of security interest in crops.* A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

50.14-9. If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this jurisdiction issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(a) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(b) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under a statute, regulation, or treaty in accordance with 50.11-5; after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

50.15 Accessions and Commingled Goods

50.15-1. *Accessions.* A security interest may be created in an accession and continues in collateral that becomes an accession.

(a) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(b) A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of an applicable certificate-of-title statute.

(c) After default, and in accordance with this Law, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole. The secured party shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate

assurance for the performance of the obligation to reimburse.

50.15-2. *Commingled Goods*. A security interest shall not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(a) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(b) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass is perfected.

(c) If more than one (1) security interest attaches to the product or mass, the following rules determine priority:

(1) A security interest that is perfected before the collateral becomes commingled goods has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one (1) security interest is perfected before the collateral becomes commingled goods; the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

50.16. Rights of Third Parties

50.16-1. *Alienability of Debtor's Rights*. Whether a debtor's rights in collateral may be voluntarily or involuntarily transferred shall governed by law other than this Law; however, an agreement between a debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default shall not prevent the transfer from taking effect.

50.16-2. *Secured Party Not Obligated on Contract of Debtor or in Tort*. The existence of a security interest or authority given to a debtor to dispose of or use collateral, without more, shall not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

50.16-3. *Rights of Assignee*.

(a) *Waiver-of-defense clauses; limitations thereon*. An agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment in good faith, and for value as defined in the law governing negotiable instruments, except as to claims or defenses that may be asserted against a holder in due course of a negotiable instrument. However, such an agreement is not enforceable if

(1) the agreement relates to an obligation incurred on account of a sale or lease of goods or services;

(2) the account debtor seeks or acquires the goods or services primarily for personal, family or household use; and

(3) the assignor, in the ordinary course of its business, sells or leases goods or services to consumers.

(b) If a negotiable promissory note represents an obligation incurred on account of a sale or lease of goods or service, and the issuer seeks or acquires the goods or services primarily for personal, family or household use, and the payee, in the ordinary course of its business, sells or leases goods or services to consumers, then the issuer may assert any claims and defenses against a person entitled to enforce the note, including a holder in due course.

(c) Except to the extent an agreement to the contrary is enforceable under (a), the rights of an assignee are subject to reduction of the amount owed by reason of all terms of the

contract between the account debtor and assignor, any defense or claim in recoupment arising from the transaction that gave rise to the contract, and any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives adequate notification of the assignment signed by the assignor or the assignee.

(d) An account debtor or party to a negotiable promissory note may discharge its obligation by paying the assignor or person formerly entitled to enforce the note until, but not after, such account debtor or party receives:

(1) adequate notification that performance is to be rendered to the assignee or transferee, signed

(A) in the case of an account debtor, by the assignor or assignee, and

(B) in the case of a negotiable promissory note, by the transferor or transferee; and

(2) if requested by such account debtor or party, reasonable proof of the assignment or transfer. In the case of an account debtor, discharge under this subsection is effective notwithstanding an otherwise enforceable agreement not to assert claims or defenses. In the case of a party to a negotiable promissory note, discharge under this subsection is effective against a holder in due course.

(e) *Modifications of contract.* A modification of or substitution for an assigned contract is effective against an assignee to the extent provided by law other than this Law.

50.17. Restrictions on Assignment

50.17-1. A commercially harmful restriction on alienation of property is invalid. Except as otherwise provided by this Law, a term in an agreement between an account debtor and an assignor, or in a promissory note, shall be deemed a commercially harmful restriction on alienation to the extent that it:

(a) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note, to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the affected property; or

(b) provides that such an assignment, transfer, creation, attachment, perfection, or enforcement may give rise to a default or remedy.

50.17-2. *General intangibles.* To the extent a commercially harmful restriction on alienation would otherwise be effective under law other than this Law, the creation, attachment, or perfection of the security interest:

(a) shall not impose a duty or obligation on the account debtor or person obligated on the promissory note;

(b) is not enforceable against the account debtor or person obligated on the promissory note; and

(c) shall not entitle the secured party to:

(1) use the debtor's rights in or to the property;

(2) have access to trade secrets or confidential information of the account debtor or person obligated on the promissory note; or

(3) enforce the security interest.

(d) This section is subject to any different rule in other law for a consumer. In addition, this section shall not apply to an assignment of:

(1) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. 104(a)(1) or (2), as the same may be amended from time to time;

(2) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. 1396p(d)(4), as the same may be amended from time to time.

(3) a structured settlement payment right; or

(4) a right to payment of winnings in a lottery or other game of chance regulated by law other than this Law.

(are there other existing alienation restrictions we want to preserve?)

50.18. Financing Statements and other Records for Filing

50.18-1. Financing statements and other records relating to a security interest shall be filed with the Oneida Recording Office, provided that, financing statements filed as fixture filings where the collateral is goods that are or are to become fixtures, shall be filed with the Division of Land Management, or other entity responsible for filing or recording a mortgage on the related real property.

50.18-2. *Who may file.* Only a person authorized by the debtor or otherwise designated by Office regulations, may file a record that is effective. By signing a security agreement, the debtor authorizes the filing of a financing statement and amendments covering the collateral described in the security agreement and property that becomes collateral as identifiable proceeds.

50.18-3. *Time of Filing.* A financing statement may be filed before a security agreement is made or a security interest attaches. Receipt by the Recording Office of a financing statement or other record, in appropriate form by an appropriate method, and tender of the filing fee, constitutes filing, and in those cases the Office shall accept the record. If the Office refuses the record, it shall communicate that fact to the person that presented the record, as well as the reason for refusal and the date and time that the record would have otherwise been filed.

50.18-4. *Required Contents.* A financing statement is sufficient to perfect a security interest only if it provides the name of the debtor, the name of the secured party or a representative, and a description that reasonably identifies the collateral covered by the financing statement or states that it covers all assets or all personal property.

50.18-5. A record in appropriate form and communicated to the Office by an appropriate method is effective even if:

(a) it is improperly refused by the Office, except as against a purchaser of the collateral for value in reasonable reliance on the absence of the record from the files;

(b) it is incorrectly indexed by the Office; or

(c) it has minor errors or omissions in information required to perfect a security interest, unless the errors or omissions make the record seriously misleading.

(1) If a financing statement fails sufficiently to provide the name of the debtor, the name provided shall not make the financing statement seriously misleading if a search of the Office's records under the debtor's correct name using the Office's standard search logic, if any, would disclose the financing statement.

50.18-6. If information that the Office's regulations require to be included in a record, but that this Law shall not require for perfection of a security interest, is incorrect at the time the record is filed, the security interest is subordinate to a conflicting perfected security interest or the interest of a purchaser other than a secured party, to the extent that

(a) the holder of the conflicting security interest gives value in reasonable reliance on the incorrect information; or

(b) the purchaser gives value and, in the case of a buyer or lessee of property capable of being possessed, takes possession, all in reasonable reliance on the incorrect information.

50.18-7. Unless sooner terminated, a validly filed financing statement shall effective for five (5) years after the date of filing, except as follows:

(a) A financing statement filed in connection with a manufactured-home transaction shall be effective for thirty (30) years after the date of filing unless sooner terminated;

(b) A mortgage that is effective as a financing statement is effective until the mortgage is satisfied of record.

50.18-8. *Lapse.* A financing statement lapses at the end of the applicable period unless a continuation statement is filed within six (6) months before the expiration of the period. A lapsed financing statement ceases to perfect the security interest unless it is otherwise perfected before lapse, and the security interest is deemed to never have been perfected against a purchaser of the collateral for value.

50.18-9. *Continuation.* Upon proper continuation, the effectiveness of a filed financing statement continues for an additional period commencing on the date on which it otherwise would have become ineffective, and again may lapse unless further continued. An amendment to a financing statement other than a continuation statement shall not extend the effectiveness of a financing statement, is effective only from its date of filing, and may be effective as a termination statement as established by Office regulation.

50.18-10. *Termination Statement.* Upon the filing of a termination statement by a secured party, in accordance with this Law and Recording Office regulations, the financing statement to which the termination statement relates ceases to be effective.

50.18-11. If a debtor so changes its name, or an organization its identity or corporate structure, that a filed financing statement becomes seriously misleading, the financing statement shall not be effective to perfect a security interest in collateral acquired by the debtor more than one hundred twenty (120) days after the change, unless an appropriate filing is made before the expiration of that time. If a security interest continues in collateral transferred by the debtor in accordance with this Law, a filed financing statement with respect to collateral remains effective, even if the secured party knows of or consents to the transfer.

50.19. Default

50.19-1. *Rights and Duties.* After default, the secured parties, debtors and obligors have the rights and duties identified in this Law as well as the rights and duties established by agreement of the parties, to the extent that such rights and duties do not conflict with this Law. These rights are cumulative and may be exercised simultaneously. A secured party:

(a) may reduce a claim to judgment, foreclose, or otherwise enforce the claim or security interest, by any available judicial procedure; and

(b) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

50.19-2. *Relation back.* If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(a) the date of perfection of the security interest in the collateral;

(b) the date of filing a financing statement covering the collateral; or

(c) any date specified in a statute under which the lien was created.

50.19-3. *Sale Pursuant to Execution.* A sale pursuant to an execution forecloses a security interest by judicial procedure. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Law.

50.19-4. *Duties for specific parties.* Except for requirements relating to commercially reasonable collection and enforcement, this Law imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

50.19-5. *Waiver and Variance of Rights and Duties.* The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party for the purpose of waiver and/or variance of those rights and duties; if the standards are not manifestly unreasonable. Provided that, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, a debtor or obligor shall not waive or vary the requirements of this Law relating to:

- (a) rights and duties when collateral is in a secured party's possession,
- (b) requests for an accounting or requests regarding a list of collateral or statement of an account,
- (c) commercially reasonable collection and enforcement,
- (d) application of proceeds, deficiency and surplus governing noncash proceeds of collection, enforcement, or disposition;
- (e) application of proceeds and the like, to the extent that they require accounting for or payment of surplus proceeds of collateral;
- (f) a secured party's right to take possession after default and limitations thereon, to the extent that it imposes upon the secured party taking possession of collateral without judicial process the duty to do so without breach of the peace and with consent of the debtor;
- (g) commercially reasonable disposition, notification before disposition of the collateral, and the contents and form of a notification before disposition of the collateral
- (h) calculation of a deficiency or surplus when the fairness of the amount of proceeds is placed in issue
- (i) explanation of the calculation of a surplus or deficiency
- (j) acceptance of collateral in satisfaction of obligation
- (k) right to redeem collateral
- (l) waivers, and
- (m) the secured party's liability for failure to comply with this Law.

50.19-6. *Procedure if Security Agreement Covers Real Property or Fixtures.*

(a) If a security agreement covers both personal and real property, a secured party may proceed under this part as to the personal property without prejudicing any rights with respect to the real property; or may proceed as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part shall not apply.

(b) Where a security agreement covers goods that are or become fixtures, a secured party may proceed under this part; or may proceed in accordance with the rights with respect to real property, in which case the other provisions of this part shall not apply.

(c) If a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property. A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A

person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

50.19-7. *Unknown Debtor or Secondary Obligor.* A secured party shall not owe a duty based on its status as secured party:

(a) to a person that is a debtor or obligor, unless the secured party knows that the person is a debtor or obligor; the identity of the person; and how to communicate with the person; or

(b) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows the identity of the person and that the person is a debtor.

50.20. Collection and Enforcement by Secured Party.

50.20-1. If so agreed, and in any event after default, a secured party:

(a) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(b) may take any proceeds to which the secured party is entitled under a statute, regulation, or treaty in accordance with 50.11-5.

(c) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

50.20-2. *Commercially reasonable collection and enforcement.* A secured party shall proceed in a commercially reasonable manner if the secured party:

(a) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(b) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

50.20-3. *Expenses.* A secured party may deduct from the collections made pursuant to this Law reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

50.20-4 This section shall not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

50.21. Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus.

50.21-1. If a security interest secures payment or performance of an obligation:

(a) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement in the following order:

(1) the reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party; to the extent that such attorney's fees and legal expenses are provided for by agreement and not prohibited by law;

(2) the satisfaction of obligations secured by the security interest under which the collection or enforcement is made; and

(3) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest under which the

collection or enforcement is made if the secured party receives a signed demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under

(a)(3)

50.21-2. A secured party need not apply or pay over for application noncash proceeds of collection and enforcement unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

50.21-3. A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

50.22. Secured Party's Limited Right to take possession after default.

50.22-1. A secured party shall only exercise the following powers after default pursuant to judicial process or with the debtor's consent.

(a) take possession of the collateral;

(b) without removal, render equipment unusable and dispose of collateral on a debtor's premises; and

(c) require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

50.22-2. The debtor's consent is effective only if expressed after default, by means of a separate dated and signed personal statement in the debtor's own handwriting; describing the powers to be exercised by the secured party and expressly acknowledging and waiving the debtor's right to require that such exercise be pursuant to judicial process.

50.22-3. A secured party acting pursuant to the debtor's consent shall proceed without breach of the peace.

50.23. Disposition of Collateral After Default

50.23-1. After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

50.23-2. Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, shall be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one (1) or more contracts, as a unit or in parcels, and at any time and place and on any terms. In order to protect the debtor's right to redeem collateral, a disposition of collateral shall take place only on a Tribal business day.

50.23-3. A secured party may purchase collateral:

(a) at a public disposition; or

(b) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

50.23-4. A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract. A secured party may disclaim or modify such warranties:

(a) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or
 (b) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(c) A record is sufficient to disclaim such warranties if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

50.23-5. *Notification before disposition of collateral.*

(a) *Notification date.* In this section, "notification date" means either the date on which a secured party sends to the debtor and any secondary obligor a signed notification of disposition; or the date on which the debtor and any secondary obligor waive the right to notification, whichever is earlier.

(b) *Notification of disposition required.* Except where the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, a secured party that disposes of collateral shall send to the debtor and any secondary obligor a reasonable signed notification of disposition. If the collateral is other than consumer goods, the secured party shall also send a reasonable signed notification of disposition to:

(1) any other person from which the secured party has received, before the notification date, a signed notification of a claim of an interest in the collateral;

(2) any other secured party or lienholder that, fourteen (14) days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) identified the collateral;

(B) was indexed under the debtor's name as of that date; and

(C) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) any other secured party that, fourteen (14) days before the notification date, held a security interest in the collateral perfected by compliance with other applicable law.

(c) A secured party complies with the requirement for notification if:

(1) not later than twenty (20) days or earlier than thirty (30) days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the Oneida Recording Office or appropriate recording office in another jurisdiction, and

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent a signed notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

50.23-6. *Timeliness of Notification.* Unless a specific time is established by court order or applicable law, a notification of disposition shall be construed as sent within a reasonable time before the disposition when it is sent after default and:

(1) in a consumer transaction, twenty (20) days or more before the earliest time of disposition set forth in the notification; or

(2) in all other transactions, ten (10) days or more before the earliest time of disposition set forth in the notification.

50.23-7. Contents and form of notification before disposition of collateral

(a) The contents of a notification of disposition are sufficient if the notification:

- (1) describes the debtor and the secured party;
- (2) describes the collateral that is the subject of the intended disposition;
- (3) states the method of intended disposition;
- (4) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting;
- (5) states the time and place of a public disposition or the time after which any other disposition is to be made;
- (6) describes any liability for a deficiency by the person receiving the notice; and
- (7) states a telephone number or mailing address from which additional information concerning redemption, disposition and the obligation secured is available.

(b) Whether the contents of a notification are nevertheless sufficient, even if the notification lacks any of the information specified in (a), is a question of fact.

(c) A particular phrasing of the notification is not required. The contents of a notification providing substantially the information specified in (a) are sufficient, even if the notification includes information not specified by that paragraph, or minor errors that are not seriously misleading.

50.24. Application of Proceeds of Disposition; Liability for Deficiency, Right to Surplus

50.24-1. Application of Proceeds. A secured party shall apply or pay over for application the cash proceeds of disposition in the following order to:

- (a) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
- (b) the satisfaction of obligations secured by the security interest under which the disposition is made;
- (c) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:
 - (1) the secured party receives from the holder of the subordinate security interest or other lien a signed demand for proceeds before distribution of the proceeds is completed; and
 - (2) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and
- (d) a secured party that is a consignor of the collateral if the secured party receives from the consignor a signed demand for proceeds before distribution of the proceeds is completed.

50.24-2 If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under 50.20-1(c).

50.24-3. A secured party need not apply or pay over for application noncash proceeds of disposition unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable

manner.

50.24-4. If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications identified above:

(a) unless this Law requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(b) the obligor is liable for any deficiency.

50.24-5. The surplus or deficiency following a disposition is calculated based on the amount of proceeds received, but if the fairness of the amount of those proceeds is placed in issue and the disposition was to a person related to the secured party, the secured party has the burden of establishing that the amount is not significantly below the range of proceeds that are represented by at least the wholesale value of the collateral.

50.24-6. A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest under which the disposition is made:

(a) takes the cash proceeds free of the security interest or other lien;

(b) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(c) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

50.24-7. Explanation of Calculation of Surplus or Deficiency.

(a) In a consumer transaction, a secured party shall provide the debtor or consumer obligor a reasonably detailed explanation in a record of the manner in which any surplus or deficiency was calculated if the debtor or consumer obligor demands such an explanation or, in any event, ten (10) Tribal business days before commencing an action for a deficiency.

(b) Each debtor or consumer obligor is entitled without charge to one (1) response to a request under this section during any six (6)-month period in which the secured party did not send to the debtor or consumer obligor an explanation as required by this Law. The secured party may require payment of a charge not exceeding twenty-five dollars (\$25) for each additional response.

50.24-8. *Rights of Transferee of Collateral.*

(a) A secured party's disposition of collateral after default:

(1) transfers to a transferee for value all of the debtor's rights in the collateral;

(2) discharges the security interest under which the disposition is made; and

(3) discharges any subordinate security interest or other subordinate lien other than liens which are nondischargable by law.

(b) A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this Law or the requirements of any judicial proceeding.

(c) If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

(1) the debtor's rights in the collateral;

(2) the security interest under which the disposition is made; and

(3) any other security interest or other lien.

50.24-9. *Rights and duties of certain secondary obligors.*

(a) A secondary obligor acquires the rights and becomes obligated to perform the duties

of the secured party after the secondary obligor:

- (1) receives an assignment of a secured obligation from the secured party;
- (2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or
- (3) is subrogated to the rights of a secured party with respect to collateral.

(b) An assignment, transfer, or subrogation described in subsection (a):

- (1) is not a disposition of collateral under 50.23; and
- (2) relieves the secured party of further duties under this Law.

50.24-10. *Transfer of Record or Legal Title.*

(a) Contents of transfer statement. In order to be effective, a transfer statement shall:

- (1) be authenticated by a secured party
- (2) include the name and mailing address of the secured party, debtor, and transferee
- (3) state that
 - (A) the debtor has defaulted in connection with an obligation secured by specified collateral;
 - (B) the secured party has exercised its post-default remedies with respect to the collateral; and
 - (C) by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral.

(b) *Effect of Transfer Statement.* A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the Recording Office or other appropriate office or official, then that entity shall accept the transfer statement; promptly amend its records to reflect the transfer; and if applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) A transfer of the record or legal title to collateral to a secured party is not of itself a disposition of collateral under this Law and shall not of itself relieve the secured party of its duties under this Law.

50.25. **Disposition and Redemption of Collateral**

50.25-1. A secured party may, after default, propose to retain the collateral in full satisfaction of the obligation it secures or, in a transaction other than a consumer transaction, in partial satisfaction of such obligation. Such disposition shall be made within ninety (90) days after taking possession, or within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and signed after default.

(a) *Exception.* A secured party that has taken possession of collateral shall dispose of the collateral pursuant to 50.23 if sixty percent (60%) or more:

- (1) of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or
- (2) of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

50.25-2. *Notification.* The secured party shall send notice of such proposal to the debtor and:

- (a) any person from whom the secured party has received, before the debtor consented to the acceptance, a signed notification of a claim of an interest in the collateral;

(b) any person that, fourteen (14) days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected in a manner that makes such interest reasonably discoverable; and

(c) if the proposal is for partial satisfaction of the obligation, any secondary obligor.

50.25-3. *Conditions to acceptance.* The proposal is not effective unless:

(a) the debtor consents to the acceptance in a record signed after default;

(b) no other person specified in (b), and no other person holding an interest in the collateral subject to the secured party's interest, objects to the acceptance within fourteen (14) Tribal business days after notification was sent;

(c) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance

50.25-4. *Effect of Acceptance.* A secured party's acceptance of collateral pursuant to this section

(a) discharges the obligation to the extent consented to by the debtor;

(b) transfers to the secured party all of the debtor's rights in the collateral;

(c) discharges the security interest that is the subject of the debtor's consent, and any security interest or other lien or interest that is subordinate thereto, even if the secured party accepting the collateral fails to comply with this article.

50.25-5. *Redeeming Collateral.* A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral by tendering fulfillment of all obligations secured by the collateral; as well as the reasonable expenses and attorney's fees related to the application of proceeds of disposition. A redemption may occur at any time before a secured party:

(a) has collected collateral,

(b) has disposed of collateral or entered into a contract for its disposition

(c) has accepted collateral in full or partial satisfaction of the obligation it secures.

50.25-6. *Waivers.*

(a) A debtor or secondary obligor may waive the right to notification of disposition of collateral only by an agreement to that effect entered into and signed after default.

(b) A debtor may waive the right to require mandatory disposition of consumer goods as collateral, only by an agreement to that effect entered into and signed after default.

(c) In a consumer transaction, a debtor or secondary obligor may not waive the right to redeem collateral. In a non-consumer transaction, a debtor or secondary obligor may waive the right to redeem collateral only by an agreement to that effect entered into and signed after default.

50.26. Remedies

50.26-1. If a secured party is not proceeding in accordance with this Law, the Judiciary or court of competent jurisdiction may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

50.26-2. Except as otherwise provided herein, a person is liable for damages in the amount of any loss caused by a failure to comply with this Law, which may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(a) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages for its loss; and

(b) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent (10%) of the

principal amount of the obligation or the time-price differential plus 10 percent (10%) of the cash price.

(c) A debtor whose deficiency is eliminated under 50.26-7 may recover damages for the loss of any surplus.

50.26-3. In addition to any damages otherwise recoverable under this Law; the following shall apply:

(a) the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars (\$500) in each case from a person that:

(1) fails to comply with the additional duties of a secured party having control of an investment account,

(2) fails to comply with the duties of a secured party if an account debtor has been notified of assignment,

(3) files a record that the person is not entitled to file,

(4) fails to file, cause to be filed or send a termination statement as required by this Law,

(5) fails to provide required explanations of calculations of surplus or deficiency, and whose failure is part of a pattern, or consistent with a practice, of noncompliance.

(b) a debtor or consumer obligor may recover five hundred dollars (\$500) in each case from a person that, without reasonable cause, fails to comply with a request for an accounting. Provided that, a recipient of a request which never claimed an interest in the collateral or obligations that are the subject of a request has a reasonable excuse for failure to comply with the request.

50.26-4. If a secured party fails to comply with a request regarding a list of collateral or a statement of account as required by this Law, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

50.26-5. *Action in which deficiency or surplus is in issue.*

(a) *Non-Consumer Transactions.* In an action arising from a non-consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with requirements relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue. However, if the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(2) If a secured party fails to prove that collection, enforcement, disposition, or acceptance was conducted in accordance with this Law, the liability of a debtor or a secondary obligor for a deficiency is subject to setoff for an amount which may be measured by the amount recovered for conversion of collateral. The liability of the debtor or a secondary obligor is calculated on the rebuttable presumption that the proceeds of disposition equal the sum of the secured obligation, expenses, and allowable attorney's fees.

(b) *Consumer transactions.* The limitation of the rules in subsection (a) to transactions other than consumer transactions is intended to leave to the Judiciary the determination of the proper rules in consumer transactions. The Judiciary shall not infer from that

limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

50.26-6. *Limitation on Liability of Secured Party; Liability of Secondary Obligor.*

(a) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Law; and

(2) the secured party's failure to comply with this Law does not affect the liability of the person for a deficiency.

(b) A secured party is not liable because of its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows that the person is a debtor or obligor; the identity of the person; and how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows that the person is a debtor and the identity of the person.

(c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) A secured party is not liable to any person for statutory damages where the collateral is consumer goods, for a failure to comply the requirements of this Law regarding explanations of calculations of surplus or deficiency.

(e) A secured party is not liable for statutory damages where the collateral is consumer goods, more than once with respect to any single secured obligation.

50.26-7. *Attorney's fees in consumer transactions.* If the secured party's compliance with this Law is placed in issue in an action with respect to a consumer transaction:

(a) If the secured party would have been entitled to attorney's fees as the prevailing party, a consumer debtor or consumer obligor prevailing on the issue is entitled to the costs of the action and reasonable attorney's fees.

(b) In other cases, the court may award to a consumer debtor or consumer obligor prevailing on that issue the costs of the action and reasonable attorney's fees.

(c) In determining the attorney's fees, the amount of the recovery on behalf of the prevailing consumer debtor or consumer obligor is not a controlling factor.

Adopted – OBC# _____

IV. FILING SYSTEMS

Purpose of Filing Systems

Secured transaction laws govern transactions in which security interests in personal property or fixtures are created by agreement between a debtor and creditor. Security interests can be either *possessory*, or what could be termed “quasi-possessory,” where the property subject to a security interest, *i.e.*, the *collateral*, is physically held or controlled (such as the case where a broker with which the debtor has an investment account agrees to follow the secured party’s instructions) by the secured party until the debt is paid; or *nonpossessory*, where the creditor does not have physical possession or control of the collateral, but nevertheless retains a legal interest – something short of actual ownership - in the collateral. For nonpossessory security interests, filing in a *central filing system* is the most common way for a creditor to perfect its security interest and to ensure its priority in the collateral as against other creditors and purchasers.

Filing accomplishes two things. First, it puts third parties who may deal with a given debtor on notice that the debtor’s property at issue may be collateral for another debt or debts. Second, it establishes a “first in time” method by which to determine which creditor, if there is more than one, will generally have a prior interest in that collateral. Thus, a filing system establishes a regime of certainty for secured parties. A filing system and the ability to both publish notice of security interests and search for existing security interests are indispensable components of a secured transactions system.

Real Estate Recordings and Secured Transaction (UCC) Filings Compared

Both secured transaction laws and real estate laws provide that to ensure that a creditor’s security interest in property is protected against competing claims, the creditor must file information that will put the public on notice of its interest in the property. However, the regimes for public notice of real estate interests and personal property interests differ. For real estate transactions, the transaction document, *i.e.*, the mortgage or deed of trust, is “recorded” by placing the original document in a recording office. The mortgage or deed of trust is then made available for review for informational purposes to the public. Recording offices are local, typically in a division of a county, town, parish or district office. A mortgage or deed of trust on real estate must normally be recorded in the local recording office for the designated area in which the parcel of real estate is located.

The filing of security interests in personal property are handled differently than real estate recordings. In a secured transaction involving personal property as collateral, the transaction document is the security agreement. The security agreement is roughly the equivalent of a mortgage or deed of trust in a real property transaction. Unlike a real estate recording, however, a secured creditor normally will not file the transaction document itself, *i.e.*, the security agreement, to perfect its nonpossessory security interest. Instead, the creditor will file an initial financing statement, as well as amendments to and continuations or assignments thereof, which together comprise what is called a UCC filing under state law. A financing statement is a partial summary of the transaction that notifies the public that the secured party may have a lien on specified personal property of a particular debtor. In state filing regimes, it is typically the Secretary of State's office that administers the UCC filing office.² The filing office makes this information publicly available. An interested party may search the UCC filing records to determine whether certain personal property of a debtor may be subject to a prior lien or liens.

There are exceptions to the general rules above regarding where to record or file real property and personal property secured interests. Security interests in as-extracted collateral or timber to be cut, and in fixtures or in collateral that is goods that are to become fixtures, are typically required under state law to be filed in the office designated for the recording of a mortgage on the real property involved. The rationale is that these types of personal property are so closely connected or related to the real property that it is reasonable to assume that interested parties would expect to discover information about the collateral in the same location they would search for information about the underlying land. In this regard, real estate recording offices also serve as UCC filing offices.

Other Filing Regimes

State and federal laws create some exceptions to the general rules for where and how to file for some types of personal property in order to establish a secured party's claim or interest in that property. In effect, these laws put the *perfection* of interests in certain assets outside the scope of UCC Article 9. In most states, perfection of an interest in a motor vehicle that is not inventory will be subject to a state certificate-of-title law and will not be covered by the Act. For example, under a state's certificate-of-title law, if a person borrows from a bank to purchase a car, and the bank retains a security interest in the car as collateral to secure the loan, a notation will be put on the car's certificate of title indicating

² In some states, other state agencies or divisions administer the state's central filing system. Other state filing offices include Bureau of Conveyances, Department of Assessments and Taxation, Department of Revenue, Division of Corporations and Commercial Code, and the Department of Financial Institutions, to name a few.

the bank's lien. In some states, assets such as boats, mobile homes and farm tractors are also subject to certificate-of-title laws. Federal law also creates exceptions for the registration of interests in certain types of property. For example, a security interest in an airplane must be registered by filing with the Federal Aviation Administration. Similarly, an interest in a radio transmission tower must be filed with the Federal Communications Commission.

Filing Office; Filer Responsibilities and Requirements

Secured transaction laws, or the rules or regulations promulgated under such laws, set forth the requirements for legally sufficient filings as well as the responsibilities of the filing office and those searching the files. Responsibilities of a filing office are administrative and include, for example, determinations of when filings must be accepted or rejected, what a rejection communication to a filer must include, how the filed information must be maintained, the fees to be charged, and how information must be made available to the public. Requirements for a legally sufficient filing will include the use of specified forms, the correct format and content to identify the debtor, and the content necessary to describe the collateral. The rules, whether specified in the secured transaction law itself or set forth in a separate regulation or administrative rule, are a necessary component of a secured transaction system.

The filing rules that a Tribe should adopt and apply will depend on the filing system it establishes and /or uses. The options are discussed below.

Filing System Options for Enacting Tribes

The Act recognizes that Tribes will have preferences depending on their needs as they pertain to filing systems. In this regard, the Act recognizes three options: (1) a Tribe, by agreement with the state in which the tribal jurisdiction is located, may participate in the state filing system; (2) a Tribe may establish and administer its own filing system; and (3) several Tribes may collaborate to administer a joint, or collaborative, filing system. A Tribe should carefully consider these options to determine which will best suit its needs, recognizing that a filing system is an indispensable component of a secured transaction system.

State Filing System

Creditors that have security interests in personal property under the existing secured transaction laws of a number of tribes file their financing statements with the central filing office of the state in which the Tribe's jurisdiction is located. At least one Tribe has formalized this arrangement by entering into an agreement with the state in which it is located.³ In some cases, tribes have enacted secured transaction laws but have not addressed the crucial filing system component. Creditors taking security interests under these tribal laws typically file with the state in which a Tribe's jurisdiction is located because there is simply no other designated place to file. In other instances, tribal law does in fact designate the state filing office as the location to file but has done so without a formal agency arrangement with the state filing office. These informal practices raise a number of potential issues as to the validity of perfection from such filings, resulting priority among competing creditors, and whether these state filing offices have responsibilities or potential liabilities in connection with these filings, to name but a few.

There are benefits, however, for a Tribe and secured creditors in designating a state filing office as the Tribe's filing office. First, most states have converted at least in part to electronic filing systems. Those that have not are in the process of doing so. The benefits of an electronic filing system are significant in that both filings and searches can be done on-line, thus realizing significant time and cost savings for potential lenders and other creditors.

For many tribes, the cost of implementing a central filing system may be prohibitive. To take advantage of a state's filing system and thus avoid the cost of implementing and administering its own is desirable. Thus, a Tribe desiring to pursue this course should enter into an agreement with the state in which its jurisdiction is located to serve as its filing office. By entering into a written agreement with the state for this purpose, the potential legal issues noted above can be avoided. Since it would be important that the Tribe's filing rules be consistent with the state's filing rules, a couple of options may be considered. First, the Tribe could adopt Section 2 of the Model Filing System Regulation (Exhibit B) by incorporation into Part 5 of the Act. Second, the Tribe could agree to adopt, or incorporate by reference into its secured transactions law, Part 5 only of the state's Article 9 (dealing with filing), and any applicable administrative filing rules and/or regulations (modified where

³ *Joint Powers Agreement between South Dakota Secretary of State and Cheyenne River Sioux Tribe.* Under this agreement, the Cheyenne River Sioux Tribe has agreed to adopt verbatim, subject to several carve-outs, the State of South Dakota's UCC Article 9 as tribal law. In return, the South Dakota Secretary of State's Office serves as the designated filing office for security interest filings under Cheyenne River Sioux Tribal law. See www.sdsos.gov/ucc/.

necessary). If a Tribe chooses this option and the state in which it is located is agreeable, a model Memorandum of Understanding is set forth as Exhibit A for the Tribe's and state's mutual consideration. In addition, the Tribe should add the following provision to MTA 9-501(g) at the end:

"The tribal legislative body hereby delegates to [name of appropriate authority pursuant to written agreement with the designated state, or the name of appropriate authority pursuant to a written agreement setting up a collaborative administration] to administer Part 5 of this Act."

Tribal Filing System

A Tribe may wish to implement its own central filing system. Such a system may be paper-based, electronic, or both. A paper-based system will be the most cost effective to set up initially, and would be sufficient until such time that the number of filings and searches would be difficult to manage manually. There are several excellent resources that a Tribe may consult to set up and administer a filing office.⁴ It will, of course, require trained staff that understand the UCC filing and search processes, and the Tribe will need to establish a filing and search fee structure. The Committee recommends if the Tribe desires to set up its own system, that it utilize the national standard financing statement forms (including financing statement addendums, amendments and corrections) to facilitate secured party use.⁵ These forms are standard throughout the country and are accepted in all jurisdictions' central filing offices. Standardization has been encouraged to facilitate the ease of commercial transactions across jurisdictional boundaries. See Exhibit B: Model Tribal Filing System Regulation.

Tribal Consortium Filing System

Finally, a Tribe may consider a collaborative effort with several other tribes to establish and administer a single filing system on behalf of the participating tribes. This would allow the

⁴*International Association of Commercial Administrators (IACA).* The Secured Transaction Section (STS) of IACA provides valuable information to those who administer a personal property secured transaction registry function. IACA has had a significant role in shaping the filing provisions in the revision of Article 9 of the Uniform Commercial Code. In addition, IACA develops educational programs for filing system administrators. Its website may be found at www.iaca.org. Under its Documents section, a STS subsection may be found which contains pdf files of all standard financing statement and other UCC filing forms, in addition to various guidelines.

In addition, Ernst Publishing Co. presents a wealth of information and resources for UCC filing office administrators such as a subscription service entitled "The UCC Revised Article 9 Alert," which hosts articles that explain practical aspects of Revised Article 9 for those who prepare, file and search UCC financing and other statements. Its website may be found at www.ernstpublishing.com.

implementation and administrative costs of a central filing system to be shared. Recommended is a requirement that all participating tribes adopt the Act, modified as each Tribe deems necessary except for Part 5 (Filing). It is recommended that each participating Tribe be required to adopt Part 5, as modified mutually and uniformly by the tribal consortium, so as to maintain consistency in the filing provisions among all participants. In addition, any related filing system administrative rules or regulations should be applied to all participating tribes.

It would be advisable for participating tribes to enter into an agreement that states the terms and conditions of participation. Agreement terms might include, but not necessarily be limited to, responsibilities for administration, cost- and revenue-sharing, applicability of filing rules or regulations, process of amending such rules and/or regulations, limitations on liability, retention and disposition of records, termination of participation, sovereign immunity of participating tribes, choice of law and venue governing disputes arising under the participation agreement, and filing fee structure.

⁵ The standard forms are attached to this Guide as part of Section VII, Exhibit B, and may also be downloaded from IACA's website (see footnote 4). Links to the standard forms may also be found on Ernst Publishing Co.'s website.

***Compact
between
Chippewa Cree Tribe of Rocky Boy's Reservation
and
Office of the Montana Secretary of State
for a
Joint Sovereign Filing System***

This Compact is made and entered into this 4 day of APRIL 2012, between the Office of the Montana Secretary of State whose address is State Capitol Building, Rm. 260, Helena, MT 59620, (hereinafter the "Office of the Secretary") and Chippewa Cree Tribe of Rocky Boy's Reservation, whose address is R.R. 1 Box 544, Box Elder, MT 59521 (hereinafter the "Tribe").

PURPOSE OF AGREEMENT

WHEREAS, pursuant to Mont. Code Ann. § 30-9A-501, the Office of the Secretary is the designated Uniform Commercial Code ("UCC") central filing office for the State of Montana for the filing of financing statements assignments, continuations, amendments, partial releases and terminations of UCC documents for which central filing is required, as well as the place of filing for Effective Financing Statements ("EFSs") under the Federal Food Security Act of 1985, 7 U.S.C. §1631, and its implementing regulations, 9 CFR Part 205; and

WHEREAS, the Chippewa Cree Tribal Secured Transactions Code of the Chippewa Cree Law and Order Code (hereinafter the "Tribal Act") was adopted in substantial conformance with the Model Tribal Secured Transactions Act as promulgated by the National Conference of Commissioners on Uniform Laws in 2005, and is consistent in its core principles with Article 9 of the Uniform Commercial Code as revised by the National Conference of Commissioners on Uniform State Laws in 1999 and as adopted by the State of Montana in 2001, and any subsequent amendments thereto; and

WHEREAS, Section 9-501 of the Tribal Act provides that, except with respect to certain real estate related collateral (as-extracted collateral, timber and fixtures), the place to file a financing statement to perfect a security interest governed by the Tribal Act is the Office of the Montana Secretary of State; and

WHEREAS, the Tribe wishes to engage the Office of the Secretary to provide a central filing system ("Central Filing System") in order to serve as the place (the "Central Filing Office") for lenders to file financing statements to perfect security interests in personal property collateral that arise under the Tribal Act, and to provide certain administrative services relating thereto; and

WHEREAS, the Office of the Secretary has agreed to serve as the location and administrator for lenders to perfect a security interest in personal property collateral that arise under the Tribal Act; and

WHEREAS, the Office of the Secretary has agreed to provide the Central Filing System and serve as the Central Filing Office, and to provide certain administrative services relating thereto; and

WHEREAS, the Office of the Secretary and the Tribe have expressed a desire to work together to support commercial development by the Tribe, which may include additional administrative services to be provided by the Office of the Secretary through future compacts or agreements, such as centralized filing of business entity documents, assumed business names, and similar records.

IN FURTHERANCE THEREOF, the Office of the Secretary and the Tribe agree that the Office of the Secretary shall provide the Central Filing System and serve as the Central Filing Office pursuant to the terms and conditions set forth herein.

RESPONSIBILITIES OF TRIBE

1. The Tribe agrees to keep on its books a secured transactions law, such as the Tribal Act, consistent in its core principles with UCC Revised Article 9, Title 30, Chapter 9A, Mont. Code Ann., as adopted by the State of Montana.
2. As it has in Section 9-503 of the Tribal Act, the Tribe agrees to adopt verbatim and incorporate by reference into the Tribal Act the rules, procedures and requirements for filing specified in Title 30, Chapter 9A, Part 5 of the Montana Code Annotated, and Title 44, Chapters 2 and 6 of the Administrative Rules of Montana relating thereto, as such statutes and rules may be amended from time to time (the "Montana UCC Filing Provisions") and hereby acknowledges and agrees to the scope of the Office of the Secretary's filing responsibilities contained in the Montana UCC Filing Provisions.
3. The Tribe agrees that the filing requirements and fees will always be identical under state and tribal UCC law so that any creditor, who wishes to perfect a security interest under either state or tribal law, or both, will be dealing with identical rules concerning filing requirements and fees.

RESPONSIBILITIES OF THE OFFICE OF THE SECRETARY

4. The Office of the Secretary agrees to serve as the central filing office for the purpose of receiving filings under the Tribal Act, in the same manner as it performs these filing duties under the Montana UCC filing provisions, and make available the option of electronic filing under the same terms and conditions that electronic filing is available to lenders who file under state law. The parties agree that the duties undertaken by the Office of the Secretary pursuant to this Compact are ministerial in nature and the parties further agree that all filings made under the Tribal Act with the Office of the Secretary pursuant to this Compact are tribal records and the property of the Tribe.
5. The Office of the Secretary shall have the right to reject or remove improper or fraudulent liens tendered under the Tribal Act to the same extent as provided in Mont. Code Ann. § 30-9A-420, as enacted or amended.

6. The Tribe shall prepare a form of financing statement to be used for filing with the Secretary which is readily distinguishable from the financing statement forms used under the UCC and shall assist the Secretary in making such forms available, together with public information concerning the Tribal Act and the provisions of this Compact.
7. The Office of the Secretary agrees that it will provide timely notice to the Tribe of any anticipated and final amendments to the Montana UCC Filing Provisions on July 1 of each year during the term of this Compact.
8. As soon as practicable after the effective date of this Compact, the Office of the Secretary shall update its website to add a menu item specific to the Tribe's Secured Transaction Act and named "Chippewa Cree Tribe UCC."

DURATION

9. Subject to approval of the Attorney General of Montana as required in the State-Tribal Cooperative Agreements Act, Mont. Code Ann. §§ 18-11-101, *et seq.*, this Compact shall be effective for five years commencing on the date of the Attorney General's actual or statutory approval, as provided in Mont. Code Ann. § 18-11-105, and may be renewed by the parties thereafter for additional five-year periods, unless sooner terminated pursuant to this Compact.

TERMINATION

10. This Compact may be terminated by either party hereto without cause upon 90-days' written notice.
11. Notwithstanding the provisions of the above paragraphs, the obligations of the Office of the Secretary under this Compact depend upon the continued legislative authority under state law to operate the Central Filing System and perform the duties and services contemplated herein. This Compact will automatically terminate if the Legislature of the State of Montana removes the Office of the Secretary's authority or fails to appropriate funds or grant expenditure authority sufficient to cover the costs and expenses necessary to carry out the duties hereunder.
12. This Compact may be terminated upon 30-days' written notice by any party upon the substantial failure by the other party to fulfill its obligations hereunder. The defaulting party shall have 30-calendar days from receipt of notice to cure such default. If such default is not timely cured, termination shall be effective 30-days after receipt of the initial notice by the defaulting party.
13. The Office of the Secretary agrees to continue to perform its duties hereunder during any notice period, up to and including the date of termination. After the date of termination, the Office of the Secretary is unconditionally relieved from any and all duties, responsibilities and obligations hereunder, with the exception of the preservation and disposition of records pursuant to Paragraph 14.

RECORD PRESERVATION AND DISPOSITION UPON TERMINATION

14. The Office of the Secretary agrees to preserve all filings made pursuant to the Tribal Act ("Tribal Act Filings") that are received in the Central Filing Office under this Compact in exactly the same manner as it preserves UCC filings made and received under the Montana UCC Filing Provisions. If during the term of this Compact the Office of the Secretary in any manner upgrades or otherwise changes the method of preservation of the UCC filings under the Montana UCC Filing Provisions, the Office of the Secretary agrees to perform the same upgrades and changes as to Tribal Act Filings. In the event of termination of this Compact, the Office of the Secretary agrees, at the Tribe's sole option, to deliver duplicate copies of all records then actively maintained hereunder (the "Tribal Act Records") to the Tribe. In any event, the Office of the Secretary will continue to preserve the Tribal Act Records in exactly the same manner as it would preserve similar state records for the requisite period then in effect. In addition, the Office of the Secretary agrees to provide to the Tribe, at the Tribe's expense, copies of any magnetically stored Tribal Act Records together with both print-out and available digital copies of such Tribal Act Records as are then available in electronic form. The Tribe agrees to pay the actual costs of providing such records.

COURT APPEARANCE BY SECRETARY OF STATE

15. The Office of the Secretary, agrees to respond to subpoenas issued by the Chippewa Cree Tribal Court for the purpose of giving testimony relative to authentication of Tribal Act Records maintained by the Office of the Secretary hereunder. The Tribe agrees to reimburse the reasonable expenses incurred by the Office of the Secretary in such cases. Expenses shall be deemed reasonable if they are comparable to those paid in the event a representative of the Office of the Secretary were appearing in state or federal court under similar circumstances.
16. The Tribe agrees that copies of Tribal Act Records under this Compact that are certified by the Secretary or the Secretary's designee as true copies shall be admissible as evidence in Chippewa Cree Tribal Court without further foundation, and notwithstanding any tribal law of evidence that may be inconsistent with this provision.

FILING AND SERVICE FEES

17. The Tribe agrees that the Office of the Secretary, as compensation for the duties performed hereunder, may collect and retain all filing and related service fees for providing Central Filing Services and serving as the Central Filing Office for filings made under the Tribal Act. The Office of the Secretary agrees that such fees shall be the same as those required under the Montana UCC Filing Provisions.

SOVEREIGN IMMUNITY; TRIBAL JURISDICTION

18. Nothing in this Compact shall be construed as a waiver of sovereign immunity of either the Tribe or the State of Montana. Furthermore, nothing in this Compact or the provision of services hereunder shall be construed as limiting in anyway or

otherwise infringing upon the jurisdiction of the Tribe's courts or application of the Tribe's laws.

NO LIABILITY FOR PERFORMANCE

19. The Tribe agrees that it will not bring any legal action or claim against the Office of the Secretary arising out of or in any way connected with the Office of the Secretary's performance of the services set forth hereunder. Furthermore, the Tribe agrees to hold the Office of the Secretary harmless and indemnify and defend the Office of the Secretary from any and all third party claims arising out of or in any way connected with the Office of the Secretary's performance of the services set forth hereunder; provided, however, that nothing herein requires the Tribe to hold the Office of the Secretary harmless from or defend it against third party claims arising solely from the errors or omissions of the Office of the Secretary.

ASSIGNMENTS; AMENDMENTS; NOTICES

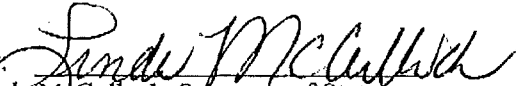
20. This Compact, or any part thereof, shall not be assigned, transferred, or disposed of to any person, firm, corporation, or other entity. This Agreement may not be amended or modified except in a writing signed by the Secretary or the Secretary's designee and the Tribe.
21. Any notice to be given under the terms of this Agreement shall be in writing and shall be served by certified mail, return receipt requested, directed to the party to be served at the following address:

Office of the Secretary: Montana Office of the Secretary of State
State Capitol Building, Rm. 260
Helena, MT 59620
Attention: Business Services Division

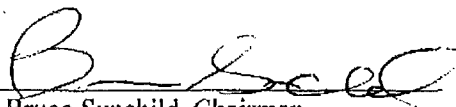
Tribe: Chippewa Cree Tribe
RR1 Box 544
Box Elder, MT 59521
Attention: Chairman Sunchild

A party wishing to change its designated address shall do so by notice in writing to the other party. Notice shall be deemed complete when received by the other party.

Montana Office of the Secretary of State

By: 
Linda McCulloch, Secretary of State

Chippewa Cree Tribe


Bruce Sunchild, Chairman

Approved pursuant to Mont. Code Ann. §§ 18-11-101, *et seq.*:

Attorney General of Montana

By:



Date:

April 3, 2012

***Compact
between
Crow Tribe of Indians/Apsaalooke Nation
and
Office of the Montana Secretary of State
for a
Joint Sovereign Filing System***

This Compact is made and entered into this 3 day of March 2012, between the Office of the Montana Secretary of State whose address is State Capitol Building, Rm. 260, Helena, MT 59620, (hereinafter the "Office of the Secretary") and Crow Tribe of Indians/Apsaalooke Nation, whose address is Bacheeitch Avenue, P.O. Box 159, Crow Agency, MT 59022 (hereinafter the "Tribe").

PURPOSE OF AGREEMENT

WHEREAS, pursuant to Mont. Code Ann. § 30-9A-501, the Office of the Secretary is the designated Uniform Commercial Code ("UCC") central filing office for the State of Montana for the filing of financing statements assignments, continuations, amendments, partial releases and terminations of UCC documents for which central filing is required, as well as the place of filing for Effective Financing Statements ("EFSs") under the Federal Food Security Act of 1985, 7 U.S.C. §1631, and its implementing regulations, 9 CFR Part 205; and

WHEREAS, the Tribe has enacted the Crow/Apsaalooke Tribal Secured Transactions Act in Title 15, Chapter 9 of the Crow Law and Order Code (hereinafter the "Tribal Act") which was adopted in substantial conformance with the Model Tribal Secured Transactions Act as promulgated by the National Conference of Commissioners on Uniform Laws in 2005, and is consistent in its core principles with Article 9 of the Uniform Commercial Code as revised by the National Conference of Commissioners on Uniform State Laws in 1999 and as adopted by the State of Montana in 2001, and any subsequent amendments thereto; and

WHEREAS, Section 15-9-501 of the Tribal Act provides that, except with respect to certain real estate related collateral (as-extracted collateral, timber and fixtures), the place to file a financing statement to perfect a security interest governed by the Tribal Act is the Office of the Montana Secretary of State; and

WHEREAS, the Tribe wishes to engage the Office of the Secretary to provide a central filing system ("Central Filing System") in order to serve as the place (the "Central Filing Office") for lenders to file financing statements to perfect security interests in personal property collateral that arise under the Tribal Act, and to provide certain administrative services relating thereto; and

WHEREAS, the Office of the Secretary has agreed to serve as the location and administrator for lenders to perfect a security interest in personal property collateral that arise under the Tribal Act; and

WHEREAS, the Office of the Secretary has agreed to provide the Central Filing System and serve as the Central Filing Office, and to provide certain administrative services relating thereto; and

WHEREAS, the Office of the Secretary and the Tribe have expressed a desire to work together to support commercial development by the Tribe, which may include additional administrative services to be provided by the Office of the Secretary through future compacts or agreements, such as centralized filing of business entity documents, assumed business names, and similar records.

IN FURTHERANCE THEREOF, the Office of the Secretary and the Tribe agree that the Office of the Secretary shall provide the Central Filing System and serve as the Central Filing Office pursuant to the terms and conditions set forth herein.

RESPONSIBILITIES OF TRIBE

1. The Tribe agrees to keep on its books a secured transactions law, such as the Tribal Act, consistent in its core principles with UCC Revised Article 9, Title 30, Chapter 9A, Mont. Code Ann., as adopted by the State of Montana.
2. As it has in Section 15-9-503 of the Tribal Act, the Tribe agrees to adopt verbatim and incorporate by reference into the Tribal Act the rules, procedures and requirements for filing specified in Title 30, Chapter 9A, Part 5 of the Montana Code Annotated, and Title 44, Chapters 2 and 6 of the Administrative Rules of Montana relating thereto, as such statutes and rules may be amended from time to time (the "Montana UCC Filing Provisions") and hereby acknowledges and agrees to the scope of the Office of the Secretary's filing responsibilities contained in the Montana UCC Filing Provisions.
3. The Tribe agrees that the filing requirements and fees will always be identical under state and tribal UCC law so that any creditor who wishes to perfect a security interest under either state or tribal law, or both, will be dealing with identical rules concerning filing requirements and fees.

RESPONSIBILITIES OF THE OFFICE OF THE SECRETARY

4. The Office of the Secretary agrees to serve as the central filing office for the purpose of receiving filings under the Tribal Act, in the same manner as it performs these filing duties under the Montana UCC filing provisions, and make available the option of electronic filing under the same terms and conditions that electronic filing is available to lenders who file under state law. The parties agree that the duties undertaken by the Office of the Secretary pursuant to this Compact are ministerial in nature and the parties further agree that all filings made under the Tribal Act with the Office of the Secretary pursuant to this Compact are tribal records and the property of the Tribe.
5. The Office of the Secretary shall have the right to reject or remove improper or fraudulent liens tendered under the Tribal Act to the same extent as provided in Mont. Code Ann. § 30-9A-420, as enacted or amended.

6. The Tribe shall prepare a form of financing statement to be used for filing with the Secretary which is readily distinguishable from the financing statement forms used under the UCC and shall assist the Secretary in making such forms available, together with public information concerning the Tribal Act and the provisions of this Compact.
7. The Office of the Secretary agrees that it will provide timely notice to the Tribe of any anticipated and final amendments to the Montana UCC Filing Provisions on July 1 of each year during the term of this Compact.
8. As soon as practicable after the effective date of this Compact, the Office of the Secretary shall update its website to add a menu item specific to the Tribe's Secured Transaction Act and named "Crow/Apsaalooke Tribe UCC."

DURATION

9. Subject to approval of the Attorney General of Montana as required in the State-Tribal Cooperative Agreements Act, Mont. Code Ann. §§ 18-11-101, *et seq.*, this Compact shall be effective for five years commencing on the date of the Attorney General's actual or statutory approval, as provided in Mont. Code Ann. § 18-11-105, and may be renewed by the parties thereafter for additional five-year periods, unless sooner terminated pursuant to this Compact.

TERMINATION

10. This Compact may be terminated by either party hereto without cause upon 90-days' written notice.
11. Notwithstanding the provisions of the above paragraphs, the obligations of the Office of the Secretary under this Compact depend upon the continued legislative authority under state law to operate the Central Filing System and perform the duties and services contemplated herein. This Compact will automatically terminate if the Legislature of the State of Montana removes the Office of the Secretary's authority or fails to appropriate funds or grant expenditure authority sufficient to cover the costs and expenses necessary to carry out the duties hereunder.
12. This Compact may be terminated upon 30-days' written notice by any party upon the substantial failure by the other party to fulfill its obligations hereunder. The defaulting party shall have 30-calendar days from receipt of notice to cure such default. If such default is not timely cured, termination shall be effective 30-days after receipt of the initial notice by the defaulting party.
13. The Office of the Secretary agrees to continue to perform its duties hereunder during any notice period, up to and including the date of termination. After the date of termination, the Office of the Secretary is unconditionally relieved from any and all duties, responsibilities and obligations hereunder, with the exception of the preservation and disposition of records pursuant to Paragraph 14.

RECORD PRESERVATION AND DISPOSITION UPON TERMINATION

14. The Office of the Secretary agrees to preserve all filings made pursuant to the Tribal Act ("Tribal Act Filings") that are received in the Central Filing Office under this Compact in exactly the same manner as it preserves UCC filings made and received under the Montana UCC Filing Provisions. If during the term of this Compact the Office of the Secretary in any manner upgrades or otherwise changes the method of preservation of the UCC filings under the Montana UCC Filing Provisions, the Office of the Secretary agrees to perform the same upgrades and changes as to Tribal Act Filings. In the event of termination of this Compact, the Office of the Secretary agrees, at the Tribe's sole option, to deliver duplicate copies of all records then actively maintained hereunder (the "Tribal Act Records") to the Tribe. In any event, the Office of the Secretary will continue to preserve the Tribal Act Records in exactly the same manner as it would preserve similar state records for the requisite period then in effect. In addition, the Office of the Secretary agrees to provide to the Tribe, at the Tribe's expense, copies of any magnetically stored Tribal Act Records together with both print-out and available digital copies of such Tribal Act Records as are then available in electronic form. The Tribe agrees to pay the actual costs of providing such records.

COURT APPEARANCE BY SECRETARY OF STATE

15. The Office of the Secretary, agrees to respond to subpoenas issued by the Crow Tribal Court for the purpose of giving testimony relative to authentication of Tribal Act Records maintained by the Office of the Secretary hereunder. The Tribe agrees to reimburse the reasonable expenses incurred by the Office of the Secretary in such cases. Expenses shall be deemed reasonable if they are comparable to those paid in the event a representative of the Office of the Secretary were appearing in state or federal court under similar circumstances.
16. The Tribe agrees that copies of Tribal Act Records under this Compact that are certified by the Secretary or the Secretary's designee as true copies shall be admissible as evidence in Crow Tribal Court without further foundation, and notwithstanding any tribal law of evidence that may be inconsistent with this provision.

FILING AND SERVICE FEES

17. The Tribe agrees that the Office of the Secretary, as compensation for the duties performed hereunder, may collect and retain all filing and related service fees for providing Central Filing Services and serving as the Central Filing Office for filings made under the Tribal Act. The Office of the Secretary agrees that such fees shall be the same as those required under the Montana UCC Filing Provisions.

SOVEREIGN IMMUNITY; TRIBAL JURISDICTION

18. Nothing in this Compact shall be construed as a waiver of sovereign immunity of either the Tribe or the State of Montana. Furthermore, nothing in this Compact nor the provision of services hereunder shall be construed as limiting in anyway

or otherwise infringing upon the jurisdiction of the Tribe's courts or application of the Tribe's laws.

NO LIABILITY FOR PERFORMANCE

19. The Tribe agrees that it will not bring any legal action or claim against the Office of the Secretary arising out of or in any way connected with the Office of the Secretary's performance of the services set forth hereunder. Furthermore, the Tribe agrees to hold the Office of the Secretary harmless and indemnify and defend the Office of the Secretary from any and all third party claims arising out of or in any way connected with the Office of the Secretary's performance of the services set forth hereunder; provided, however, that nothing herein requires the Tribe to hold the Office of the Secretary harmless from or defend it against third party claims arising solely from the errors or omissions of the Office of the Secretary.

ASSIGNMENTS; AMENDMENTS; NOTICES

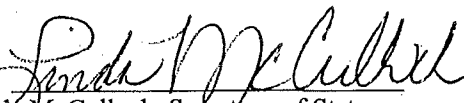
20. This Compact, or any part thereof, shall not be assigned, transferred, or disposed of to any person, firm, corporation, or other entity. This Agreement may not be amended or modified except in a writing signed by the Secretary or the Secretary's designee and the Tribe.
21. Any notice to be given under the terms of this Agreement shall be in writing and shall be served by certified mail, return receipt requested, directed to the party to be served at the following address:

Office of the Secretary: Montana Office of the Secretary of State
State Capitol Building, Rm. 260
Helena, MT 59620
Attention: Business Services Division

Tribe: Crow Tribe of Indians/Apsaalooke Nation
Bacheeitché Avenue
P.O. Box 159
Crow Agency, MT 59022
Attention: Chairman, Executive Branch

A party wishing to change its designated address shall do so by notice in writing to the other party. Notice shall be deemed complete when received by the other party.

Montana Office of the Secretary of State

By: 
Linda McCulloch, Secretary of State

Crow Tribe Of Indians/
Apsaalooke Nation



Cedric Black Eagle, Chairman

Approved pursuant to Mont. Code Ann. §§ 18-11-101, *et seq.*:

Attorney General of Montana

By: *Ali Borington*
for Steve Bullock

Date: *03/15/12*, 2012

August 19, 2015

Below is the LOC priority list that the LOC submitted to the 2/11/15 OBC meeting. Based on this list, the OBC took the following action: Motion by Lisa Summers to accept the Legislative Operating Committee priority list, seconded by Trish King. Motion carried unanimously. Note: The following were suggested priority items: Organizational Restructure Regulations (Trish King), Membership Ordinance (Lisa Summers), and Fit for Duty Regulations (Melinda J. Danforth). A “second tier” priority list was also suggested.

The LOC re-evaluated the priority list on June 17, 2015 and made several changes. This list incorporates those changes.

(Highlighted portions indicates that LOC work is complete; however, item is still awaiting consideration/approval)

GTC DIRECTIVES

Budget Management and Control Law

Summary: Budget Management and Control Law was deferred to the OBC by the GTC. The request was to develop a law to provide a consistent manner to govern the Tribal budget process, establish a procedural framework and oversee Tribal expenditures.

Next Steps: Continue to draft the Law

GTC Meetings Law

Summary: Develop a new law to govern the scheduling and conducting of GTC meetings, including: a standard agenda format and a code of conduct for those in attendance; outlining the duties of those preparing and assisting with GTC meetings, and establishing how petitions would be processed.

Next Steps: GTC deferred to LOC to make changes and hold public meetings.

Petition: Child Care Department Consumer Complaint Policy

Next Steps: Draft deferred to LRO for redrafting

Petition: Constitution Amendments in Regards to Members

Next Steps: Analysis accepted by OBC on October 22, 2014; Tribal Secretary is to bring back a final recommendation when ready. LOC to review memo regarding membership sustainability

Petition: Cornelius-4 Resolutions (Investigative 7 Gens, 7 Gens Return Money, Freedom of Press, Impose Tax on OBC)

Next Steps: Update to OBC due August 12, 2015; SOEs due August 24, 2015

Petition: Genskow- 3 Resolutions (OBC Accountability, Repeal Judiciary and Open Records Law)

Next Steps: Analysis submitted to OBC on June 24, 2015; awaiting GTC consideration

Petition: Genskow- 4 Resolutions (Budget Cuts, Swimming Lessons, GTC Directives and Home Repairs for Elders)

*items the OBC suggested be priorities

August 19, 2015

Next Steps: Analyses submitted, waiting for GTC consideration

Petition: Genskow-6 Resolutions (GTC Meetings, Fee to Trust Applications, Elder Services Program, Recording OBC Sub-Committee meetings, Chain of Command System, Allocation of Unclaimed Per Capita Payments)

Next Steps: Analysis accepted by OBC on April 22, 2015; awaiting GTC consideration

Petition: Judiciary Support System

Next Steps: Analysis accepted by OBC on November 26, 2014; item was presented at July 6, 2015 GTC meeting but was tabled

Petition: Powless-Per Capita Payments

Next Steps: Update to OBC due August 12, 2015; SOEs due August 24, 2015

OBC DIRECTIVES

Back Pay Policy Amendments

Summary: Amendments to the Back Pay Policy were proposed by the OBC Officers. The OBC met to consider a settlement proposal for a direct report and during the review of the settlement, 2 issues were discovered: 1) Article 4-1 (g) (1)- if an employee is being reinstated for employee health care benefits as if they were never terminated, the employee should be mandated to reimburse the Tribe for any CHS claims they may have had during the time they were off of work and 2) Article 4-1 (g) (1)- this is unclear how to apply this section as it relates to terminations.

Next Steps: Begin drafting amendments to the Back Pay Policy to clarify Article 4-1 (g)(1)

Comprehensive Policy Governing Boards, Committees and Commissions Amendments

Summary: Clarify the appointment process, include language on what happens when a publishing notice mistake is made and consider the following: prohibit individuals on service on multiples boards, committees and commissions; set term limits and prohibit Tribal employees from serving on boards, committees or commissions.

Next Steps: LRO is making amendments to the draft based on the work meeting held on June 8, 2015; draft will be presented to the LOC on August 19, 2015

Furlough Policy

Summary: Develop a permanent policy that allows for furloughs.

Next Steps: Awaiting SOPs from HRD then forward to OBC for consideration.

Higher Education

Summary: The LOC was directed to look at codifying the rules created by the Higher Education Office, which currently governs how Higher Ed disburses funding in accordance with GTC directives.

Next Steps: LOC to review draft and consider forwarding for analysis

August 19, 2015

Flag Code

Summary: A Code that includes: protocol for those who oversee flag responsibilities, identify who the authority to lower the flag to half-staff, determine the height and position of the Tribal Flag as compared to the US Flag, etc.

Next Steps: LOC to review draft and consider forwarding for analysis

LOC PRIORITIES (based on June 17, 2015 LOC meeting)

Children's Code

Summary: Develop a Code which would enable the Tribe to take jurisdiction of child welfare matters involving Tribal children.

Next Steps: Make changes to draft

Code of Ethics Law Amendments

Summary: Seeks to amend the current Code of Ethics to strengthen accountability of employees, elected officials and appointed officials.

Next Steps: Meet with sponsor and determine changes to the draft

Employment Law

Summary: Develop a law that may replace the Personnel Policies and Procedures

Next Steps: Waiting on HRD to send rules pertaining to the Employment Law and continue working with Sponsor on changes to the draft

Membership Ordinance

Summary: Trust/Enrollment Department requested amendments to the Ordinance to include an individual's New York Oneida blood and Oneida of the Thames blood when determining blood quantum for Tribal membership.

Next Steps: Wait until the Sustain Oneida initiative gathers information and the Trust/Enrollment Department decide on how to proceed or make possible changes based on the Petition: Constitution Amendments in regard to Membership

Removal Law Amendments

Summary: Give the OBC the ability to remove elected members of boards, committees and commissions upon petition.

Next Steps: Making changes to the draft based on LOC's consideration of the public meeting comments, draft will be brought back to August 19, 2015 LOC meeting

Rulemaking Law

Summary: Develop a new Law in order to have a consistent process for Tribal agencies that have been granted rulemaking authority under Tribal laws to adopt of administrative rules.

Next Steps: Sponsor is reviewing draft

Sanctions and Penalties Law

Summary: Proposal for a consistent process that would provide for members of the OBC and other boards, committees and commissions to face sanctions for misconduct.

*items the OBC suggested be priorities

August 19, 2015

Next Steps: Research how this item affects the Code of Ethics, Removal Law and Comprehensive Policy Governing Boards, Committees and Commissions and decide to either combine this item with one or more of the mentioned legislation or continue to work on this item separately

Tribal Hearing Bodies/Administrative Court

Summary: This was a request for the LRO to conduct research on Tribal Boards, Committees and Commissions to find out which are also hearing bodies and where the hearing body authority comes from.

Next Steps: An action plan is due to the OBC by August 12, 2015

Emergencies

Administrative Procedures Act Emergency Amendments

Summary: The APA was repealed by GTC on March 1, 2015; however, the APA housed rules governing how Tribal hearing bodies conduct their hearings. A new law was created on an emergency basis which provides procedures for Tribal boards, committees and commission that do not have procedures in place under other Tribal law, to conduct hearings for disputes arising under Tribal law.

Expires: September 1, 2015 and can be extended for an additional 6 months. Administrative Court may have an effect on APA.

Election Law Emergency Amendments

Summary: The Election Law was amended on an emergency basis to lower the voting age to 18 and change the “Oneida Tribe of Indians of Wisconsin” to “Oneida Nation”.

Next Steps: Emergency amendments expire December 28, 2015 and can be extended for an additional 6 months. Permanent considerations include amending the Law to prohibit Tribal members from running for more than one seat per election and serving on more than one board, committee or commission; add enforcement provisions for campaign violations; streamline the role of Election Board, require a Milwaukee polling site; add provisions regarding election observations and clarify the referendum process.

ONGO Emergency Amendments

Summary: ONGO was amended on an emergency basis in order to comply with the National Indian Gaming Commission regulations. These amendments went into effect on November 14, 2014 and have been extended for an additional six months on May 1, 2015. Emergency Amendments expire November 1, 2015 and permanent amendments are currently being made. Permanent amendments have been incorporated into the ONGO.

Next Steps: Public meeting was held on July 30, 2015

Public Use of Tribal Land Emergency Amendments

Summary: The Public Use of Land was amended on an emergency basis to allow ERB to prescribe permissible and prohibited uses for tribal lands that is designated as Oneida Community Access, Oneida Tribal Member Access or Open Access to allow for the enforcement of prescriptions on such lands.

August 19, 2015

Next Steps: Emergency Amendments expire January 8, 2016 and can be extended for an additional 6 months

ACTIVE FILES LIST

Agriculture Law

Summary: Consider legislation that would enable the Tribe to identify agricultural products that can be grown on the Reservation.

Next Steps: Begin working on a draft.

Audit Committee Bylaws

Summary: The previous LOC deferred a draft of the Bylaws to the Audit Committee for review and were awaiting a response when the term ended.

Next Steps: Draft was sent to the Audit Committee for review.

Audit Law Amendments

Summary: The Audit Committee requested establishing a standard requirement for correcting high risk findings. The Committee also requested that the OBC clarify roles and responsibilities related to Audit issue interpretations and resolutions, including: who is the primary authority to determine whether audit issues are pursued or closed, who can enforce the need for management action and what process should be adopted to achieve results so past audits can be resolved and closed.

Next Steps: LRO and sponsor discussed changes to Law, changes are being developed and will be brought to the LOC when ready.

Capping Damages and Awards from the Judicial System

Summary: Develop legislation that would cap damages and awards that can be rendered by the Judicial System

Next Steps: Review proposed draft and either continue work on the draft or create a new draft

Cemetery Law Amendments

Summary: Correct the name of the Cemetery to reflect the Resolution which changed the name by the Land Commission on May 11, 2015. Identifying who is responsible for the maintenance may also change.

Next Steps: Begin making amendments to the Law.

Community Support Fund Policy Amendments

Summary: There was a discrepancy between the adopting resolution and Policy. The Policy is being revised to not require someone who receives assistance from the Community Support Fund to cost share if they are at or below the federal poverty guidelines.

Next Steps: The Policy will be returning to the LOC on August 19, 2015

Election Board Bylaws Amendments

Summary: The Election Board requested amendments be made to their Bylaws per the current Election Law and previous GTC action.

August 19, 2015

Next Steps: Review report from Sponsor

Employee Advocacy Law

Summary: Develop a new Law that formally codifies the rules and requirements for Tribal employees who wish to serve as an advocate for other Tribal employees who are challenging disciplinary action.

Next Steps: Review proposed draft and either continue work on the draft or create a new draft

Environmental, Health and Safety Law

Summary: Develop a new Law that enables the Environmental, Health and Safety Department (EHSD) to protect land, water, air, people and safety on the Reservation. EHSD shall have the authority to protect the Reservation, promote public health & safety and do business on the Reservation as well as perform duties such as creating rules in implementing this Law.

Next Steps: The sponsor is reviewing the proposed draft and will determine whether it is ready to move forward for an analysis or if changes should be made

Family Court Amendments: Bench Warrants

Summary: Amendments to the Family Court to explicitly include bench warrant authority.

Next Steps: Waiting on input for implementation from the appropriate departments

***Fitness For Duty Policy**

Summary: Develop a policy that allows supervisors to send employees for an assessment when it is believed that an employee presents a health and/or safety hazard to themselves, others or the Tribe.

Next Steps: Work meeting scheduled on August 5, 2015

Garnishment Ordinance Amendments

Summary: Amend the Garnishment Ordinance to allow the Judiciary to include interest when a garnishment is ordered.

Next Steps: Begin making amendments to the Ordinance.

Guardianship Law

Summary: Develop a Guardianship Law for minor children because the Child Custody, Placement and Visitation Law permits a third party (i.e. a non-parent) to petition for custody of a minor child, but does not address third-party guardianships.

Next Steps: Review proposed draft and either continue work on the draft or create a new draft

Hunting, Fishing and Trapping Law Amendments

Summary: Streamline the Law and separate policy making and management decisions from the Law to avoid yearly/bi-yearly updates to the Law.

Next Steps: Work meetings held, draft is being revised.

Industrial Hemp Law

Summary: 2013 Farm Bill authorizes institutions of higher education or State Departments of Agriculture, in states where it is legal to grow hemp, to grow hemp for research or

*items the OBC suggested be priorities

August 19, 2015

agriculture pilot programs. A new Law is being developed to govern how industrial hemp will be grown on the Reservation, pending the appropriate federal permits are obtained.

Next Steps: Consideration of supporting AB 215 was held in executive session, no further direction was given

Law Enforcement Ordinance Amendments: Conservation Officers

Summary: In order to avoid confusion when it comes to issuing fines, OPD and the Law Office are asking that the Ordinance clarify that Conservation Wardens are not sworn police officers.

Next Steps: Begin making amendments to the Ordinance

Leasing Law

Summary: Develop a new law which would allow the Tribe to approve surface leases at their discretion, instead of the Secretary of Interior, so long as the Secretary of Interior has approved Tribal surface lease regulations.

Next Steps: Leasing Law was forwarded to the Department of Interior for consideration on May 18, 2015.

Per Capita Law Amendments

Summary: The Trust Department requests that several provisions of the Law be clarified. In addition they are asking to modify the frequency of form requirements in elder distributions and incorporate fees for stop payments and closed bank accounts.

Next Steps: An automatic 60-day return will require this item to be brought back on September 16, 2015

Personnel Commission Bylaws Amendments

Summary: The Personnel Commission has identified the need to revise its Bylaws in order to outline more specifically the qualifications for appointed commissioners.

Next Steps: Changes to draft are being made based on a work meeting held with the Personnel Commission on July 14, 2015

Rules of Civil Procedure Amendments

Summary: A request from the Land Commission was made to remove the filing fee requirement when a Tribal entity is filing and modifying the requirements of service for Tribal entities.

Next Steps: An automatic 60-day return will require this item to be brought back on September 16, 2015

Tribally-Owned Business Organization Code

Summary: Because the Tribe has several Tribally-owned entities, a proposal seeks the adoption of a Tribal corporation code.

Next Steps: Develop the Code

Vehicle Driver Certification and Fleet Management

Summary: Risk Management requests a new Law to govern employee/Tribal official use of vehicles while on Tribal business and replace the current Vehicle Driver Certification Policy and Fleet Management Policy.

*items the OBC suggested be priorities

August 19, 2015

Next Steps: Making revisions on the Law based on LOC's consideration of public meeting comments.

Violence Against Women Act (VAWA)

Summary: Look at how the Tribe can exercise jurisdiction over non-Indians in domestic abuse cases on the Reservation being that the State of Wisconsin is PL 280 state.

Next Steps: Develop the Law

Whistleblower Law

Summary: Develop a new Law that will replace the Employee Protection Law which would provide a more comprehensive avenue for complaints to be processed in a confidential manner.

Next Steps: Review proposed draft and either continue work on the draft or create a new draft

Workplace Violence Policy

Summary: Develop a new Policy that provides guidance to Tribal employees to maintain an environment at and within the Tribe's property and events that is free of violence and the threats of violence.

Next Steps: Develop the Policy

August 2015

August 2015						
Su	Mo	Tu	We	Th	Fr	Sa
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					

September 2015						
Su	Mo	Tu	We	Th	Fr	Sa
6	7	1	2	3	4	5
13	14	8	9	10	11	12
20	21	15	16	17	18	19
27	28	22	23	24	25	26
		29	30			

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Jul 26	27	28	29	30	31	Aug 1
7/26 - 31							
	2	3	4	5	6	7	8
8/2 - 7				9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar 3:00pm 4:30pm FW: Fitness for Duty Wor			
	9	10	11	12	13	14	15
8/9 - 14				BC Meeting (BCCR)			
	16	17	18	19	20	21	22
8/16 - 21				9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar			
	23	24	25	26	27	28	29
8/23 - 28				BC Meeting (BCCR)			
	30	31	Sep 1	2	3	4	5
8/30 - 9/4							

September 2015

September 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			

October 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

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Aug 30 - Sep 5	Aug 30	31	Sep 1	2	3	4	5
				9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar			
Sep 6 - 12	6	7	8	9	10	11	12
		Labor Day Holiday		BC Meeting (BCCR)			GTC Meeting (Radisso)
Sep 13 - 19	13	14	15	16	17	18	19
				9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar			
Sep 20 - 26	20	21	22	23	24	25	26
		6:00pm 10:00pm GTC Budget Mtg (Radisson)		BC Meeting (BCCR)			
Sep 27 - Oct 3	27	28	29	30	Oct 1	2	3