

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

LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA-REVISED

Business Committee Conference Room-2nd Floor Norbert Hill Center
October 7, 2015 9:00 a.m.

- I. Call To Order and Approval of the Agenda**
- II. Minutes to be approved**
 - 1. September 16, 2015 LOC Meeting Minutes
- III. Current Business**
 - 1. Cemetery Law Amendments
 - 2. Vehicle Driver and Fleet Management Policy
 - 3. Community Support Fund Policy Amendments
 - 4. Oneida Higher Education Scholarship
 - 5. Removal Law Amendments
 - 6. Furlough Policy
- IV. New Submissions**
 - 1. Research Protection Act
 - 2. Real Property Law
 - 3. Probate Law
 - 4. Mortgage Law
 - 5. Landlord-Tenant Law
 - 6. Land Commission Bylaw Amendments
- V. Additions**
 - 1. Public Use of Tribal Land Amendments-HANDOUT
- VI. Administrative Updates**
- VII. Executive Session**
- VIII. Recess/Adjourn**

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LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center

September 16, 2015 9:00 a.m.

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

OTHERS PRESENT: Taniquelle Thurner, Candice Skenandore, Douglass McIntyre, Krystal John, Rae Skenandore, Laura Manthe, Richard Van Boxtel, Eric Boulanger, Cheryl VanDenBerg, Norbert Hill, Jr., Bonnie Pigman, Layatalati Hill, Paula Rippl, Fawn Cottrell, Rhiannon Metoxen, Danelle Wilson.

I. Call To Order and Approval of the Agenda

Tehassi Hill called the September 16, 2015 Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Fawn Billie to adopt the agenda with one additional item – the LOC Sponsor List; seconded by David P. Jordan. Motion carried unanimously.

II. Minutes to be approved

1. September 2, 2015 LOC Meeting Minutes

Motion by Jennifer Webster to approve the September 2, 2015 LOC meeting minutes; seconded by Fawn Billie. Motion carried, with David P. Jordan abstaining.

III. Current Business

1. Community Support Fund Policy Amendments(01:05 – 01:59)

Motion by David P. Jordan to accept the update on the Community Support Fund Policy Amendments and forward to the Oneida Business Committee; seconded by Fawn Billie. Motion carried unanimously.

2. Furlough Policy (02:00 – 12:06, 13:05-14:35)

Motion by David P. Jordan to defer the Furlough Policy back to the sponsor, to bring back with recommendations for the Standard Operating Procedure and the Policy; seconded by Fawn Billie. Motion carried unanimously.

3. Removal Law Amendments (12:15-13:03, 14:36-25:00)

Motion by David P. Jordan to defer the Removal Law Amendments to the Legislative Reference Office to bring back with a proposed date for a Public Meeting; seconded by Fawn Billie. Motion carried unanimously.

4. Administrative Rulemaking Law (25:08-26:13)

Motion by David P. Jordan to accept the memorandum regarding the status of the Administrative Rulemaking Law as FYI; seconded by Jennifer Webster. Motion carried unanimously.

5. Garnishment Ordinance Amendments (26:18- 34:15)

Motion by David P. Jordan to defer Garnishment Ordinance Amendments to the sponsor's office to work with the Chief Financial Officer for recommendations, and bring back with the required analysis within 60 days; seconded by Tehassi Hill. Motion carried unanimously.

6. Oneida Higher Education Scholarship (34:16-46:15)

Motion by David P. Jordan to defer Oneida Higher Education Scholarship to the Legislative Reference Office to make the discussed changes and bring it back to the next LOC meeting; with a Public Meeting packet prepared for the LOC to review; seconded by Tehassi Hill. Motion carried unanimously.

7. Per Capita Law Amendments (46:20-54:05)

Motion by David P. Jordan to accept the update as FYI and defer the Per Capita Law Amendments to the Legislative Reference Office and to bring back in 30 days for an update; seconded by Fawn Billie. Motion carried unanimously.

8. Public Use of Tribal Land Amendments (54:06-59:24)

Motion by David P. Jordan to accept the updated legislative analysis and defer the Public Use of Tribal Land Amendments for a fiscal analysis and to forward for an October 15, 2015 Public Meeting; seconded by Tehassi Hill. Motion carried unanimously.

9. Rules of Civil Procedure Amendments (59:29-1:02:01)

Motion by David P. Jordan to defer the Rules of Civil Procedure Amendments back to the Legislative Reference Office to continue working on this item, and to bring back a draft within 90 days; seconded by Fawn Billie. Motion carried unanimously.

10. Tribal Hearing Bodies (1:02:01-1:11:55)

Motion by David P. Jordan to accept the update on Tribal Hearing Bodies as information, and forward to the Oneida Business Committee with an updated chart; seconded by Tehassi Hill. Motion carried unanimously.

IV. New Submissions**1. Domestic Animals Law Amendments (1:11:56-1:20:38)**

Motion by Tehassi Hill to add the Domestic Animals Law Amendments to the active files list with Tehassi Hill as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

2. Legislative Procedures Act Amendments (1:20:39-1:24:16)

Motion by David P. Jordan to add the Legislative Procedures Act Amendments to the active files list with Brandon Stevens as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

Motion by David P. Jordan to request a legal opinion from Chief Counsel regarding the impact of the new Legislative Reference Office SOPs on existing laws; seconded by Tehassi Hill. Motion carried unanimously.

V. Additions

VI. Administrative Updates

1. LOC Priority List (1:24:19-1:35:26)

Motion by Tehassi Hill to forward the LOC Priority List to an LOC work meeting within two weeks, and to include on this list the last action taken for each item; seconded by David P. Jordan. Motion carried unanimously.

2. LOC Sponsor List (1:35:27-1:37:20)

Motion by David P. Jordan to accept the LOC Sponsor List as information and to make the noted changes; seconded by Fawn Billie. Motion carried unanimously.

VII. Executive Session

VIII. Recess/Adjourn

Motion by David P. Jordan to adjourn the September 16, 2015 Legislative Operating Committee meeting at 10:38 a.m.; seconded by Fawn Billie. Motion carried unanimously.



Legislative Operating Committee

October 7, 2015

Cemetery Law

Submission Date: 8/5/15

Public Meeting:
 Emergency Enacted:
 Expires:

LOC Sponsor: David P. Jordan

Summary: *This request for amendments was brought to the LOC by the Oneida Law Office. Amendments were requested to correct the name of the Cemetery, which was changed by resolution of the Oneida Land Commission on May 11, 2015. Additional revisions may also be necessary to change who is responsible for the cemetery's maintenance.*

8/5/15 LOC: 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.

8/12/15 OBC: Determine responsible area for cemetery maintenance. Item sent to a Business Committee special meeting agenda at the adjournment of the meeting.

8/17/15 OBC: Motion by David Jordan to defer this issue to the September 23, 2015, regular Business Committee meeting and direct the Tribal Secretary to schedule the special Business Committee work meeting and that an invitation be extended to all interested parties, including departments and families impacted, seconded by Jennifer Webster. Motion carried unanimously

9/2/15: OBC work meeting. Attendees include Brandon Stevens, Tehassi Hill, Fawn Billie, Jennifer Webster, Michelle Mays, Douglass McIntyre, various departments and family members of those buried in the cemetery.

9/23/15 OBC: Motion by Lisa Summers to place an indefinite land use moratorium on area designation # 18 'Where the Water Birds Nest', identified in the Public Use of Land Law, and to defer the cemetery issues identified today to the Business Committee Officers for follow-up with a final action plan to be brought by the November 11, 2015, regular Business Committee meeting, seconded by David Jordan. Motion carried unanimously.

Motion by Lisa Summers to direct the Chairwoman's Office to send out communications, regarding the indefinite land use moratorium directive, to the Business Committee's Direct Reports, appropriate Boards, Committees, and Commissions, and affected parties, including sweat lodge users and families impacted, seconded by David Jordan. Motion carried unanimously.

Amendment to the second motion by Melinda J. Danforth to inform users of the sweat lodge and families of the cemetery. Motion fails for lack of support.

Next Steps:

- Accept the memorandum as FYI and defer to the sponsor to bring back when ready.

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 Jennifer Webster, Councilmember

Memorandum

TO: Legislative Operating Committee
FROM: David P. Jordan
DATE: October 7, 2015
RE: Cemetery Law

On July 31, 2015, an agenda request form was submitted to the Legislative Operating Committee (LOC) to amend the Cemetery Law. At a LOC meeting on August 5, 2015, the LOC added Cemetery Law Amendments to the active files list with myself as sponsor. This memorandum serves as a sixty (60) day update.

Since being added to the active files lists, the Legislative Reference Office has been in contact with the Trusts/Enrollment Department for suggested changes to the Law. From this a draft has been created and all that is needed is a final decision on maintenance responsibility.

The topic of responsibility for maintenance of the cemetery has been an agenda item at Oneida Business Committee (OBC) meetings on August 12, 2015, August 17, 2015 and August 23, 2015. A final action plan is scheduled to be brought by November 11, 2015. Once the decision concerning maintenance is made by the OBC officers, a finalized first draft will be brought back to the LOC.

Requested Action

Accept the memorandum regarding the status of the Cemetery Law Amendments as FYI and defer to be brought back when ready.



Legislative Operating Committee

October 7, 2015

Vehicle Driver Certification and Fleet Management

Submission Date: 9/17/14

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

LOC Sponsor: Jennifer Webster

Summary: *This item was originally submitted to the LOC on June 15, 2012 from Bob Keck, Risk Management Director. The item was carried over into the current term by the LOC. The proposal sought the development of a new law to govern employee/Tribal official use of vehicles while on Tribal business, and would replace the current Vehicle Driver Certification Policy and the Fleet Management Policy.*

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

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

2/19/15: Public meeting held.

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

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

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

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

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

Next Steps:

- Forward for a legislative analysis and consider forwarding for a new public meeting.

Chapter 330

Vehicle Driver Certification and Fleet Management Policy

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Article I. Purpose and Policy
Article II. Adoption, Amendment, Repeal
Article III. Definitions
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Article V. Tribal Vehicles - Usage
Article VI. Rental Vehicles
Article VII. Tribal Vehicle Driver Certification
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Article IX. Suspension of Tribal Vehicle Driver Certification
Article X. Drivers – Personal Vehicle Use on Tribal Business
Article XI. Suspension of Personal Vehicle Driver Certification
Article XII. Motor Vehicle Crash
Article XIII. Vehicle Driver Certification Suspensions, Permanent Loss of Vehicle Driver Certification and Disciplinary Action
Article XIV. Reinstatement of Vehicle Driver Certification
Article XV. Supervisor Responsibilities

21 ~~330.1. Purpose and Policy~~
22 ~~330.2. Adoption, Amendment, Repeal~~
23 ~~330.3. Definitions~~
24 ~~330.4. Tribal Department Responsibilities~~
25 ~~330.5. Tribal Vehicles – Usage~~
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27 ~~330.7. Tribal Vehicle Driver Certification~~
28 ~~330.8. Driver Responsibilities – Tribal Vehicles~~
29 ~~330.9. Suspension of Tribal Vehicle Driver Certification~~
30 ~~330.10. Drivers – Personal Vehicle Use on Tribal Business~~
31 ~~330.11. Suspension of Personal Vehicle Driver Certification~~
32 ~~330.12. Accidents~~
33 ~~330.13. Vehicle Driver Certification Suspensions, Permanent Loss of Vehicle Driver Certification and Disciplinary Action~~
34 ~~330.14. Reinstatement of Vehicle Driver Certification~~
35 ~~330.15. Supervisor Responsibilities~~
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330.1. Article I. Purpose and Policy

~~330.1-1. *Purpose.* The purposes of this Law Policy are to:~~
~~(a) ensure the safety of all Tribal employees and the public is protected by establishing standards that certify employees, officials and volunteers to drive a Tribal vehicle or drive a personal vehicle on Tribal business; and~~ ~~(b) control the use of all Tribal Oneida owned vehicles.~~
~~330.1-2. *Policy.* It is the policy of the Tribe to:~~
~~(a) Ensure the safety of the community and employees of the Oneida Tribe;~~
~~(b) minimize the Tribe’s liability when physical damage to vehicles and/or property damage occurs as a result of vehicle accidents a motor vehicle crash; and~~
~~(c) improve the efficiency and effectiveness of the use of Tribal vehicles.~~

330.2. Article II. Adoption, Amendment, Repeal

~~330.2-1. This Law Policy was adopted by the Oneida Business Committee by Resolution _____.~~
~~330.2-2. This Law Policy may be amended by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.~~
~~330.2-3. Should a provision of this Law Policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law Policy which are considered to have legal force without the invalid portions.~~
~~330.2-4. In the event of a conflict between a provision of this Law Policy and a provision of another law Policy, the provisions of this Law Policy shall control. Provided that, this Law Policy repeals the following:~~
~~(a) BC-09-09-98-A (Resolution Adopting Amended Vehicle Driver Certification Policy)~~
~~(b) BC-09-24-97-E (Resolution Adopting Vehicle Fleet Management Policy)~~
~~330.2-5. This Law Policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.~~

330.3 Article III. Definitions

~~330.3-1. This section shall govern the definitions of words and phrases used within this Law Policy. All words not defined herein shall be used in their ordinary and everyday sense.~~
~~(a) “Business miles” means miles driven in a vehicle by an individual in order to conduct Tribal business.~~

(b) “Drivers” means ~~e~~Employees, officials and volunteers who are vehicle driver certified to operate a Tribal vehicle or a personal vehicle on Tribal business.

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

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

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

(f) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.

(g) “Tribal entity” means a Tribal department, enterprise, program, board, committee or commission.

(h) “Tribal vehicle” means all vehicles owned or leased by the Tribe.

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

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

330.4 Article IV. Tribal Department Responsibilities

~~330.4-1.~~ *Department of Public Works.* The Department of Public Works shall maintain a Fleet Management and an Automotive Department to assist with the implementation of the provisions of this ~~Law~~Policy.

~~330.4-2.~~ *Fleet Management.* Fleet Management shall:

- (a) Purchase, manage and monitor the use of Tribal vehicles including the removal of unsafe vehicles from the fleet;
- (b) Obtain estimates of and schedule Tribal vehicle repairs when necessary;
- (c) Participate in ~~accident~~motor vehicle crash investigations;
- (d) Participate in situations requiring approval of Driver certifications; and
- (e) Install or remove global positioning system monitors on Tribal vehicles.

~~330.4-3.~~ *Automotive Department.* The Automotive Department shall service and maintain Tribal vehicles according to factory recommendations, or the maintenance schedule established by the Automotive Department, whichever is stricter. Any vehicle deemed unsafe by the Automotive Department shall be reported to Fleet Management.

~~330.4-4.~~ *Risk Management.* Risk Management shall:

- (a) Secure and maintain insurance coverage for all Tribal vehicles;
- (b) Provide auto insurance identification cards in every Tribal vehicle;
- (c) Process all vehicle claims and information submitted to them;
- (d) Submit claims to the insurance company;
- (e) Participate in ~~accident~~motor vehicle crash investigations; and
- (f) Participate in situations requiring approval of Driver certifications.

121 | ~~330.4-5.~~ *Human Resources Department.* The Human Resources Department shall:

- 122 | (a) Maintain the list of Drivers and provide the list to Fleet Management and the Central
123 | Accounting Department on a regular basis;
- 124 | (b) Perform driving record checks and approve or deny vehicle driver certification based
125 | on the review of an individual's driving record;
- 126 | (c) Notify supervisors of the vehicle driver certification status of his or her ~~e~~Employees
127 | or volunteers;
- 128 | (d) Assist supervisors with the administration of vehicle driver certification suspensions;
- 129 | (e) Request written proof of insurance on personal vehicles driven on Tribal business;
- 130 | (f) Participate in ~~accident~~motor vehicle crash investigations; and
131 | ~~(g) Approve vehicle driver certifications; and~~
132 | ~~(g)~~h) Maintain documentation of all required driver training and regulatory compliance.

133 | ~~330.4-6~~ *Environmental Health & Safety Division.* The Environmental Health & Safety Division
134 | shall provide Driver safety training as included herein, and provide the Human Resources
135 | Department with the names of Drivers who have completed training after each training session.
136 |

137 | ~~330.5~~Article V. **Tribal Vehicles - Usage**

138 | ~~330.5-1.~~ Drivers that do not have access to a permanently assigned Tribal vehicle may request to
139 | use a Tribal vehicle to conduct Tribal business by submitting a request to Fleet Management.

- 140 | (a) Whenever possible, requests shall be made to Fleet Management at least one (1)
141 | week in advance. Fleet Management may cancel reservations that are not fulfilled in a
142 | timely manner and may combine vehicle use for travel to the same destination.
- 143 | (b) Fleet Management shall confirm a Driver is vehicle driver certified before approving
144 | the use of a Tribal vehicle.
- 145 | (c) An official or volunteer shall provide written proof to Fleet Management that he or
146 | she has the consent of his or her Tribal entity to use a Tribal vehicle.
- 147 | (d) An ~~e~~Employee shall provide written proof to Fleet Management that he or she has the
148 | consent of his or her Supervisor before using a Tribal vehicle.
- 149 | (e) Upon receiving written proof that a Driver has the required consent to use a Tribal
150 | vehicle and any other individuals are eligible to travel in a Tribal vehicle, Fleet
151 | Management shall determine whether a Tribal vehicle is available.

152 | ~~330.5-2.~~ In order to have a Tribal vehicle permanently assigned to a Tribal entity, the entity shall
153 | drive a minimum number of miles annually, as determined by Fleet Management. Exceptions to
154 | the mileage criteria may be granted upon request by a Tribal entity and with written approval
155 | from Fleet Management.

156 | ~~330.5-3.~~ The following individuals may travel in a Tribal vehicle:

- 157 | (a) Employees, officials or volunteers who are on Tribal business.
- 158 | (b) Individuals who receive permission, through Oneida Business Committee motion, to
159 | travel in a Tribal vehicle. The Oneida Business Committee may request input from Fleet
160 | Management before making a determination on these requests.
- 161 | (c) Individuals being transported as part of a Tribal program or service.

162 | ~~330.5-4.~~ Tribal vehicles shall be used for ~~b~~Business miles. When away from the work site, a
163 | Tribal vehicle may also be used for incidental purposes, such as travel to and from lodging and
164 | meal sites. Tribal vehicles shall not be used for any of the following:

- 165 | (a) Personal use or ~~n~~Non-business miles, except as authorized under the Business
166 | Committee Vehicle Policy, as approved on August 17, 1990 and amended by the Oneida
167 | Business Committee.
- 168 | (b) Vacation.

- 169 (c) Towing cargo for personal reasons.
170 (d) Hauling loads that could structurally damage the vehicle.
171 (e) Delivering goods or services for personal gain, or operating private pools where the
172 riders pay the driver.
173 (f) Transporting hitchhikers.
174 (g) Jump starting vehicles, other than Tribal vehicles.
- 175 ~~330.5-5.~~ Tribal logos shall be placed on all Tribal vehicles.
176 ~~330.5-6.~~ A radar detection device shall not be installed or used in a Tribal vehicle.
177 ~~330.5-7.~~ *General.* A Driver of a Tribal vehicle shall ensure the following rules regarding the use
178 of a Tribal vehicle are followed when the Tribal vehicle is under his or her control.
179 (a) A Driver of a Tribal vehicle shall not be under the influence of alcohol; illegal drugs;
180 or prescription or over-the-counter medicine used in an unauthorized or unlawful manner.
181 (b) There is no smoking allowed in Tribal vehicles.
182 (c) Oneida One Stops shall be used for fueling Tribal vehicles, unless the Tribal vehicle
183 needs fuel before it can be taken to an Oneida One Stop.
184 (d) All Drivers of and passengers in Tribal vehicles shall wear seat belts at all times.
- 185 ~~330.5-8.~~ Modifications to Tribal vehicles for personal reasons shall not be permitted.
186 Modifications to Tribal vehicles for operating purposes may be allowed only with the approval
187 of Fleet Management.
188 ~~330.5-9.~~ A Tribal entity shall regularly schedule service work, maintenance work and safety
189 checks with the Automotive Department for any Tribal vehicle assigned to the entity.
190 ~~330.5-10.~~ A Driver of a Tribal vehicle shall follow all traffic laws, respect property, be
191 courteous and use good judgment. Vehicle interiors should be kept in good condition, clean and
192 free of debris.
193 ~~330.5-11.~~ ~~The Tribe~~Fleet Management may equip Tribal vehicles with Global Positioning
194 Systems (GPS) to monitor vehicle usage.
195 ~~330.5-12.~~ *Specialized Requirements.* Drivers of Tribal vehicles are subject to all specialized
196 requirements necessary to comply with specific departmental rules regarding age, experience,
197 training, licensing, additional provisions and/or specialized requirements and rules imposed by
198 state or federal regulatory agencies.
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- 200 ~~330.6~~Article VI. Rental Vehicles
201 ~~330.6-1.~~ Rental vehicles are considered Tribal vehicles for the purpose of this LawPolicy. All
202 provisions of this LawPolicy apply to rental vehicle usage. Cars shall be rented in accordance
203 with the Tribe's Travel and Expense Policy and Drivers of rental vehicles shall be vehicle driver
204 certified according to the terms and conditions of this LawPolicy.
205 ~~330.6-2.~~ Every vehicle rental shall include the purchase of the maximum collision damage
206 waiver offered by rental companies.
207
- 208 ~~330.7~~Article VII. Tribal Vehicle Driver Certification
209 ~~330.7-1.~~ Drivers shall be vehicle driver certified by the Human Resources Department before
210 operating a Tribal vehicle. In order to be vehicle driver certified to operate a Tribal vehicle,
211 Drivers shall:
212 (a) Hold a valid, non-probationary Wisconsin driver license and provide proof of such
213 license, including any commercial endorsement(s), to the Human Resources Department.
214 (1) Drivers with commercial driver licenses may be restricted to only operating
215 Tribal vehicles within the state of Wisconsin.

216 (2) An occupational license is a valid, non-probationary driver license if the
217 ~~Driver's~~ abstract for the occupational license allows the Driver to operate Tribal
218 vehicles for his or her job with the Tribe.

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

223 (b) Pass a driving record check to verify the ~~Driver has not received a citation or been~~
224 ~~convicted of a violation which~~ Driver has no driving citation or conviction involving
225 drugs or alcohol that would make the Driver ineligible under this Law.

226 (1) The individual shall have his or her driving record checked by the Human
227 Resources Department prior to his or her hire date. An individual with a driver
228 license from a state other than Wisconsin shall have his or her driving record
229 checked based on that state's license.

230 (2) The individual shall authorize the Human Resources Department to check his
231 or her driving record. Any individual who refuses to allow his or her driving
232 record to be checked shall not be vehicle driver certified to operate a Tribal
233 vehicle.

234 (3) State Department of Motor Vehicle reports shall be used to determine
235 whether an individual passes the driving record check.

236 (4) Tribal insurance carriers or agents may check an individual's driving record.
237 This review shall be deemed to be a review by the Tribe.

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

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

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

245 (B) A Driver who has not completed the required training requirements
246 within (180) days of the effective date of this Law shall be prohibited from
247 driving a Tribal vehicle until he or she completes the required training.

248 (C) A break in employment or service of one hundred eighty (180) days
249 or greater requires retraining.

250 (D) Drivers shall be paid their regular wage by their home department for
251 all required training.

252 (2) Drivers of Tribal vehicles who are governed by federal or state agency
253 regulations or requirements shall:

254 (A) complete all required driver safety training according to the
255 applicable regulations before being certified to operate a Tribal vehicle to
256 which the regulations apply.

257 (B) be in compliance with all regulatory requirements pertaining to drugs
258 and alcohol.

259 330.7-2. An individual Tribal entity may require stricter driving certification procedures that do
260 not conflict with these standards. Such procedures shall be submitted to Fleet Management and
261 the Human Resources Department for review and approval.

262 330.7-3. The Tribe reserves the right to check driving records of a Driver at any time. The Tribe
263 also reserves the right to allow insurance carriers to check driving records at any time.

264

265 | **330.8 Article VIII. Driver Responsibilities – Tribal Vehicles**

266 | 330.8-1. Drivers shall notify the Human Resources Department, in writing, immediately upon:

267 | (a) Issuance of a driving citation involving drugs or alcohol.

268 | (b) Any suspension of driving privileges by any State or regulatory agency.

269 | (c) Reinstatement of driving privileges by any State or regulatory agency, if applicable.

270 | 330.8-2. When a Driver uses a Tribal vehicle, he or she shall:

271 | (a) Complete a vehicle mileage log. Vehicle mileage logs are found in each Tribal
272 | vehicle.273 | (b) Notify Fleet Management immediately of any problem(s) with a Tribal vehicle that
274 | may be a safety or mechanical hazard, or of any incidents that result in the inability of a
275 | Tribal vehicle to complete a trip.276 | (c) Be personally responsible for all traffic citation costs, parking ticket costs or any
277 | similar expense related to vehicle use.278 | (d) Safely stop the vehicle when using devices such as cell phones, whether for talking
279 | or texting; notebook or laptop computers; books or book applications; newspapers or
280 | magazines; and two-way radios. This does not include authorized emergency vehicle
281 | communication equipment or ~~on-board~~ computers used for communication or navigation.

282 | (e) Abide by all provisions contained in this Law.

283

284 | **330.9 Article IX. Suspension of Tribal Vehicle Driver Certification**285 | 330.9-1. A Driver shall have his or her Tribal vehicle driver certification suspended and shall be
286 | prohibited from driving a Tribal vehicle upon any of the following:

287 | (a) Refusing to allow the Tribe or an insurance carrier check his or her driving record.

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

291 | (c) Failing to complete any applicable driver training requirements.

292 | (d) Receiving a motor vehicle operation citation for an offense involving drugs or
293 | alcohol.

294 | (e) Having his or her driver license suspended by the State.

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

297 | (g) Violating any other provision of this Law.

298 | 330.9-2. *Vehicle Driver Certification Suspensions Affecting Employment Status.* Individuals
299 | who have their vehicle driver certification suspended for more than five (5) days and their ability
300 | to perform their duties as an ~~e~~Employee affected by that suspension may request, in writing, that
301 | their Supervisor and a Human Resources Department representative determine what, if any,
302 | options may be available to them. Options may include, but are not limited to: non-driving
303 | accommodation within the home department; reassignment to a position which does not require
304 | driving; a leave of absence without pay; or termination of employment.

305

306 | **330.10 Article X. Drivers – Personal Vehicle Use on Tribal Business**307 | 330.10-1. *Certification.* Drivers of personal vehicles on Tribal business shall be vehicle driver
308 | certified by the Human Resources Department to operate a personal vehicle on Tribal business.
309 | In order to be vehicle driver certified to operate a personal vehicle on Tribal business, a Driver
310 | shall:

311 (a) Hold a valid, non-probationary Wisconsin driver license within thirty (30) days after
312 his or her start of employment or time of election, appointment or volunteer service.

313 (1) Drivers with a driver license from a state other than Wisconsin shall have
314 their driving record checked based on that state's license.

315 (2) An occupational license is a valid, non-probationary driver license if the
316 driver's abstract for the occupational license allows the Driver to operate vehicles
317 owned by the Driver for his or her job with the Tribe.

318 (b) Pass a driving record check by the Human Resources Department to verify the Driver
319 has not received a citation or been convicted of a violation which would make the Driver
320 ineligible under this Law. Any individual who refuses to allow his or her driving record
321 to be checked shall not be vehicle driver certified to operate a personal vehicle on Tribal
322 business.

323 | 330.10-2. Insurance. Drivers shall provide written proof of the minimum insurance required by
324 this Law to the Human Resources Department.

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

326 (1) \$100,000 Per Person;

327 (2) \$300,000 Per Accident for Bodily Injury; and

328 (3) \$25,000 Property Damage.

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

331 (1) A Driver shall immediately notify the Human Resources Department of any
332 cancelation or lapse in his or her insurance coverage.

333 (2) A Driver is prohibited from driving a personal vehicle on Tribal business
334 during the time he or she does not have the required minimum personal auto
335 insurance coverage. The Human Resources Department shall remove the Driver
336 from the list of certified drivers immediately upon notification by the Driver and
337 shall notify the Driver's Supervisor or Tribal entity.

338 (c) The Human Resources Department shall maintain written proof of insurance on
339 personal vehicles of Drivers and may request written proof of insurance from Drivers at
340 any time.

341 | 330.10-3. Mileage Reimbursement.

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

344 (1) Was vehicle driver certified at the time and had written proof of required
345 insurance on file with the Human Resources Department.

346 (2) Had prior consent from his or her Supervisor, if an eEmployee or volunteer.

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

349 (b) Drivers of personal vehicles while on Tribal business are prohibited from using their
350 vehicle for personal gain of any kind.

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

353 | 330.10-4. The Human Resources Department is responsible for performing driving record
354 checks and shall notify the appropriate parties. During the hiring process, individuals who are
355 ineligible to be vehicle driver certified shall be notified of their ineligibility in writing.

356 | 10-5. HRD Officials and volunteers

357 | 330.10-5. Seat Belts. All Drivers of and passengers in a personal vehicle on Tribal business
358 shall wear seat belts at all times.

359

360 | **330.11 Article XI. Suspension of Personal Vehicle Driver Certification**361 | ~~330.11-1.~~ A Driver shall have his or her personal vehicle driver certification suspended and shall
362 | be prohibited from driving a personal vehicle on Tribal business upon any of the following:

- 363 | (a) Refusing to allow the Tribe or an insurance carrier check his or her driving record.
- 364 | (b) Not maintaining the minimum insurance requirements on his or her personal vehicle.
- 365 | (c) Failing to advise his or her Supervisor, or the Human Resources Department if the
366 | Driver does not have a Supervisor, of a driver license suspension or of receiving a motor
367 | vehicle operation citation involving drugs or alcohol.
- 368 | (d) Receiving a motor vehicle operation citation for an offense involving drugs or
369 | alcohol.
- 370 | (e) Having his or her driver license suspended by the State.
- 371 | (f) Violating any other provision of this Law.

372 | 12-2. A suspension of a vehicle driver certification under section 330.11-1 (a) through (e) is not
373 | appealable.

374

375 | **330.12 Article XII. ~~Accidents~~ Motor Vehicle Crash**

376 | ~~330.12-1.~~ This section shall apply in the event a Driver is involved in an ~~accident~~ motor vehicle
377 | crash while driving a Tribal vehicle or a personal vehicle on Tribal business, provided that if the
378 | Tribe's Travel and Expense Policy has more restrictive requirements regarding accident
379 | reporting, the provisions of that Policy shall apply.

380 | ~~330.12-2.~~ Drivers operating a Tribal vehicle or a personal vehicle on Tribal business shall:

- 381 | (a) report all ~~accidents~~ motor vehicle crashes or damage involving the vehicle
382 | immediately to his or her Supervisor, Fleet Management and Risk Management. If the
383 | Driver does not have a Supervisor, then the Driver shall report immediately to the Human
384 | Resources Department.
- 385 | (b) provide Fleet Management and Risk Management with a completed incident report
386 | within twenty-four (24) hours after the ~~accident~~ motor vehicle crash or when the damage
387 | occurs.
- 388 | (1) All Tribal vehicles shall have an Auto Incident Kit which contains forms and
389 | instructions for reporting any incident.
- 390 | (c) comply with any alcohol and drug testing requirements under the Tribe's Drug and
391 | Alcohol Free Workplace Policy.
- 392 | (d) report the ~~accident~~ motor vehicle crash or damage to local law enforcement if the
393 | ~~accident~~ motor vehicle crash or damage:
- 394 | (1) results in an injury to the Driver or another person and requires medical
395 | intervention by a police officer or emergency medical technician, or treatment at a
396 | medical facility; or
- 397 | (2) results in death of a person; or
- 398 | (3) involves damage to property that does not belong to the Driver or the Tribe;
399 | or
- 400 | (4) results in the Tribal vehicle being disabled and/or requires the Tribal vehicle
401 | to be towed.

402 | ~~330.12-3.~~ Drivers shall follow any additional ~~accident~~ motor vehicle crash reporting
403 | requirements for vehicles regulated by a state or federal agency.

404 | ~~330.12-4.~~ All ~~accidents~~ motor vehicle crashes involving Tribal vehicles shall be internally
405 | ~~investigated by the Tribe~~ reviewed by the Fleet Management and Risk Management and
406 | investigated if needed in accordance with industry standards of practice. These investigations

407 shall be coordinated and completed as necessary by Fleet Management and Risk Management,
 408 and other personnel as deemed appropriate by Fleet Management and Risk Management.
 409 Investigations shall be completed as soon as practicable after an ~~an~~ accident-motor vehicle crash has
 410 been reported.

411 (a) Investigative authority includes:

412 (1) determination of fault if not determined by law enforcement.

413 (2) recommendation of whether a Driver's vehicle driver certification should be
 414 suspended.

415 (b) Investigation reports shall be provided to the Driver and the Driver's Supervisor, or
 416 the Human Resources Department if the Driver does not have a Supervisor, with
 417 recommendations of disciplinary action, if any is desired.

418 (c) eCopies of the investigation reports shall be retained in Fleet Management and Risk
 419 Management for a minimum of three (3) years.

420 ~~330.12-5.~~ Non-compliance with accident-motor vehicle crash reporting requirements shall result
 421 in a vehicle driver certification suspension for the ~~e~~Employee(s) involved who failed to comply.
 422 If a Supervisor is aware of an accident-motor vehicle crash and reporting requirements are not
 423 followed, the Supervisor is also subject to ~~a vehicle driver certification suspension being~~
 424 disciplined through the disciplinary process.

425 ~~330.12-6. Drivers driving a personal vehicle while on Tribal business shall report all accidents~~
 426 ~~to local law enforcement at the time of the accident, and to their Supervisor, or the Human~~
 427 ~~Resources Department if the Driver does not have a Supervisor, and Risk Management within~~
 428 ~~twenty four (24) hours after the accident or damage.~~

429 ~~330.12-67.~~ If, while driving a Tribal vehicle, a Driver is determined to be, or admitted to be,
 430 more than fifty percent (50%) at fault in an accident-motor vehicle crash involving vehicle
 431 damage, property damage or personal injury, the Driver ~~shall~~ may have his or her vehicle driver
 432 certification suspended.
 433

434 **330.13 Article XIII. Vehicle Driver Certification Suspensions, Permanent Loss of Vehicle**
 435 **Driver Certification and Disciplinary Action**

436 ~~330.13-1.~~ A vehicle driver certification suspension is a suspension of driving privileges and is
 437 not leave from work.

438 13-2. The minimum length of a suspension shall be based on the number of prior suspensions
 439 within the past three (3) years from the date of the incident that resulted in the most recent
 440 suspension:

441 (a) The first time a Driver has his or her vehicle driver certification suspended, the
 442 suspension shall last no less than five (5) full-time workdays.

443 (b) ~~330.13-2.~~ The second time a Driver has his or her vehicle driver certification
 444 suspended, the suspension shall last no less than ten (10) full-time workdays.

445 (c) ~~330.13-3.~~ The third time a Driver has his or her vehicle driver certification suspended,
 446 the suspension shall last no less than fifteen (15) full-time workdays.

447 (d) ~~330.13-4.~~ Drivers who incur more than three (3) vehicle driver certification
 448 suspensions under this Law within a three (3) year period shall lose their vehicle driver
 449 certification for three (3) years, beginning with the date of the incident that resulted in the
 450 most recent suspension.

451 13-3. Except for the three (3) year suspension in section 13-2(d) which will survive a break in
 452 employment, A break in employment or service of one hundred eighty (180) days or greater
 453 shall clear the Driver's record of any other vehicle driver certification suspensions. However,
 454 the knowledge of prior suspensions can be used in re-employment consideration.

455 | ~~330.13-45~~. Due to the seriousness of a citation for the operation of motor vehicles involving
456 | drugs or alcohol, this Law requires suspension of vehicle driver certification upon the issuance of
457 | a driving citation involving drugs or alcohol and will only allow reinstatement of vehicle driver
458 | certification upon the dismissal of the citation or upon three (3) years passing from the date of
459 | ~~conviction~~citation.

460 | (a). An Employee that is found not guilty, acquitted of charges or in any way where the
461 | citation does not end in a conviction will be reinstated with back pay if not prohibited by
462 | any other laws of the Tribe.

463 | ~~330.13-56~~. Notwithstanding sections 330.13-~~42~~ through 330.13-~~53~~, the Tribe reserves the right
464 | to suspend a vehicle driver certification or extend a vehicle driver certification suspension upon
465 | unanimous agreement between the Human Resources Department, Fleet Management and Risk
466 | Management and based on the best interests of the Tribe.

467 | ~~330.13-67~~. Drivers who violate this Law may be subject to disciplinary action, in accordance
468 | with Tribal policies and procedures, whether or not the violation results in the suspension of their
469 | vehicle driver certification.
470 |

471 | ~~330.14~~Article XIV. Reinstatement of Vehicle Driver Certification

472 | ~~330.14-1~~. Vehicle driver certifications that are suspended for thirty (30) days or less shall be
473 | automatically reinstated upon expiration of the suspension. Vehicle driver certifications that are
474 | suspended for thirty-one (31) days or more shall be reinstated in accordance with 330.14-2.

475 | ~~330.14-2~~. An individual whose vehicle driver certification is suspended for thirty-one (31) days
476 | or more may have his or her vehicle driver certification reinstated after the following.

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

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

481 | (2) Three (3) years have passed since the individual was convicted of a motor
482 | vehicle operation citation involving drugs or alcohol; and

483 | (3) The state removes a driver license suspension; and

484 | (4) Written proof has been submitted to the Human Resources Department that
485 | the individual has any required insurance coverage; and

486 | (b) Upon request from an individual to re-instate his or her vehicle driver certification,
487 | the Human Resources Department shall:

488 | (1) check the individual's driving record to ensure the individual has no
489 | violations on his or her driving record preventing re-instatement; and

490 | (2) approve the written proof of insurance submitted by the individual, provided
491 | it meets the requirements of this Law.

492 | (c) If the individual passes the driving record check and his or her proof of insurance is
493 | approved, the individual's vehicle driver certification shall be reinstated upon:

494 | (1) unanimous approval of the Human Resources Department, Fleet Management
495 | and Risk Management, if this was the individual's fourth (4th) suspension or the
496 | suspension was due to a conviction of motor vehicle operation citation involving
497 | drugs or alcohol; or

498 | (2) approval of the Human Resources Department, in all other cases.
499 |

500 | ~~330.15~~Article XV. Supervisor Responsibilities

501 | ~~330.15-1~~. Supervisors of Drivers who drive a Tribal vehicle or a personal vehicle on Tribal
502 | business shall:

- 503 (a) Ensure those Drivers who report to them are vehicle driver certified before allowing
504 them to drive a Tribal vehicle or a personal vehicle on Tribal business.
- 505 (b) Ensure Drivers have the appropriate license and training certification for driving
506 vehicles.
- 507 (c) Ensure that Drivers have the appropriate insurance information on file with the
508 Human Resources Department.
- 509 | (d) Ensure all ~~accidents~~ motor vehicle crashes and damages are reported in accordance
510 with the provisions of this Law.
- 511 (e) Ensure that all Tribal vehicle mileage is recorded and submitted to Fleet Management
512 in accordance with Fleet Management's requirements. Non-compliance with turning in
513 mileage reports shall result in revoking department vehicles.
- 514 (f) Approve expense reports submitted for personal vehicle mileage reimbursement.
- 515 (g) Promptly investigate all infractions of this Law which they become aware of.
- 516 (h) Ensure that all direct reports abide by all provisions of this Law.
- 517 (i) Implement disciplinary action against Drivers who violate this Law, in accordance
518 with the Tribe's personnel policies and procedures.
- 519 | 330.15-2. It is the responsibility of Supervisors to uphold and enforce all provisions of this Law.
520 Supervisors who fail to uphold this Law may face suspension of vehicle driver certification,
521 disciplinary action and/or loss of Department vehicles.
- 522 | 330.15-3. *Referrals*. Supervisors may refer Drivers to:
- 523 (a) the Environmental Health & Safety Division or an appropriate agency or training
524 source for additional driver training; and/or
- 525 (b) the Employee Assistance Program in accordance with applicable Tribal policies and
526 procedures.

527
528 *End.*



Legislative Operating Committee

October 7, 2015

Community Support Fund Policy Amendments

Submission Date: 6/25/15

Public Meeting:
 Emergency Enacted:
 Expires:

LOC Sponsor: David P. Jordan

Summary: *This item was brought forward to add language found in BC Resolution 12-11-13-D into the policy to clarify that someone who receives assistance from the Fund program does not have to cost share if they are at or below the federal Poverty Guidelines.*

7/1/15 LOC: Motion by David P. Jordan to add the Community Support Fund Policy Amendments to the active files list; seconded by Tehassi Hill. Motion carried unanimously.

7/22/15 OBC: Direct LOC to make requested changes to the Community Support Fund. Item deferred to the next regular Business Committee meeting.

8/12/15 OBC: Direct LOC to make requested changes to the Community Support Fund. Item sent to a Business Committee special meeting agenda at the adjournment of the meeting.

8/17/15 OBC: Direct LOC to make requested changes to the Community Support Fund. Motion by Jennifer Webster to direct the requested changes to the Community Support Fund Policy to the Legislative Operating Committee and for proposed changes due back to the September 23, 2015 regular Business Committee meeting, seconded by David Jordan. Motion carried with one opposed and one abstention.

9/2/15 LOC: Motion by Jennifer Webster to forward the current draft of the Community Support Fund (Policy) for the required analyses; seconded by Fawn Billie. Motion carried unanimously.

9/16/15 LOC: Motion by David P. Jordan to accept the update on the Community Support Fund Policy Amendments and forward to the Oneida Business Committee; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- Review the draft and analysis and consider approving for a Public Meeting for October 29, 2015 at 12:15 p.m.



Notice of

Public Meeting

to be held

October 29, 2015 at 12:15 p.m.

OBC Conference Room—2nd Floor, Norbert Hill Center



Topic: Community Support Fund Amendments

The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal that would:

- ◆ Clarify that the Fund is a fund of last resort;
- ◆ Now require an applicant to provide additional information including sufficient documentation of:
 - ◆ enrollment in the Tribe
 - ◆ household income for a period of thirty (30) days prior to the application
 - ◆ status of employment;
- ◆ Remove the cost share feature from the Fund;
- ◆ Add new items to the listed items covered by the Fund including Utility Disconnections, Inpatient Treatment, Fire recovery/natural disaster assistance, Home renovations required for handicap accessibility, Family Medical Leave Act Wage Replacement, Social Security Disability Determination rent/utility assistance;
- ◆ Add new items to the listed items not covered by the Fund including Appliance Repair/Replacement, Homeless lodging assistance, Stabilization rent assistance, Department of Correction re-entry assistance, Health membership fees, Food and personal care items;
- ◆ Only all enrolled members or individuals acting on behalf of enrolled members to seek assistance from the Fund.

All community members are invited to attend this meeting to learn more about this proposal and/or to submit comments concerning this proposal.

Public Comment Period—Open until November 5, 2015

During the Public Comment Period, all interested persons may submit written comments regarding this legislative proposal; and/or a transcript of any testimony/spoken comments made during the Public Meeting. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, interoffice mail, e-mail or fax.

For more information about the public meeting process, or to obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office, which is located on the second floor of the Norbert Hill Center, Oneida WI.

Mail: **Legislative Reference Office**
PO Box 365
Oneida, WI 54155

Phone: **(920) 869-4376 or (800) 236-2214**
 E-Mail: **LOC@oneidanation.org**
 Fax: **(920) 869-4040**

Community Support Fund Policy

Article I. Purpose and Policy
 Article II. Adoption, Amendment, Repeal
 Article III. Definitions
 Article IV. Economic Support Services
 Responsibilities; Eligibility and Qualifications

Article V. Priorities for Consideration
 Article VI. Items Covered by the Fund
 Article VII. Items not Covered by the Fund
 Article VIII. Application Requirements
 Article IX. Appeal

| Analysis by the Legislative Reference Office | | | | | |
|---|--|----------------|----------------------|----------------|--------------|
| Title | Community Support Fund Policy (the Policy) Amendments | | | | |
| Requester | Councilman Brandon Stevens | Drafter | Douglass McIntyre | Analyst | Tani Thurner |
| Reason for Request | To clarify an inconsistency between the Policy and the adopting resolution. Additional changes have also been made to update and streamline the Policy. | | | | |
| Purpose | The adopting resolution states that persons below the federal poverty level do not have to cost-share when receiving benefits; however the Policy does not state this. Amendments were requested to reconcile the two documents. | | | | |
| Authorized/ Affected Entities | Governmental Services Division Director must report semi-annually to the OBC. Economic Support Services Area, instead of the Social Services Area, administers the Fund, creates SOPs, and notifies the membership. | | | | |
| Due Process | Case Manager decisions appealable to his/her supervisor. If upheld, they can be appealed to Area Manager, and if upheld; then to the Judiciary. | | | | |
| Related Legislation | There are various policies which identify how funds would be disbursed, for example the Children’s Burial Fund Policy or the Trust Scholarship Fund Policy; however nothing is directly related. | | | | |
| Policy Mechanism | Process for applying for emergency funding; eligibility requirements. | | | | |
| Enforcement | N/A | | | | |

1
 2
 3 **Overview**
 4 When amendments were adopted to the Community Support Fund Policy (the Policy) in
 5 December 2013, the adopting Resolution (OBC #12-11-13-D) stated:

6 “the amendments to the Policy also [...] specifically states (sic) that someone who
 7 receives assistance from the Fund program does not have to cost share if they are at or
 8 below the Federal Poverty Guidelines”
 9

10 However the Policy, as adopted, did not state that someone who receives funds would not
 11 have to cost share if below Federal Poverty Guidelines. Amendments have been requested to
 12 reconcile the Policy with the adopting resolution, and additional changes have also been made to
 13 the Policy.
 14

15 **Cost Sharing**

16 These proposed amendments do not add a provision stating that persons are not required to
 17 cost-share if they fall under federal poverty guidelines. Instead, all references to “cost sharing”
 18 are deleted entirely from the Policy. The provisions that would be deleted include:

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- 19 • A definition for cost sharing. [Current Policy, 3-1(f)]
- 20 • A general provision stating that all applicants will be asked to contribute a percentage
- 21 of the assistance being requested. [Current Policy, 4-4]
- 22 • A requirement that case managers consider “the ability of the applicant to cost-share”
- 23 as one of the factors used to determine the level of assistance an applicant may
- 24 receive. [Current Policy, 5-1(b)]
- 25 • A requirement that persons who receive assistance in paying their utilities must repay
- 26 50% of the funds received within 4 months, or else their per capita payments may be
- 27 garnished. [Current Policy, 6-3]

Other Changes to the Policy

30 In addition to deleting references to cost-sharing, the following changes are also being
31 proposed for the Policy:

- 32 • The Policy contains lists that specifically identify certain things as being covered by the
- 33 Fund, and other things as not being covered by the Fund. Several new items were added
- 34 to each of those list, and there were also changes made to items already listed as being
- 35 covered by the Fund:

| New Items added to the list of things covered by the Fund [6-1] | New Items added to the list of things NOT covered by the Fund [7-1] | Changes to items already listed as being covered by the Fund [6-1] |
|---|---|--|
| <ul style="list-style-type: none"> • Utility Disconnections • Inpatient Treatment • Fire recovery/natural disaster assistance • Home renovations required for handicap accessibility • Family Medical Leave Act Wage Replacement • Social Security Disability Determination rent/utility assistance | <ul style="list-style-type: none"> • Appliance Repair/Replacement • Homeless lodging assistance • Stabilization rent assistance • Department of Correction re-entry assistance • Health membership fees • Food and personal care items 7-1. | <ul style="list-style-type: none"> • Instead of “rental of medical equipment”, the Fund may cover medical- related equipment, supplies, or furniture, “but must use rental equipment, supplies, or furniture when available” • Instead of “health insurance”, the Fund may be used to cover “COBRA insurance payments”. • The fund not only covers medical transportation / emergency medical travel, but also vehicle repairs for those. |

- 37 • A new provision is added to clarify that the Community Support Fund (the “Fund”) is a
- 38 fund of last resort. [4-4]
- 39 • The definition of “applicant” is revised to clarify that the person applying for assistance
- 40 must be an enrolled Tribal member or applying for assistance on behalf of an enrolled
- 41 Tribal member. [3-1(a)]
- 42 • Minors who are eligible for enrollment but not enrolled are no longer eligible for
- 43 assistance under this fund. Eligibility is exclusively reserved for enrolled Tribal
- 44 members. [4-2]
- 45

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10/7/15

- 46 • Currently, the Fund may be used for a “catastrophic event, illness, or injury.” The
47 amendments clarify that assistance also covers an “emergency event”. The definition for
48 “emergency” is changed to a definition for “emergency event”. [3-1(f)]
- 49 • A new factor is also added that case managers must use to determine the level of
50 assistance that may be provided to an applicant - case managers must now consider the
51 Fund’s “appropriate standard operating procedures.” [5-1(d)]
- 52 • Currently, the Social Services Area is responsible for administering the Fund. Under the
53 amendments, references to the Social Services Area are replaced with references to the
54 Economic Support Services Area. [4-1]
- 55 • The Policy lists examples of a catastrophic illness or injury that would involve continuing
56 treatment due to a chronic serious health condition. Currently, asthma, diabetes and
57 epilepsy, are listed as examples, but under the amendments, “chemotherapy/radiation,
58 dialysis, daily/weekly therapy resulting from trauma” are listed instead. [3-1(e)(2)]
- 59 • Case managers may still deny benefits to applicants who have elected not to be covered
60 by employer benefits such as disability or health insurance, but the amendments also give
61 case managers the option of limiting benefits, instead of completely denying them. [4-6]
- 62 • Currently, non-tribal parents and legal guardians may apply for assistance from the Fund
63 on behalf of an enrolled Tribal member. Under the amendments persons with “legal
64 responsibility” for a Tribal member may also apply on behalf of the Tribal member. [4-2]
- 65 • Under the amendments, no assistance may be provided without sufficient documentation
66 of Tribal enrollment and of all household income for the 30 business days immediately
67 before the application of the submission. [8-2]
- 68 • An applicant may be reimbursed for lodging as part of travel expenses related to a
69 funeral, in addition to mileage and airfare expenses. [6-4]
- 70 • Instead of prohibiting applicants from reapplying for the same reason more than twice,
71 the amended Policy would instead prohibit applicants from reapplying for the same
72 reason more than the limit stated within the Policy or the Fund Standard Operating
73 Procedures (SOPs). [8-4(e)] There are only three limits specifically identified in the
74 Policy, so unless there are additional limits set out in the SOPs, there would be very few
75 limits to how often a person could reapply for the same reason.
- 76 The three limits in the Policy include:
- 77 • Assistance with paying utility bills - once every two years (currently it is once every
78 three years, but the amendments reduce it to two years). [6-3]
- 79 • Inpatient treatment has a limit of once per lifetime. [6-1(h)]
- 80 • Social Security Disability determination rent/utility assistance – maximum of 12
81 months per lifetime. [6-1(l)]

Other

84 Various minor revisions were made to improve the language and flow of the document,
85 and to ensure this document complies with Tribal drafting practices. These changes do not affect
86 the content of the law.

87 A public meeting has not been held.

88

Draft 2
10/7/1589 **Considerations**

90 The following are issues the LOC may want to consider:

- 91 • The definition of “applicant” is revised to clarify that the person applying for assistance must
92 be an enrolled Tribal member or applying for assistance on behalf of an enrolled Tribal
93 member. [3-1(a)] It is not clear why a Tribal membership requirement is added to the
94 definition, because 4-2 already states that only Enrolled Tribal members are eligible for
95 assistance. Further, since “applicant” is now defined as a person applying for assistance on
96 behalf of an enrolled Tribal member, there is confusion because 4-2 states that applications
97 may be made by a non-Tribal member “provided the [...] non-tribal member has one of the
98 following relationships to the applicant.” however, the applicant would be the non-Tribal
99 member, not the Tribal member who s/he is applying on behalf of, according to the
100 definition.
- 101 • 6-2(c) states that, for assistance with a security deposit, “Only one request per household will
102 be considered.” However, no time limit is placed on this – does this mean only one request
103 will be considered at a time? Once every five years?
- 104 • 9-1 states that appeals are made to the area manager of the Social Services Division. This is
105 the same provision as there is under the current law, where the program is administered by
106 the Social Services Division. Since the Social Services Division no longer administers this
107 Policy, it may not be the intent to have appeals go to the Area Manager of that Division.
- 108 • 7-1 – the list of things not covered by the Fund now includes: “stabilization rent assistance”
109 and “Department of Correction re-entry assistance.” Neither of these terms is defined, and it
110 may not be clear what is meant by either.
- 111 • “Immediate family” is defined as “that group of persons who make up a family unit normally
112 defined as husband, wife, children, sister, brother, in-laws, step family, grandparents and
113 grandchildren, **and/or a person who has Legal responsibility for a member of their**
114 **immediate family.**”
- 115 ○ This is a circular definition because it uses the term within the definition. Also, it is
116 not clear why the above bolded language is included, because it is not needed. If a
117 person has legal responsibility for a member of their immediate family then they are
118 already “immediate family.”
- 119 • The Fund as an Entity. Various provisions refer to the Fund as though it is an individual
120 person, capable of taking actions. Among other things, this could make enforcement difficult.
121 It is recommended that the language throughout the Policy be revised to identify a specific
122 person (i.e. Case Manager, Division Director, etc) who would be administering the Fund. For
123 example:
- 124 ○ 7-2 and 4-6 both state “The **Fund reserves the right to deny or limit benefits...**” –
125 however, the Fund is a source of money; it cannot reserve a right to do anything.
- 126 ○ 7-2 states: “If the **Fund chooses to approve, deny, or limit benefits**”
- 127 ○ 6-2 states: “The **Fund will only provide assistance...** The **Fund shall not co-sign**
128 any lease.”
- 129 ○ 6-4. “The **Fund shall reimburse** those applicants...”
- 130 • This may not need to be addressed with these amendments, however it may be beneficial to
131 note this for future revisions – this Law does not identify a consistent list of what is a

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132 qualifying event, and there are numerous provisions scattered throughout the Policy which
 133 reference what qualifies and what does not. There are different lists of qualifying events and
 134 separate examples identified in the definitions section, Article IV, Article VI; and Article VII
 135 identifies what is not covered. It may be beneficial to review all of these provisions and
 136 establish one consistent list of what is covered and what is not, for clarity.

- 137 • Additional minor, typographical and drafting issues were noted during the legislative
 138 analysis, and will be discussed with the sponsor for this item.

140 Community Support Fund Policy

143 Article I. Purpose and Policy

144 | 1-1. Purpose. The purpose of this Policy is to assist the greatest number of Tribal members of
 145 the Oneida Tribe of Indians of Wisconsin who apply for assistance to the Community Support
 146 Services Fund in times of a Catastrophic event, illness ~~or~~, injury or emergency event when no
 147 other resources for assistance exist.

148 | 1-2. Policy. It is the policy of the Oneida Tribe of Indians of Wisconsin to assist their people in
 149 a time of need after a Catastrophic event, illness ~~or~~, injury or emergency event, when there is no
 150 other assistance available or all other assistance has been exhausted.

152 Article II. Adoption, Amendment, Repeal

153 2-1. This Policy is adopted by the Oneida Business Committee by resolution # BC-5-15-96-A,
 154 amended by resolution # BC-01-08-97-G, and amended by resolution #BC-_____.

155 2-2. This Policy may be amended or repealed by the Oneida Business Committee and/or the
 156 Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures
 157 Act.

158 2-3. Should a provision of this Policy or the application thereof to any person or circumstances
 159 be held as invalid, such invalidity shall not affect other provisions of this Policy which are
 160 considered to have legal force without the invalid portion(s).

161 2-4. In the event of a conflict between a provision of this Policy and a provision of another
 162 policy, the provisions of this Policy shall control.

163 2-5. This Policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of
 164 Wisconsin.

166 Article III. Definitions

167 | 3-1. This article shall govern the definitions of words and phrases used within this policy. All
 168 words not herein defined shall be used in their ordinary and everyday sense.

169 (a) "Applicant" ~~shall mean~~ means the person applying for assistance for themselves ~~or is~~
 170 an enrolled Tribal Member or the application is on behalf of ~~another person who is~~
 171 otherwise unable to do so due to age or incapacity, an enrolled Tribal Member.

172 (b) "Business days" ~~shall mean~~ means Monday through Friday ~~8:00 a.m. to 4:30 p.m.,~~
 173 except ~~for those days~~ recognized as holidays ~~as listed~~ on the official calendar of the Tribe.

174 (c) "Case Manager" ~~shall mean the~~ means a employee of the Social Economic Support

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- 175 | Services Area responsible for administering Community Support Services Fund benefits
176 | ~~according to the established guidelines set forth below.~~
- 177 | (d) “Catastrophic event” ~~shall mean~~means a natural or man-made incident, which results
178 | in substantial damage or loss requiring major financial resources to repair or recover (i.e.
179 | house fire, tornado, flood, or other disaster).
- 180 | (e) “Catastrophic illness or injury” ~~shall mean~~means a serious debilitating illness, injury,
181 | impairment, or physical or mental condition that involves:
182 | (1) in-patient care; or
183 | (2) a period of continuing treatment due to a chronic serious health condition
184 | ~~(asthma, diabetes, epilepsy, etc.);~~such as chemotherapy/radiation, dialysis,
185 | daily/weekly therapy resulting from trauma, etc.); or
186 | (3) a period of illness or injury that is long-term due to a condition for which
187 | treatment may be ineffective (stroke, terminal disease, etc.); or
188 | (4) receipt of multiple treatments either for restorative surgery after an accident or
189 | other injury, or for a chronic condition. (i.e. cancer or kidney disease)
- 190 | (f) ~~“Cost share” shall mean the request to have the applicant agree to contribute to the~~
191 | ~~cost of the assistance given.~~
- 192 | ~~(g) “Emergency” shall mean~~ event” means a situation that poses an immediate risk to
193 | health, life, safety, property or environment. Emergencies require urgent intervention to
194 | prevent further illness, injury, death, or other worsening of the situation.
- 195 | ~~(h) “Emergency medical travel” shall mean~~means an unexpected serious health
196 | situation or occurrence, requiring the immediate presence of immediate family. (i.e., end
197 | of life situation, life support, etc.)
- 198 | ~~(i) “Fund” shall mean~~means the Community Support Services Fund as originally
199 | established under # BC 5-15-96-A.
- 200 | ~~(j) “Immediate family” shall mean~~means that group of persons who make up a family
201 | unit normally defined as husband, wife, children, sister, brother, in-laws, step family,
202 | grandparents and grandchildren, and/or a person who has Legal responsibility for a
203 | member of their immediate family.
- 204 | ~~(k) “Legal guardian” shall mean~~means a person who has the legal authority to care for
205 | the personal and property interests of another person granted through Court order.
- 206 | ~~(l) “Legal responsibility” shall mean~~means specific duties imposed upon a person to
207 | care or provide for another including liability for personal obligations as granted through
208 | a Power of Attorney or Court order.
- 209 | ~~(m) “Major medical surgery” shall mean~~means a surgical procedure that carries a degree
210 | of risk to the patient’s life, or the potential for severe disability if something goes wrong
211 | during surgery. It is a surgical procedure that usually requires a patient to be put under
212 | general anesthesia and given respiratory assistance because he or she cannot breathe
213 | independently.
- 214 | ~~(n) “Reservation” shall mean all the lands and waters within the exterior boundaries of~~
215 | ~~the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the~~
216 | ~~1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal~~
217 | ~~law.~~

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- 218 | ~~(o)~~ (m) “Severity” ~~shall mean~~ means the verified rate or level of need.
 219 | ~~(p)~~ “Shelter” ~~shall mean~~ means mortgage payments or rent payments.
 220 | ~~(q)~~ “Tribal” or “Tribe” ~~shall mean~~ means the Oneida Tribe of Indians of Wisconsin.
 221 | ~~(r)~~ “Verification” ~~shall mean~~ means the evidence or proof that confirms the accuracy or
 222 | truth of the alleged catastrophic event, illness ~~or~~ injury or emergency event and of Tribal
 223 | membership (i.e., estimates, photographs, doctor statements/report, check stubs, tribal
 224 | identification card/letter, etc.).
 225 |

226 | **Article IV. ~~Social Service~~ Economic Support Services Responsibilities; Eligibility and**
 227 | **Qualifications**

228 | 4-1. The ~~Social~~ Economic Support Services Area of the Governmental Services Division shall
 229 | create and administer the Fund.

230 | (a) The ~~Social~~ Economic Support Services Area shall create standard operating
 231 | procedures for the administration of the Fund. The standard operating procedures
 232 | ~~shall~~ must include the list of categories the Fund covers and a cap that set the amount of
 233 | assistance per event/ per household, except for funeral expenses which ~~shall~~ will be set
 234 | per event/ per person.

235 | (b) The Governmental Services Division Director shall report semi-annually to the
 236 | Oneida Business Committee. The report ~~shall~~ must include, the amount of funds paid out
 237 | under each category.

238 | (c) The ~~Social~~ Economic Support Services area shall ensure that the Tribal membership is
 239 | informed of what assistance is available through the Fund, how to apply for assistance,
 240 | and specify who is eligible for assistance.

241 | 4-2. Eligibility for assistance provided under the Fund is reserved for enrolled Tribal members.
 242 | Applications may be made by a non-tribal ~~parent or legal guardian~~ member on the behalf of an
 243 | enrolled Tribal member, ~~or minor eligible for enrollment,~~ provided the requested funds will
 244 | benefit the Tribal member ~~or child~~ only and the non-tribal member has one of the following
 245 | relationships to the applicant:

- 246 | (a) is a non-Tribal parent of the applicant
 247 | (b) is the Legal guardian of the applicant
 248 | (c) has Legal responsibly for the applicant

249 | 4-3. Residency within the State of Wisconsin is not a prerequisite for assistance, except for
 250 | requests for a security deposit in ~~Section~~ accordance with 6-2.

251 | 4-4. The Fund is a fund of last resort and provides assistance when there is no other financial
 252 | assistance available:

253 | ~~(a) Applicants will be asked to contribute a percentage of the~~ or all other assistance ~~being~~
 254 | ~~requested.~~

255 | ~~(b) has been exhausted.~~ Applicants shall first seek out other resources that can meet the needs of
 256 | their request. Proof of requesting assistance from other sources ~~shall~~ must be provided
 257 | with the application.

258 | 4-5. The following types of catastrophic events, illnesses or injuries qualify an applicant for
 259 | assistance:

- 260 | (a) Terminally ill

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- 261 (b) Physically challenged or incapacitated
- 262 (c) Major medical surgery
- 263 (d) Life threatening (i.e. Cancer, AIDS, Stroke, disabling injuries due to motor vehicle
- 264 accident, etc.)
- 265 (e) Natural disaster (i.e. Tornado, fire, flood, etc.)
- 266 (f) Death in immediate family
- 267 4-6. ~~A Case Manager~~The Fund reserves the right to deny or limit benefits to applicants who
- 268 have elected not to be covered by employer benefits such as disability or health insurance.
- 269 4-7. All payments ~~shall~~must be provided directly to the service provider. However, payments
- 270 awarded for funeral travel ~~shall~~will be reimbursed to the applicant.
- 271 4-8. Assistance available under the Fund is subject to change according to fiscal year funding
- 272 levels.
- 273 4-9. Tribal Programs and Enterprises are not eligible for these funds.

274
275 **Article V. Priorities for Consideration**

- 276 5-1. The Case ~~Managers~~Manager shall determine the level of assistance to be provided based
- 277 on:
- 278 (a) Severity of event, illness~~-or,~~ injury or emergency event
- 279 (b) ~~Ability of applicant to cost share~~
- 280 ~~(c) Cost (usual and customary fees)~~
- 281 ~~(d) Amount of time elapsed since catastrophic event, illness~~-or,~~ injury~~ or emergency
- 282 event occurred
- 283 (d) The Fund's appropriate standard operating procedures
- 284 5-2. The Case Manager shall assess each individual case, prioritize and assist with immediate
- 285 needs. Priorities are as follows:
- 286 (a) Life-threatening emergency requests
- 287 (b) Emergency medical travel
- 288 (c) Other needs

289
290 **Article VI. Items Covered by the Fund**

- 291 6-1. Requests for assistance from the Fund must be tied to or be a result of a catastrophic event,
- 292 illness~~-or,~~ injury~~,~~ or emergency event. Upon verification of a catastrophic event, illness~~-or,~~
- 293 injury or emergency event, the Fund may be used for the following:
- 294 (a) ~~Health insurance, including~~ COBRA Insurance Payments
- 295 (b) Prescriptions not available through an IHS Clinic
- 296 (c) Medical transportation/emergency medical travel ~~(including vehicle repairs)~~
- 297 ~~(d) Rental of medical equipment~~
- 298 (d) Medical-related equipment, supplies, or furniture, but must use rental equipment,
- 299 supplies, or furniture when available
- 300 (e) Medical bills (dental, optical, hospital) not covered by insurance
- 301 (f) Shelter and utilities where no other resources exist (including security deposits)
- 302 (g) Utility disconnections
- 303 (h) Inpatient Treatment (with a limit of once per lifetime)

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304 (i) Fire recovery/natural disaster assistance

305 (j) Home renovations required for handicap accessibility (if written authorization from
306 the landlord)

307 (k) Family Medical Leave Act Wage Replacement

308 (l) Social Security Disability Determination rent/utility assistance (with a maximum of
309 twelve (12) months per lifetime)

310 6-2. ~~Requests for~~ The Fund will only provide assistance for a security deposit ~~shall~~will be tied to
311 or be a result of, a catastrophic event, illness ~~injury~~ or ~~injury~~emergency event and are limited to
312 Tribal members who are Wisconsin residents only.

313 (a) The ~~Tribal member~~Applicant shall demonstrate the ability to fulfill the terms of the
314 rental lease. The Fund ~~does~~shall not co-sign any lease.

315 (b) Security deposits are non-transferable and the amount paid for a security deposit
316 ~~shall~~must be paid back to the Fund Program before another security deposit is issued at
317 any time in the future.

318 (c) Only one (1) request per household will be considered.

319 (d) Security deposits shall be issued on an emergency basis which shall include, but is
320 not limited to, pending eviction and homelessness.

321 6-3. ~~Requests for~~ Assistance for the payment of utilities shall only be allowed once every ~~three~~
322 ~~(3)~~two (2) years by the person listed as responsible to pay with the utility company. ~~Those who~~
323 ~~receive assistance in paying their utilities shall cost share those expenses by paying back fifty~~
324 ~~percent (50%) of the funds received within four (4) months. If those funds are not reimbursed to~~
325 ~~the fund by the required date, the Community Support Program may garnish the individual's per~~
326 ~~capita payments.~~

328 6-4. Travel expenses to arrange or attend a funeral for immediate family members outside the
329 State of where an applicant resides ~~shall~~must be paid by the applicant first, and the Fund shall
330 reimburse those applicants for mileage, lodging, or airfare expenses up to a maximum amount of
331 five hundred dollars (\$500).

333 **Article VII. Items not Covered by the Fund**

334 7-1. The Fund does not cover payments that are not for a catastrophic event, illness ~~or~~, injury or
335 emergency event as defined above. The following is a list of items not covered by the Fund;
336 however, this is not an exhaustive list:

337 (a) Car payments

338 (b) Taxes

339 (c) Credit card or Charge accounts

340 (d) Commercial loans

341 (e) Defaults/fines/bankruptcy charges

342 (f) Expenses not tied to basic needs (Cable, internet, memberships, etc.)

343 (g) Legal fees/court costs/judgments

344 (h) Appliance Repair/Replacement

345 (i) Homeless lodging assistance

346 (j) Stabilization rent assistance

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- 347 | (k) Department of Correction re-entry assistance
 348 | (l) Health membership fees
 349 | (j) Food and personal care items

350 | 7-2. The Fund reserves the right to deny or limit benefits if evidence is found regarding the
 351 | applicant as to the following:

- 352 | (a) The catastrophic event, illness ~~or~~, injury or emergency event is the result of a
 353 | violation of the law as proven by a citation or criminal conviction.
 354 | (b) The applicant or others in the household benefiting from assistance from the Fund are
 355 | non-compliant with the requirements of other tribal programs, policies or laws (i.e.
 356 | Zoning, etc.)
 357 | (c) The applicant or others in the household benefiting from assistance from the Fund are
 358 | non-compliant with the requirements of the Fund.

359 | If the Fund chooses to approve, deny, or limit benefits ~~under this section~~, an explanation of the
 360 | decision ~~shall~~must be in writing and provided to the applicant with a copy placed in the Fund's
 361 | file.

362 |
 363 | **Article VIII. Application Requirements**

364 | 8-1. To be considered for assistance and before receiving assistance the applicant must complete
 365 | the full application process. All applicants shall cooperate with the Case Manager to assist the
 366 | Case Manager in comprehensively addressing the needs of the applicant~~-(s)~~.

367 | 8-2. Supporting documentation ~~shall be~~is required in all cases. The applicant is responsible to
 368 | provide all documentation requested by the Case Manager. No assistance may be provided
 369 | without:

370 | ~~(a) No assistance shall be provided without~~(a) sufficient documentation of the
 371 | catastrophic event ~~or~~, illness ~~or~~, injury or emergency event as requested by the Case
 372 | Manager.

373 | ~~(b) No assistance shall be provided without~~(b) sufficient documentation that the
 374 | applicant sought assistance from other agencies with an explanation of benefits received
 375 | or refusal of assistance by the other agencies.

376 | (c) sufficient documentation of enrollment in the Tribe

377 | (d) sufficient documentation of all household income the thirty (30) Business days
 378 | immediately prior to the submission of the application.

379 | (e) sufficient documentation of status of employment is required and includes the
 380 | following documentation:

- 381 | (1) Leave of absence paperwork
 382 | (2) Balance of personal and vacation time accumulation
 383 | (3) Disability insurance or workmen's compensation coverage
 384 | (4) Check stubs

385 | 8-3. Documentation includes, but is not limited to:

- 386 | (a) Medical reports
 387 | (b) Bills or statements
 388 | (c) Estimates
 389 | (d) Letters

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- 390 (e) Police or fire reports
 391 (f) Obituary or formal notice of death
 392 (g) Check stubs
 393 (h) Pictures or photographs
 394 (i) Applications for assistance from other agencies
 395 (j) Approval of assistance or denial of assistance letters from other agencies
 396 8-4. ~~Verification of status of employment is required and includes the following~~
 397 ~~documentation. Requests submitted without supporting documentation must be kept on file for~~
 398 ~~thirty (30) Business days.~~
 399 (a) ~~Leave of absence paperwork~~
 400 (b) ~~Balance of personal and vacation time accumulation~~
 401 (c) ~~Disability insurance or workmen's compensation coverage~~
 402 (d) ~~Check stubs~~
 403 8-5. ~~Requests submitted without supporting documentation shall be kept on file for thirty (30)~~
 404 ~~business days.~~
 405 (a) ~~A The Case Manager shall~~ request ~~for~~ additional information ~~by a Case Manager~~
 406 ~~shall be made~~ be provided when an application contains insufficient information to make
 407 an informed decision.
 408 (b) Applicants may deliver, scan, fax, mail, or e-mail additional requested information.
 409 (c) Failure to submit the requested information within the thirty (30) Business days will
 410 result in closing the application file, with no further action taken in regard to that
 411 application.
 412 (d) Applicant ~~shall~~ must be sent a notice that the file has been closed and reason(s) for the
 413 file being closed.
 414 (e) After the file is closed, the applicant ~~shall~~ must start the application process over
 415 again in order to be considered for assistance from the Fund. However, no applicant may
 416 re-apply for the same catastrophic event, illness ~~or~~ injury or emergency event more than
 417 ~~twice~~ the limit stated within this Policy or the Fund's standard operating procedures.
 418 8-65. Application for assistance ~~shall~~ must be made within a reasonable time period, not to
 419 exceed thirty (30) Business days of a catastrophic event or illness ~~or~~ injury or emergency event.
 420 Applications made after thirty (30) Business Days ~~shall~~ will not be considered.

421
422 **Article IX. Appeal**

423 9-1. An appeal of the Case Manager's decision shall be made to the Case Manager's supervisor.
 424 If the supervisor upholds the decision, it may then be appealed to the Area Manager of the Social
 425 Services Division. If the decision is upheld by the Area Manager, the decision may be appealed
 426 as a final decision to the Judiciary.

427
428 *End.*
429

430
431 Adopted - BC-5-15-96-A
432 Amended - BC-1-8-97-G
433 Amended- BC-12-11-13-D



Legislative Operating Committee

October 7, 2015

Oneida Higher Education Scholarship

Submission Date: October 15, 2014

Public Meeting:
 Emergency Enacted:

LOC Sponsor: Fawn Billie

Summary: *Higher Education proposed funding changes for Fall 2014-2015. The OBC requested a legislative analysis of the changes which were made to the Student Handbook. Following this action, the OBC directed the LOC to look at codifying the rules created by the Higher Education Office, which currently govern how Higher Ed disburses higher education funding in accordance with GTC directives.*

08/23/14 OBC: Motion by Vince Delarosa request the BC to direct the proposed Higher Education changes be put on hold until 1) A legal review and legislative analysis are completed and 2) A notice of the amendments and the effects of the amendments are provided to the GTC at an Annual or Semi-Annual meeting, seconded by Brandon Stevens. Motion carried unanimously.

Motion by David Jordan to direct Higher Education and Governmental Division to send out a notification in the next Kalihwisaks and to include all the students that are within their database who are applying for financial assistance in that notification, saying that the new proposed changes are being put on hold, seconded by Vince Delarosa. Motion carried unanimously.

10/01/14 LOC: Motion by Fawn Billie to approve the memo and forward to the Oneida Business Committee for acceptance; seconded by Jennifer Webster. Motion carried unanimously.

10/08/14 OBC: Motion by Lisa Summers to send this issue back to LOC for a draft law or policy to come back to the Business Committee when ready, seconded by Trish King. Motion carried unanimously.

10/15/14 LOC: Motion by Jennifer Webster to add Higher Education to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.

Note: Fawn Billie will be the sponsor.

12/17/14 LOC: Motion by Jennifer Webster to accept the memorandum regarding the status of the Higher Education Law as FYI; seconded by Fawn Billie. Motion carried unanimously.

5/20/15: Work meeting held, attendees include: Pat Garvey, Candice Skenandore, Mitchell Metoxen, Fawn Billie, David P. Jordan, Leyne Orosco, Fawn Cottrell.

7/17/15: Work meeting held, attendees include: Fawn Billie, David Jordan, Tehassi Hill, Jennifer Webster, Cheryl Vandenberg, Paula Ripple, Don White, Mistylee Herzog, Mitchel Metoxen, Fawn Cottrell, Krystal John, Candice Skenandore.

7/24/15: Strategy meeting held, attendees include: David Jordan, Tehassi Hill, Jennifer Webster, Brandon Stevens, Krystal John, Candice Skenandore.

8/5/15 LOC: 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.

9/16/15 LOC: Motion by David P. Jordan to defer Oneida Higher Education Scholarship to the Legislative Reference Office to make the discussed changes and bring it back to the next LOC meeting; with a Public Meeting packet prepared for the LOC to review; seconded by Tehassi Hill. Motion carried unanimously.

Next Steps:

- Review the public meeting packet and, if appropriate, approve to send for a Public Meeting to be held on October 29, 2015.



Notice of

Public Meeting

to be held

October 29, 2015 at 12:15 p.m.

OBC Conference Room—2nd Floor, Norbert Hill Center



Topic: Oneida Higher Education Scholarship

The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal for this new law that:

- Identifies the duties and responsibilities of the Higher Education Office which includes awarding scholarships pursuant to this Law, developing and maintaining rules and regulations to carry out this Law and developing and maintaining a system of internal controls for the Higher Education Office [See 305.4-1].
- Lists the eligibility and requirements for an applicant seeking a scholarship [See 305.5].
- Sets the length of funding, identifies the different tiered funding systems and explains how the scholarship amount is determined [See 305.6].
- Allows the Higher Education Office to make exceptions to eligibility, requirements and length of funding on a case-by-case basis. The Law also notes that the Higher Education Student Handbook sets out the exception process [See 305.7-2 & 305.7-3].
- Gives the Higher Education Office the authority to enforce this Law [See 305.8-1].
- Allows a student appeal a scholarship decision only if he/she can show the Higher Education Office failed to abide by this Law and/or the Higher Education Student Handbook [See 305.9-1].

All community members are invited to attend this meeting to learn more about this proposal and/or to submit comments concerning this proposal.

Public Comment Period—Open until November 5, 2015

During the Public Comment Period, all interested persons may submit written comments regarding this legislative proposal; and/or a transcript of any testimony/spoken comments made during the Public Meeting. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, interoffice mail, e-mail or fax.

For more information about the public meeting process, or to obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office, which is located on the second floor of the Norbert Hill Center, Oneida WI.

**Mail: Legislative Reference Office
PO Box 365
Oneida, WI 54155**

**Phone: (920) 869-4376 or (800) 236-2214
E-Mail: LOC@oneidanation.org
Fax: (920) 869-4040**



Oneida Higher Education Scholarship Analysis to PM Draft (Draft # 11)

| <i>Analysis by the Legislative Reference Office</i> | |
|---|--|
| Title | Oneida Higher Education Scholarship (Law) |
| Requester | OBC Referral Drafter Krystal L. John Analyst Candice E. Skenandore |
| Reason for Request | The Higher Education Office proposed funding changes. The OBC requested a legislative analysis and directed that the LOC look at codifying the rules created by the Department, which currently governs how the Department disburses higher education funding in accordance with GTC directives. |
| Purpose | The purpose of this Law is to implement a scholarship program that is compliant with GTC directives and to specify the funding requirements and procedural controls <i>[See 305.1-1]</i> . |
| Authorized/ Affected Entities | Higher Education Office, Area Manager of Education & Training or equivalent Governmental Services Division Director or equivalent, and any eligible Tribal member seeking a scholarship |
| Due Process | A student can appeal a scholarship decision to the review panel, if dissatisfied with the review panel’s decision; the student can appeal to the Division Director. The Division Director’s decision is final <i>[See 305.9]</i> . |
| Related Legislation | Higher Education Student Handbook, Higher Education Office’s system of internal controls |
| Policy Mechanism | Higher Education Scholarships |
| Enforcement | The Higher Education Office can place a student who violates this Law or fails to comply with the Higher Education Student Handbook on probation or suspension <i>[See 305.8-1]</i> . |

Overview

This is a new Law that:

- Identifies the duties and responsibilities of the Higher Education Office which includes awarding scholarships pursuant to this Law, developing and maintaining rules and regulations to carry out this Law and developing and maintaining a system of internal controls for the Higher Education Office *[See 305.4-1]*.
- Lists the eligibility and requirements for an applicant seeking a scholarship *[See 305.5]*.
- Sets the length of funding, identifies the different tiered funding systems and explains how the scholarship amount is determined *[See 305.6]*.
- Allows the Higher Education Office to make exceptions to eligibility, requirements and length of funding on a case-by-case basis. The Law also notes that the Higher Education Student Handbook sets out the exception process *[See 305.7-2 & 305.7-3]*.
- Gives the Higher Education Office the authority to enforce this Law *[See 305.8-1]*.
- Allows a student appeal a scholarship decision only if he/she can show the Higher Education Office failed to abide by this Law and/or the Higher Education Student Handbook *[See 305.9-1]*.

Considerations

The LOC may want to consider the following:

Oneida Higher Education Scholarship Analysis to PM Draft (Draft # 11)

- 19 ▪ There are discrepancies with this Law and the Higher Education Student Handbook;
20 however, the Higher Education Student Handbook is in the process of being updated.
- 21 ▪ General Tribal Council (GTC) must be notified of any amendments related to scholarships
22 either at the Annual or Semi-Annual meeting, whichever is sooner [*See GTC Resolution 7-*
23 *24-02-A*].

Miscellaneous

24 A public meeting has not been held. Please refer to the fiscal impact statement for any
25 financial impact.
26

Chapter 305
Oneida Higher Education Scholarship
On the Standing Stone, the great place where they teach them the traditions, money

| | |
|-------------------------------------|-------------------------------------|
| 305.1. Purpose and Policy | 305.6. Higher Education Scholarship |
| 305.2. Adoption, Amendment, Repeal | 305.7. Exceptions |
| 305.3. Definitions | 305.8. Enforcement |
| 305.4. Higher Education Office | 305.9. Appeals |
| 305.5. Eligibility and Requirements | |

305.1. Purpose and Policy

305.1-1. *Purpose.* The purpose of this Law is:

- (a) To implement a scholarship program that is compliant with the following resolutions GTC-08-12-96-A, GTC-12-7-96-C, BC-05-09-01-B, BC-10-24-01-K, BC-07-24-02-A, BC-01-26-05-A and GTC-01-30-10-A.
- (b) To specify the funding requirements and procedural controls for awarding Scholarships.

305.1-2. *Policy.* It is the policy of this Law to have a consistent methodology for awarding Higher Education Scholarships so that the Tribe is able to provide educational opportunities to Tribal Members and award Scholarships in a consistent and fiscally responsible manner.

305.2. Adoption, Amendment, Repeal

305.2-1. This Law was adopted by the Oneida Business Committee by resolution _____.

305.2-2. This Law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

305.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity does not affect other provisions of this Law which are considered to have legal force without the invalid portions.

305.2-4. In the event of a conflict between a provision of this Law and a provision of another Tribal law, the provisions of this Law control.

305.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

305.3. Definitions

305.3-1. This section governs the definitions of words and phrases used within this Law. All words not defined herein are to be used in their ordinary and everyday sense.

- (a) “Accredited vocational program, college or university” means any United States educational institution eligible for federal financial aid or any Canadian educational institution permitted to grant degrees pursuant to Canadian provincial government that provides Oneida specific culture and/or language based programs.
- (b) “Appeal” means a request for review of a Scholarship decision made by the Higher Education Office or Higher Education Office Review Panel for which the requestor must demonstrate that the Higher Education Office has failed to abide by the provisions of this Law and/or the approved Higher Education Student Handbook.
- (c) “Area Manager” means the supervisor of Education & Training or anyone with the responsibility of overseeing the Higher Education Office.
- (d) “Division Director” means the Division Director of Governmental Services or anyone with the responsibility of overseeing the Area Manager of the Higher Education Office.

41 (e) “Exception” means a request that the Higher Education Office make a discretionary
42 decision to exempt an applicant from a requirement(s) for which there is an available ex-
43 emption under Section 305.7-2.

44 (f) “Financial Needs Analysis” is a form which reports a school’s cost of attendance and
45 eligible Financial Aid awards, which is sent by the Higher Education Office directly to
46 the school’s financial aid office for completion.

47 (g) “Free Application for Federal Student Aid” is an application which determines eligi-
48 bility for any financial resources such as state and federal funding.

49 (h) “GPA” means grade point average which is a measure of a student’s academic
50 achievement arrived at by dividing the total grade points received by the total grade
51 points attempted.

52 (i) “Higher Education Office Review Panel” is a three (3) party review panel, which is to
53 include the applicants’s Higher Education Advisor, the Higher Education Office Manager
54 and the Area Manager.

55 (j) “Higher Education Student Handbook” is the source of the rules and regulations for
56 carrying out this Law as further described in Section 305.4-1(b).

57 (k) “Progress Report” means an official transcript of grades.

58 (l) “Scholarship” means monetary funds awarded to an applicant through the Oneida
59 Higher Education program.

60 (m) “Tribal Member” means an enrolled member of the Oneida Tribe of Indians of Wis-
61 consin.

62 63 **305.4. Higher Education Office**

64 305.4-1. The Higher Education Office shall carry out the intent and purposes of this Law and
65 enforce the provisions of this Law. The Higher Education Office shall:

66 (a) Award scholarships in accordance with this Law.

67 (b) Develop and maintain rules and regulations designed to carry out this Law and shall
68 make such rules and regulations available in the Higher Education Student Handbook.

69 (1) At a minimum, the rules and regulations relating to the eligibility require-
70 ments, funding caps in accordance with resolution GTC-08-12-96-A, GTC-12-7-
71 96-C, BC-05-09-01-B, BC-10-24-01-K, BC-07-24-02-A, BC-01-26-05-A and
72 GTC-01-30-10-A and the enforcement and appeals provisions must comply with
73 the provisions of this Law.

74 (2) The Higher Education Student Handbook and any revisions thereto must be
75 approved by the Oneida Business Committee.

76 (c) Develop and maintain a system of internal controls for the Higher Education Office.
77

78 **305.5. Eligibility and Requirements**

79 305.5-1. *Eligibility.* In order to be eligible for a Scholarship award, applicants must:

80 (a) Be a Tribal Member.

81 (b) Be in Good Standing where good standing means the applicant has:

82 (1) met the Oneida GPA requirements set forth in the Higher Education Student
83 Handbook;

84 (2) completed the total number of credits within the semester/term for which the
85 Scholarship was provided based on a Progress Report; and

86 (3) met the standards of the Financial Aid Academic good standing.

87 (c) Be accepted to an Accredited vocational program, college or university.

88 (d) Be seeking the Scholarship for semesters/terms which have not already ended or been

89 completed.
90 (e) Be seeking the Scholarship for a degree that is categorized in a higher funding tier
91 than the funding tier of a degree previously earned, based on the funding tiers provided
92 under Section 305.6-2. An applicant seeking a degree that is in the same funding tier or
93 lower as another degree being pursued concurrently and within the funding period allot-
94 ted for the degree at the higher funding tier, may not be considered ineligible based on
95 this Section.

96 305.5-2. *Requirements.* In order for a Scholarship to be awarded:

97 (a) Applicants must file the Free Application for Federal Student Aid, unless the appli-
98 cant will be taking less than six (6) credits or will be attending a Canadian educational in-
99 stitution permitted to grant degrees pursuant to Canadian provincial government that pro-
100 vides Oneida specific culture and/or language based programs.

101 (b) It is the applicant's responsibility to submit a complete student file to the Higher Edu-
102 cation Office based on the requirements of the Higher Education Student Handbook.

103

104 **305.6. Higher Education Scholarship**

105 305.6-1. *Length of Funding.* Pursuant to the Higher Education Student Handbook, which must
106 provide comprehensive definitions of the achievements eligible for funding and the methodology
107 for calculating funding periods, the following are the maximum Scholarship funding periods for
108 eligible applicants:

109 (a) Two and one-half (2 1/2) years for a Vocational Program Completion/Associate De-
110 gree/Certificate Program Completion/similar program.

111 (b) Five (5) years for an Undergraduate Degree.

112 (c) Three (3) years for a Graduate Degree.

113 (d) Five (5) years for a Doctoral Degree.

114 305.6-2. *Tiered Funding System.* The General Tribal Council, or its delegate, shall establish
115 maximum funding caps for the following funding tiers:

116 (a) Vocational Program, Associate Degree, Certificate Program or similar program.

117 (b) Undergraduate Degree.

118 (c) Graduate Degree.

119 (d) Doctoral Degree.

120 305.6-3. *Award.* The amount of the Scholarship award is based upon:

121 (a) The amount of funding caps for each tier under Section 305.6-2, which must be con-
122 tained in the Higher Education Student Handbook.

123 (b) The Financial Needs Analysis.

124

125 **305.7. Exceptions**

126 305.7-1. *Exception Policy.* Exceptions may be offered under narrow grounds only for applicants
127 facing extenuating circumstances whom are able to demonstrate that based on the totality of the
128 circumstances the applicant will likely succeed in achieving the accomplishment sought either
129 within the Exception period and/or despite the extenuating circumstances that have made pursu-
130 ing an Exception necessary.

131 (a) Within six (6) months of the adoption this Law, the Higher Education Office shall
132 develop a standard operating procedure for evaluating requests for Exceptions; no Excep-
133 tions may be granted pursuant to this Law until the said standard operating procedure has
134 been developed.

135 305.7-2. *Available Exceptions.* In its discretion, the Higher Education Office may make Excep-
136 tions to eligibility, requirements and length of funding on case-by-case basis as provided below:

137 (a) In regards to eligibility, exceptions may be made relating to the requirements con-
138 tained in subsections 305.5-1(b), (c) and (e).

139 (b) In regards to requirements, exceptions may be made relating to the requirement con-
140 tained in subsection 305.5-2(a).

141 (c) Exceptions may also be made relating to the length of funding periods contained in
142 section 305.6-1.

143 (d) Exceptions may not be made for requirements contained in this Law that are not ex-
144 plicitly noted in this section.

145 305.7-3. *Exception Process.* Applicants requesting an Exception shall follow the process set
146 forth in the Higher Education Student Handbook.

147 (a) *Granting an Exception.* The Higher Education Review Panel shall consider requests
148 for available Exceptions under Section 305.7-2 based on the Exception Policy identified
149 under Section 305.7-1. A decision by the Higher Education Office Review Panel regard-
150 ing an Exception must be approved by a majority of the said Panel.

151 (b) *Requesting Reconsideration of an Exception Decision.* If an applicant disagrees with
152 the Higher Education Office Review Panel’s denial of an available Exception under Sec-
153 tion 305.7-2, the applicant may file a request for reconsideration of the Exception with
154 the Division Director; the decision of the Division Director regarding the Exception is fi-
155 nal.

156

157 **305.8. Enforcement**

158 305.8-1. *Accountability.* The Higher Education Office may place any applicant who violates this
159 Law or fails to comply with the Higher Education Student Handbook on probation or suspension
160 in accordance with the Higher Education Office’s system of internal controls.

161

162 **305.9. Appeals**

163 305.9-1. *Appeal Process and Requirements.* An applicant may Appeal a Scholarship decision
164 made by the Higher Education Office, but only to extent that the applicant is able to demonstrate
165 that the Higher Education Office has failed to abide by the provisions of this Law and/or the ap-
166 proved Higher Education Student Handbook.

167 305.9-2. *Levels of Review.* The following levels of review are available to an applicant seeking
168 an Appeal of a Scholarship decision made by the Higher Education Office:

169 (a) The first level of review is through the Higher Education Office Review Panel. A
170 decision by the Higher Education Office Review Panel regarding an Appeal must be ap-
171 proved by a majority of the said Panel.

172 (b) If an applicant disagrees with the Higher Education Office Review Panel’s decision
173 regarding an Appeal, the applicant may Appeal at the second level of review to the Divi-
174 sion Director; the decision of the Division Director regarding the Appeal is final.

175 *End.*

176

177

178 Pursuant to resolutions: GTC-08-12-96-A, GTC-12-7-96-C, BC-05-09-01-B, BC-10-24-01-K, BC-07-24-02-A, BC-
179 01-26-05-A and GTC-01-30-10-A.



Legislative Operating Committee

October 7, 2015

Removal Law Amendments

Submission Date: December 17, 2014

Public Meeting: 4/30/15
 Emergency Enacted:

LOC Sponsor: Fawn Billie

Summary: *These amendments will give the OBC the ability to remove elected members of boards, committees and commissions upon petition or request by the board, committee or commission. The OBC removal process will not be amended.*

- 12/17/14 LOC:** Motion by Fawn Billie to add the Removal Law Amendments to the active files list with herself as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.
- 02/18/15 LOC:** Motion by Fawn Billie defer the Removal Law Amendments for a legislative analysis and a fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.
- 4/3/15 LOC:** Motion by Jennifer Webster to forward the Removal Law Amendments to an April 30th, 2015 Public Meeting; seconded by Tehassi Hill. Motion carried unanimously.
- 4/30/15:** Public Meeting Held.
- 7/1/15 LOC:** Motion by David P. Jordan to defer the Removal Law Amendments to a work meeting; seconded by Tehassi Hill. Motion carried unanimously.
- 7/1/15:** Work Meeting Held. Attendees include: Brandon Stevens, Tehassi Hill, David P. Jordan, Danelle Wilson, Leyne Orosco, Ed Delgado, Douglass McIntyre, Candice Skenandore, Taniquelle Thurner, Daril Peters, Jordyn Rassmussen.
- 9/4/15:** Strategy meeting held. Attendees include: Brandon Stevens, Jennifer Webster, Fawn Billie, Douglass McIntyre.
- 9/16/15 LOC:** Motion by David P. Jordan to defer the Removal Law Amendments to the Legislative Reference Office to bring back with a proposed date for a Public Meeting; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- Review the draft and analysis and consider approving for a Public Meeting for October 29, 2015 at 12:15 p.m.



Notice of

Public Meeting

to be held

October 29, 2015 at 12:15 p.m.

OBC Conference Room—2nd Floor, Norbert Hill Center



Topic: Removal Law Amendments

The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal that would:

- ◆ Establish two separate processes for removing an elected official from office: one process for Oneida Business Committee members and one for all other elected officials. The separate processes differentiate between boards, committees and commissions and the OBC. Additional changes include:
 - ◆ As the final step in the removal process, General Tribal Council would still vote on the removal of an OBC member, but for all other elected officials, the OBC would make the final decision, and the official would be removed from office if six OBC members voted in favor of removal;
 - ◆ The amendments enable Tribal boards, committees, and commissions to submit a formal removal request for one of their elected members, without having to collect signatures for a petition. In order to submit a removal request, the entity would only need to approve, by majority vote, of taking such action;
 - ◆ A new provision adds that if elected officials of a board, committee or commission violate their entity's bylaws, operating agreements, laws, regulations or SOPs; it is grounds for removal.

All community members are invited to attend this meeting to learn more about this proposal and/or to submit comments concerning this proposal.

Public Comment Period—Open until November 5, 2015

During the Public Comment Period, all interested persons may submit written comments regarding this legislative proposal; and/or a transcript of any testimony/spoken comments made during the Public Meeting. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, interoffice mail, e-mail or fax.

For more information about the public meeting process, or to obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office, which is located on the second floor of the Norbert Hill Center, Oneida WI.

Mail: **Legislative Reference Office**
PO Box 365
Oneida, WI 54155

Phone: **(920) 869-4376 or (800) 236-2214**
 E-Mail: **LOC@oneidanation.org**
 Fax: **(920) 869-4040**

Chapter 4
REMOVAL LAW

Kwah Onl̄ l̄luwalihutákwas Kayanl̄hsla
 Just when they will remove him our kind of laws

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|---|--|
| 4.1. Purpose and Policy | 4.8. Final Determination of General Tribal Council Meeting – Oneida Business Committee |
| 4.2. Adoption, Amendment, Repeal | 4.9. Removal – Elected Official |
| 4.3. Definitions | 4.10. Preliminary Review – Elected Official |
| 4.4. Grounds for Removal | 4.11. Hearing – Elected Official |
| 4.5. Removal – Oneida Business Committee | 4.12. Final Determination of Oneida Business Committee Meeting – Elected Official |
| 4.6. Preliminary Review – Oneida Business Committee | |
| 4.7. Hearing – Oneida Business Committee | |

| Analysis by the Legislative Reference Office | | | | | |
|---|---|----------------|-----------------|----------------|--------------|
| Title | The Removal Law (the Law) | | | | |
| Requester | Oneida Law Office; Trust/Enrollment Committee | Drafter | Lynn Franzmeier | Analyst | Tani Thurner |
| Reason for Request | Stating that the current removal process is too costly, the Trust & Enrollment Committee requested changes to the Removal Law that would enable Tribal boards, committees and commissions (entities) to remove elected members who fail to attend meetings or violate the entity's bylaws. | | | | |
| Purpose | These proposed amendments do not enable an entity to directly remove its' own elected officials; but do enable those entities to avoid the current petition process by instead filing a formal removal request. Also, the process is changed so that for all elected officials <u>except</u> Oneida Business Committee (OBC) members; the OBC would have the final vote on whether to remove the member, instead of the General Tribal Council. | | | | |
| Authorized/ Affected Entities | Judiciary, OBC, elected officials and the entities on which they serve. | | | | |
| Due Process | Elected officials can request that the Judiciary review the validity of removal petition signatures or the action taken for a removal request. The official is also entitled to both a preliminary and a formal hearing before the Judiciary; and then the GTC (for OBC members) or OBC (for all other elected officials) vote on whether to remove the elected official. | | | | |
| Related Legislation | Comprehensive Policy Governing Boards, Committees and Commissions | | | | |
| Policy Mechanism | Removal process | | | | |
| Enforcement | Dismissal of the removal request/petition. | | | | |

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Overview

The proposed amendments to the Removal Law (the Law) change the current process for removing elected officials from office. Instead of one single removal process for all elected officials, the amendments split this Law into two separate parts – one sets out a process for removing Oneida Business Committee (OBC) members from office, and the other sets out the removal process for all other elected officials serving on a Tribal board, committee or commission (hereinafter: “entity”). The proposed amendments distinguish the OBC - which was established by the Tribal Constitution; from other entities - which were created by Tribal law.

Removal of an OBC Member

11 OBC members would still be subject to the same basic removal process established under the
12 current law - *i.e.* a signed petition is submitted; a preliminary and then formal hearing are held
13 before the Judiciary; and if the petitioner proves with clear and convincing evidence that grounds
14 for removal exist, then a GTC meeting is called within 45 days where GTC votes on whether to
15 remove the elected official. [4.5 to 4.8]

16 *Removal of all other Elected Officials*

17 All other elected Officials (non-OBC members) would still be subject to the same
18 removal process established under the current Law, but with two major changes:

- 19 1. The OBC, instead of the GTC, would have the final vote on whether to remove an
20 elected official. After the Judiciary conducts a hearing and forwards its decision, a
21 special OBC meeting must be called, and if six members of the OBC vote for
22 removal, then the official is removed from office. Like GTC meetings held for the
23 removal of an OBC member, the OBC meeting must be held within 45 days after
24 receiving the Judiciary's decision; and the removal request/petition must be dismissed
25 if there is no quorum at the special OBC meeting. [4.12]
- 26 2. There are now two ways (instead of one) to begin the removal process:
 - 27 • **Petition.** The current petition process would continue to be available. [4.9-3]
 - 28 • **Removal Request.** The amendments would enable a Tribal entity to submit a
29 formal request to remove one of its elected officials, instead of submitting a
30 petition. In order to do this; the entity must, by majority vote, approve taking such
31 action. [4.9-4]
 - 32 ▪ A removal request is treated much the same as a signed petition - for
33 example, the official may request that the Judiciary review the validity of
34 the action taken by the entity, just as s/he would be able to request that the
35 Judiciary review the validity of the signatures on a petition. [4.10-3] For
36 the preliminary and formal hearings before the Judiciary; the entity is
37 deemed to be the other party to the action (instead of the petitioner), and is
38 responsible for proving the allegations against the elected Official at the
39 formal hearing. [4.11-2 and 4.11-3]

40 *Grounds for Removal*

41 A few changes are made to the grounds for removal set out in the Law – *i.e.* the reasons
42 OBC members and other elected officials can be removed from office:

- 43 • Any official can still be removed from office for failing to attend four regularly scheduled
44 meetings without a written explanation; but the amendments clarify that this only applies
45 if the official misses all four meetings within a single term; without an excused written
46 explanation. [4.4-1(a) and 4.4-2(a)]
- 47 • Any official can still be removed if s/he no longer meets the qualifications for office, but
48 the amendments clarify that OBC members, this means the qualifications for office as
49 identified in the Oneida Constitution; and for all other officials, it means the
50 qualifications for office as identified in by-laws and Tribal law. [4.4-1(a) and 4.4-2(a)]
- 51 • OBC members can still be removed for violating a Tribal law which specifies removal as
52 a penalty; but a new provision adds that all other elected officials, except OBC members,
53 can be removed from office for violating:
 - 54 ○ their entity's by-laws, operating agreements, or standard operating procedures, or
 - 55 ○ laws, policies or regulations of the Tribe. [4.4-1(c)]

56 This means OBC members would be the only elected officials that could only be
57 removed from office for violating a Tribal law if that law specified removal as a penalty.
58 All other elected officials could be removed from office for violating any Tribal law, or

59 their entities' bylaws, operating agreements, or standard operating procedures, or any
60 other Tribal policies or regulations.

61 *Other Changes*

62 The following are additional changes that would be made to the Law:

- 63 • Petitioners would be required to use an official petition form, obtained through the Tribal
64 Secretary's Office, instead of creating their own form. Petitions are no longer required to
65 include an oath verifying that the circulator witnessed each person sign the petition, that
66 each signature is genuine, and that the petition was signed in the presence of the witness
67 on the date indicated. [4.5-2 and 4.9-3(a)]
- 68 • Currently, a petition must state the facts and grounds for removal in 200 words or less.
69 Under the amendments, the limit is increased to 300 words or less, and this requirement
70 also applies to removal requests. [4.5-3 and 4.9-3]
- 71 • After a hearing, the Judiciary issues a decision, instead of "findings". The Judiciary
72 would still forward their decision to the Tribal Chair, but the amendments appear to
73 authorize the Chair to designate another person to whom the decision must be sent
74 instead. [4.7-3 and 4.11-3]
- 75 • The Law no longer specifically requires the Tribal Chair to call a GTC meeting within 45
76 days of receiving the Judiciary's findings; instead it states that a GTC meeting shall be
77 held within 45 days after receiving the Judiciary's decision. [4.8-1]
- 78 • New language adds that the OBC and GTC determinations (about whether to remove an
79 OBC member or elected official) are not appealable. [4.8-5 and 4.12-5]
- 80 • Currently, the Law addresses what must happen if the elected official sought to be
81 removed is a member of the Judiciary - the Clerk of Courts must convene a panel of three
82 judges who are members of the Wisconsin Tribal Judges Association to carry out the
83 Judiciary's responsibilities. That language is deleted.

84 **Miscellaneous**

85 Various language and formatting changes are made to reflect the fact that the OBC officials
86 are subject to different removal requirements; and the Adoption; Amendment; Repeal language
87 (Section 2) was revised to comply with the Legislative Procedures Act. Except as described
88 above; these changes do not affect the content of the Law.

89 A public meeting was held for this item on April 30, 2015. The comments received by the
90 LOC during that public meeting and following public comment period have been reviewed and
91 considered for this draft.

92 **Considerations**

93 The following are issues the LOC may want to consider:

- 94 • **Application to the Judiciary.** The Law no longer specifically addresses what would
95 happen if removal of a Judge of the Judiciary is sought. Removal of Judges raises a few
96 issues:
 - 97 ○ There may be confusion as to whether or how this Law applies to Judges of the
98 Judiciary. The Removal Law defines (and applies to) an elected official as any
99 person elected to a position; or appointed to vacancies on an elected position; on a
100 Tribal board, committee or commission. [4.3-1(b)] Judges are generally elected
101 officials, but the Judiciary is not typically considered a Tribal Board, Committee
102 or Commission. Also, the Judiciary Law sets out a disciplinary process for
103 Judges, stating that "Where a disciplinary report recommends that a Judge be
104 removed from office, removal proceedings shall be commenced in accordance
105 with applicable removal law." [Judiciary Law, 150.12-6(d)(3)] If this Law does

106 not apply to Judges, then there is no existing removal law to govern removal of
107 judges.

108 *Recommendation:* Add language to this Law clarifying whether this Law applies
109 to Judges of the Judiciary; or whether a separate removal law would need to be
110 established for Judges.

111 ○ Under the Judiciary Law, there is a separate disciplinary process for judges. This
112 process includes an initial and then formal hearing before a disciplinary panel.
113 The panel ultimately issues a disciplinary report; and the Judiciary is required to
114 immediately carry out the disciplinary action ordered in that report. If removal is
115 recommended, “removal proceedings are commenced in accordance with
116 applicable removal law.” [Judiciary Law, 150.12-6(d)(3)] Under the Removal
117 law, this would mean that the Judiciary would then either need to petition, or
118 submit a removal request - the Removal Law does not mention anything about a
119 separate process for Judges. This would also mean that a Judge would be subject
120 to multiple, repetitive hearings – the disciplinary panel would first conduct an
121 initial hearing to determine if probable cause exists; and then a full hearing
122 (where the Judge can present testimony/evidence, and cross-examine witnesses)
123 to determine an appropriate penalty (removal is only one penalty that could be
124 imposed). After both of those hearings, if removal is ordered, this Law would
125 again require the same hearings for a Judge as for all other elected officials.
126 Nearly duplicative hearings may not be the most efficient use of Tribal resources
127 – not to mention it would be a substantial burden for a Judge.

128 *Recommendation:* There are various options that could resolve this issue. One
129 suggestion would be to add language to this Law and/or to the Judiciary law, to
130 clarify that when a disciplinary panel orders removal of a Judge, then the hearings
131 required under the Removal law are bypassed, and the Disciplinary Report shall
132 be forwarded directly to the Tribal Chair who must then call a special OBC/GTC
133 meeting.

134 ● **Preliminary Review and Motions to Challenge Validity.** The Judiciary is required to
135 schedule a preliminary review, which must take place within 20 days after the Judiciary
136 receives a petition or removal request from the Tribal Secretary. [4.6-1 and 4.10-1] Also,
137 an official can file a motion to challenge the validity of a petition’s signatures or the
138 entity’s action that authorized a removal request – which must be filed within 20 days
139 after the Official is served with the petition or removal request. [4.6-3 and 4.10-3]

140 ○ There is no timeline for the motion to challenge the validity of the signatures or
141 entity action. Also, it appears that the motion is unrelated to the preliminary
142 review.

143 *Recommendation:* In the interest of judicial economy, it may be beneficial to
144 require the respondent to file the motion in time to have it heard during the
145 preliminary review. Otherwise, at a minimum, it is recommended that a timeline
146 be added for when the motion must be heard and decided by.

147 ○ When a person files a motion challenging the authenticity of signatures or validity
148 of an entity’s action in making a removal request; it is not clear who has the
149 burden of proof or what that burden of proof might be. By comparison, at a
150 hearing, the party seeking the removal of an Elected Official has the burden of
151 proving by clear and convincing evidence that ground(s) for removal exist. [4.11-
152 2]

153 *Recommendation:* Identify legal standards and/or burden of proof so that the
154 Judiciary may more easily interpret this Law and not have to develop their own

standards for determining what either party must show or prove in order to prevail on such a motion.

Chapter 4 REMOVAL LAW

4.1. Purpose and Policy

4.1-1. The purpose of this Law is to govern the removal of persons elected to serve on the Oneida Business Committee and on boards, committees and commissions of the Oneida Tribe of Indians of Wisconsin.

4.1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to provide an orderly and fair process for the removal of persons elected to serve on the Oneida Business Committee and on boards, committees and commissions.

4.2. Adoption, Amendment, Repeal

4.2-1. This Law is adopted by the General Tribal Council by ~~GTC-Resolution #1~~GTC-01-09-06-A and amended by Resolution BC-05-28-14-B- and by Resolution GTC.

4.2-2. This Law may be amended or repealed by the General Tribal Council ~~only~~pursuant to the procedures set out in the Legislative Procedures Act.

4.2-3. 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.

4.2-4. ~~All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this law are hereby repealed unless specifically re-enacted after adoption of this law. Specifically, the following resolutions are repealed by this law~~In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control. Provided that, this Law repeals the following:

- (a) GTC-6-13-79 (Adoption of Ordinance for the Removal of Oneida Tribal Business Committee Members)
- (b) BC-3-8-85-A (Adoption of Legislatively Appointed Committee Removal Ordinance)
- (c) BC-1-03-96-B (BC Adoption of Removal Law)
- (d) GTC-1-17-98-A (GTC Adoption of Removal Law)

4.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

4.3. Definitions

4.3-1. This section shall govern the definitions of words or phrases ~~as used herein~~within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Counsel" means an attorney or advocate.

~~(b)~~(b) "Elected Official" means, for the purposes of this Law, any person elected to a position on a board, committee or commission of the Oneida Tribe of Indians of Wisconsin and those appointed to vacancies in elected position on a board, committee or commission. For the purpose of this Law, this definition will exclude members of the Oneida Business Committee who are subject to separate removal provisions under this Law.

201 (c) "Eligible voter" means a person able to vote under the Constitution of the Oneida
202 Tribe of Indians of Wisconsin.

203 (d) "Judiciary" means the judicial system that was established by Oneida General Tribal
204 Council resolution GTC-#1-01-07-13-B to administer the judicial authorities and
205 responsibilities of the Tribe.

206 (ee) "Tribe or Tribal" means the Oneida Tribe of Indians of Wisconsin.
207

208 **4.4. Grounds for Removal**

209 4.4-1.4.4-1. Oneida Business Committee. A member of the Oneida Business Committee may be
210 removed from office for any of the following reasons:

211 (a) failure to attend four (4) regularly scheduled meetings per term without an excused
212 written explanation;

213 (b) intentional mis-use of Tribal funds;

214 (c) alcohol use while performing official responsibilities or use of illegal drugs at any
215 time;

216 (d) failure to continue to meet the qualifications for office as identified in the Oneida
217 Constitution;

218 (e) violating a Tribal law which specifies removal as a penalty; or

219 (f) felony conviction while in office.

220 4.4-2. Elected Official. An Elected Official may be removed from office for any of the
221 following reasons:

222 (a) failure to attend four (4) regularly scheduled meetings per term without an excused
223 written explanation;

224 (b) failure to attend fifty percent (50%) of an entity's regular scheduled meetings within
225 a twelve (12) month period for any reason ~~provided that this subsection shall not apply to~~
226 ~~the Oneida Business Committee;~~

227 (c) violation of the by-laws, operating agreements, or Standard Operating Procedures of
228 the board, committee or commission and laws, policies or regulations of the Tribe;

229 (d) intentional mis-use of Tribal funds;

230 ~~(de)~~ (f) failure to continue to meet alcohol use while performing official responsibilities or use of illegal drugs at any
231 time;

232 ~~(e) if he or she no longer meets~~ (f) failure to continue to meet the qualifications for office
233 as identified in by-laws and Tribal law;

234 ~~(fg)~~ (g) violating a Tribal law which specifies removal as a penalty; or

235 ~~(gh)~~ (h) felony conviction while in office.
236

237 **4.5. Petition Removal – Oneida Business Committee**

238 4.5-1. Any eligible voter may file a petition with the Tribal Secretary seeking the removal of an
239 ~~elected official.~~ Oneida Business Committee member. No petition ~~shall~~ may request the removal
240 of more than one (1) ~~elected official.~~ Oneida Business Committee member.

241 4.5-2. The petitioner shall use an official petition shall form as designated by this Law, which
242 may be obtained through the Tribal Secretary's Office. The petition must, at a minimum, include
243 appropriate lines for the eligible voters':

244 (a) printed name;

245 (b) signature;

246 (c) street address; and

247 (d) Oneida Tribal Enrollment Number.

248 4.5-3. The petition must state with particularity the facts upon which it is based and the specific
249 grounds for removal, in not more than ~~two~~three hundred (~~200~~300) words, and must be signed by
250 ~~fifty (50) or more eligible voters or~~ a number of eligible voters equal to at least thirty (~~30~~)
251 percent (30%) of the ~~vote~~votes cast in the previous general election, ~~whichever is greater. A~~
252 ~~petition may not be amended after it is filed with the Tribal Secretary.~~

253 4.5-24. The petition ~~shall~~must be filed with the Tribal Secretary's Office within thirty (30)
254 calendar days after the date the first signature is obtained on the petition.

255 ~~4.5-3. The A~~ petition ~~shall contain, in ink:~~

256 (a) ~~The appropriate lines for the eligible voter's:~~

257 (1) ~~Printed name~~

258 (2) ~~Signature~~

259 (3) ~~Street address~~

260 (4) ~~Enrollment number~~

261 (b) ~~An oath verifying~~may not be amended after it is filed with the ~~fact that:~~Tribal Secretary.

262 (1) ~~The circulator witnessed each person sign the petition,~~

263 (2) ~~Each signature appearing thereon is the genuine signature of the person it~~
264 ~~purports to be, and~~

265 (3) ~~The petition was signed in the presence of the witness on the date indicated.~~

266 ~~4.5--54.~~ Upon receipt of a petition, the Tribal Secretary shall promptly:

267 (a) Submit such petition to the Oneida Tribal Enrollment Department which shall, within
268 five (5) business days, ~~determine~~verify whether the petition contains the requisite
269 number of signatures of eligible voters; and

270 (b) Notify the ~~elected official~~Oneida Business Committee member sought to be removed
271 that a petition has been filed seeking his or her removal by providing a copy of the
272 uncertified petition.

273 ~~4.5-56.~~ If the Enrollment Department ~~determines~~verifies that the petition does not contain the
274 requisite number of signatures, the Tribal Secretary shall so certify to the Oneida Business
275 Committee and file the petition without taking further action, ~~and~~ the matter shall be at an end
276 for lack of requisite signatures. No additional names may be added to the petition, and the
277 petition ~~shall~~may not be used in any other proceeding.

278 ~~4.5-67.~~ If the Enrollment Department determines that the petition contains the requisite number
279 of signatures, then the Tribal Secretary shall promptly cause a certified copy of the petition to be
280 served upon the ~~elected official~~Oneida Business Committee member sought to be removed and
281 forward a copy of the same to the Judiciary.

282 ~~4.5-78.~~ In the event the removal of the Tribal Secretary is sought, the Tribal Vice Chairperson
283 shall perform the duties assigned to the Secretary under this Law.

285 4.6. Preliminary Review – Oneida Business Committee

286 4.6-1. The Judiciary, upon receipt of the petition, shall schedule a preliminary review, to take
287 place within twenty (20) calendar days, to determine whether the allegations set forth in the
288 petition would constitute sufficient grounds for removal. The Judiciary may request that the
289 parties submit arguments in writing, and the parties may be represented by Counsel.

290 4.6-2. If the Judiciary determines that a petition does not allege sufficient grounds for removal,
291 the petition shall be dismissed. If the Judiciary determines that the petition alleges sufficient
292 grounds for removal, the Judiciary shall conduct a hearing under 4.7.

293 4.6-3. The Tribal ~~Secretary's~~Secretary's certification of the sufficiency of the number of
294 signatures on the petition may be reviewed by the Judiciary upon motion of the ~~elected~~

295 | ~~official~~Oneida Business Committee member whose removal is sought. The motion ~~shall~~must be
296 | filed within twenty (20) calendar days of service of the certified copy of the petition upon the
297 | ~~elected official sought to be removed. The motion shall be in writing and the grounds limited~~
298 | ~~to: Oneida Business Committee member sought to be removed. The motion must be in writing~~
299 | ~~and the grounds limited to the authenticity of the signatures.~~

300 | 4.6-4. This motion must be heard in the presence of the parties, who may be represented by
301 | Counsel during the review. The Judiciary shall provide the parties the opportunity to present
302 | evidence and testimony only as to the authenticity of the signatures. If the Judiciary determines
303 | that a petition contains less than the required number of valid signatures, the petition shall be
304 | dismissed and the matter shall be at an end.

305 | (a) the authenticity of the signatures, and

306 | (b) whether the signature is that of an eligible voter.

307 | ~~4.6-4. The Judiciary review shall be conducted in the presence of the parties, who may be~~
308 | ~~represented by counsel during the inspection. Opportunity to present evidence and testimony~~
309 | ~~shall be provided. If the Judiciary determines that a petition contains less than the required~~
310 | ~~number of valid signatures, the petition shall be dismissed.~~

311 | ~~4.6-5. In the event the removal of a member of the Judiciary is sought, the Clerk of Courts shall~~
312 | ~~convene a panel of three (3) judges who are members of the Wisconsin Tribal Judges~~
313 | ~~Association to carry out the Judiciary's responsibilities under this law.~~

314 | **4.7. Hearing – Oneida Business Committee**

316 | 4.7-1. ~~Rights of Elected Official~~Oneida Business Committee Member at Hearing. An ~~elected~~
317 | ~~official~~Oneida Business Committee member whose removal is sought ~~shall have~~has the right to
318 | present witnesses on his or her behalf; ~~to cross-examine adverse witnesses;~~ and to, at his or her
319 | expense, be represented by Counsel of his or her choice.

320 | 4.7-2. *Burden of Proof.* A person seeking the removal of an ~~elected official shall have~~Oneida
321 | Business Committee member has the burden of proving by clear and convincing evidence that
322 | ground(s) for removal exist.

323 | 4.7-3. *Findings Decision.* The Judiciary shall, within twenty (20) calendar days after the
324 | preliminary review has been completed; schedule a hearing to determine whether each allegation
325 | of the petition has been proven by clear and convincing evidence, and whether such allegations
326 | constitute sufficient grounds for removal under 4.4-1. If the Judiciary determines that sufficient
327 | grounds have not been proven, the Judiciary shall dismiss the petition. If the Judiciary
328 | determines that the sufficient grounds have been proven, the Judiciary shall forward the written
329 | findings decision to the Tribal ~~Chair~~Chairperson and or designee.

330 | **4.8. Final Determination at General Tribal Council Meeting – Oneida Business Committee**

332 | 4.8-1. *Special Meeting.* ~~Upon receipt of~~ Within forty-five (45) calendar days of receiving the
333 | findings decision from the Judiciary, ~~the Tribal Chair shall call~~ a special General Tribal Council
334 | meeting must be held to consider the ~~findings to be held within forty five (45) calendar days~~
335 | ~~after receipt of the Judiciary findings decision.~~

336 | 4.8-2. *Right to address the Council.* An ~~elected official~~Oneida Business Committee member
337 | whose removal is sought ~~shall have~~has the right to address the General Tribal Council
338 | personally.

339 | 4.8-3. *Determination.* An ~~elected official~~Oneida Business Committee member may only be
340 | removed from office upon the affirmative vote of a two-thirds (2/3) majority of the General
341 | Tribal Council at a meeting called for the purpose of considering the removal.

342 4.8-4. *Quorum*. If the meeting of the General Tribal Council fails to obtain a quorum, the
343 removal petition ~~shall~~must be dismissed.

344 *End.*

345 4.8-5. *Non-appealable*. There is no appeal from the determination of the General Tribal
346 Council.

347 4.9. *Removal – Elected Official*

348
349 4.9-1. An Elected Official may be subject to removal either by petition or by request of the
350 board, committee or commission, which must be filed with the Tribal Secretary’s Office within
351 thirty (30) calendar days after:

352 (a) the date the first signature is obtained on the petition; or

353 (b) the board, committee or commission adopts the removal request.

354 4.9-2. Upon receipt of a petition or removal request, the Tribal Secretary shall promptly notify
355 the Elected Official sought to be removed that a petition or removal request has been filed
356 seeking his or her removal by providing a copy of the uncertified petition or removal request.

357 4.9-3. *Petitions*. Any eligible voter may file a petition with the Tribal Secretary seeking the
358 removal of an Elected Official. No petition may request the removal of more than one (1)
359 Elected Official. The petition must state with particularity the facts upon which it is based and
360 the specific grounds for removal, in not more than three hundred (300) words, and must be
361 signed by a number of eligible voters equal to at least thirty percent (30%) of the vote cast in the
362 previous general election. A petition may not be amended after it is filed with the Tribal
363 Secretary.

364 (a) The petitioner shall use an official petition form as designated by this Law which
365 may be obtained through the Tribal Secretary’s Office. The petition must, at a minimum,
366 include appropriate lines for the eligible voters’:

367 (1) printed name;

368 (2) signature;

369 (3) street address; and

370 (4) Oneida Tribal Enrollment Number.

371 (b) The Tribal Secretary shall promptly submit such petition to the Oneida Tribal
372 Enrollment Department which shall, within five (5) business days, verify whether the
373 petition contains the requisite number of signatures of eligible voters.

374 (1) If the Enrollment Department verifies that a petition does not contain the
375 requisite number of signatures, the Tribal Secretary shall so certify to the Oneida
376 Business Committee and file the petition without taking further action, the matter
377 at an end for lack of requisite signatures. No additional names may be added to
378 the petition, and the petition may not be used in any other proceeding.

379 (2) If the Enrollment Department verifies that a petition contains the requisite
380 number of signatures, the Tribal Secretary shall promptly cause a certified copy of
381 the petition to be served upon the Elected Official sought to be removed and
382 forward a copy of the same to the Judiciary.

383 4.9-4. *Removal Requests*. A board, committee, or commission may file a removal request for
384 one of its members with the Tribal Secretary after adoption of a majority vote of the board,
385 committee or commission regarding the removal request. No removal request may request the
386 removal of more than one (1) Elected Official. The removal request must state with particularity
387 the facts upon which it is based and the specific grounds for removal, in not more than three
388

389 hundred (300) words. A removal request may not be amended after it is filed with the Tribal
390 Secretary.

391 (a) Upon verification by the Tribal Secretary of the action the board, committee or
392 commission adopting the removal request, the Tribal Secretary shall promptly cause a
393 certified copy of the removal request to be served upon the Elected Official sought to be
394 removed and forward a copy of the same to the Judiciary.

395 (b) If the Tribal Secretary determines that a removal request does not meet the
396 requirements of 4.9-4, the Tribal Secretary shall so certify to the Oneida Business
397 Committee and file the removal request without taking further action, the matter at an end
398 for lack of valid action by the board, committee or commission.

399
400 **4.10. Preliminary Review – Elected Official**

401 4.10-1. The Judiciary, upon receipt of the petition or removal request, shall schedule a
402 preliminary review, to take place within twenty (20) calendar days, to determine whether the
403 allegations set forth in the petition or removal request would constitute sufficient grounds for
404 removal. The Judiciary may request that the parties submit arguments in writing, and the parties
405 may be represented by Counsel.

406 4.10-2. If the Judiciary determines that a petition or removal request does not allege sufficient
407 grounds for removal, the petition shall be dismissed. If the Judiciary determines that the petition
408 or removal request alleges sufficient grounds for removal, the Judiciary shall conduct a hearing
409 under 4.11.

410 4.10-3. The Tribal Secretary's certification of the sufficiency of the number of signatures on the
411 petition or the validity of the action of the board, committee or commission adopting a removal
412 request may be reviewed by the Judiciary upon motion of the Elected Official whose removal is
413 sought. The motion must be filed within twenty (20) calendar days of service of the certified
414 copy of the petition or removal request upon the Elected Official sought to be removed. The
415 motion must be in writing and the grounds limited to either of the following:

416 (a) the authenticity of the signatures on a petition; or

417 (b) the validity of the action taken by a board, committee or commission in approving a
418 removal request.

419 4.10-4. The motion must be heard in the presence of the parties, who may be represented by
420 Counsel during the review. The Judiciary shall provide the parties with the opportunity to
421 present evidence and testimony only as to the authenticity of the signatures and the validity of
422 the action taken by a board, committee or commission in approving a removal request. If the
423 Judiciary determines that a petition contains less than the required number of valid signatures, or
424 the action taken by a board, committee or commission in approving a removal request was
425 invalid, the Judiciary shall dismiss the petition and the matter shall be at an end.

426
427 **4.11. Hearing – Elected Official**

428 4.11-1. *Rights of Elected Official at Hearing.* An Elected Official whose removal is sought has
429 the right to present witnesses on his or her behalf; to cross-examine adverse witnesses; and to, at
430 his or her expense, be represented by Counsel of his or her choice.

431 4.11-2. *Burden of Proof.* A party seeking the removal of an Elected Official has the burden of
432 proving by clear and convincing evidence that ground(s) for removal exist.

433 4.11-3. *Decision.* The Judiciary shall, within twenty (20) calendar days after the preliminary
434 review has been completed, schedule a hearing to determine whether each allegation of the
435 petition or removal request has been proven by clear and convincing evidence, and whether such

436 allegations constitute sufficient grounds for removal under 4.4-2. If the Judiciary determines that
437 sufficient grounds have not been proven, the Judiciary shall dismiss the petition or removal
438 request. If the Judiciary determines that the sufficient grounds have been proven, the Judiciary
439 shall forward the written decision to the Tribal Chairperson and or designee.
440

441 **4.12. Final Determination at Oneida Business Committee Meeting – Elected Official**

442 4.12-1. *Special Meeting.* Within forty-five (45) calendar days of receiving the decision from the
443 Judiciary, a special Oneida Business Committee meeting must be held to consider the decision.

444 4.12-2. *Right to address the Oneida Business Committee.* An Elected Official whose removal is
445 sought has the right to address the Oneida Business Committee personally.

446 4.12-3. *Determination.* An Elected Official may only be removed from office upon the
447 affirmative vote of six (6) members of the Oneida Business Committee at a meeting called for
448 the purpose of considering the removal.

449 4.12-4. *Quorum.* If the meeting of the Oneida Business Committee fails to obtain a quorum, the
450 removal request must be dismissed.

451 4.12-5. *Non-appealable.* There is no appeal from the determination of the Oneida Business
452 Committee.

453
454 *End.*
455

456 Adopted GTC-01-09-06-A
457 Amended – BC-05-28-14-B



Legislative Operating Committee

October 7, 2015

Furlough Policy

Submission Date: October 15, 2014

Public Meeting: 02/05/15
 Emergency Enacted:

LOC Sponsor: Fawn Billie

Summary: *During the prior term, the OBC adopted a policy on an emergency basis that set out a process allowing tribal employees to be furloughed as a cost-containment measure. The emergency adoption/extension expired on October 15, 2014, however on October 8, 2014, the OBC directed the LOC to continue developing a permanent policy that allowed for furloughs.*

09/17/14 LOC: Motion by Jennifer Webster to not add the Furlough Policy Emergency Adoption to the Active Files List and to provide the Oneida Business Committee a memo stating that it is the intent of the Legislative Operating Committee to let the emergency adoption expire; seconded by Tehassi Hill. Motion carried unanimously.

10/8/14 OBC: Motion by Lisa Summers to accept the Legislative Operating Committee update with the following answers:
 3) With regard to the Furlough Policy, the Business Committee agrees that the LOC should move forward with the development of a permanent policy.
 seconded by Trish King. Motion carried unanimously.

10/15/14 LOC: Motion by Jennifer Webster to add the Furlough Policy to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.

Note: Fawn Billie will be the sponsor for this item.

12/03/14 LOC: Motion by Jennifer Webster to direct that a fiscal impact statement and a legislative analysis be conducted on the Furlough Policy; seconded by Fawn Billie. Motion carried unanimously.

1/15/15 LOC: Motion by Jennifer Webster to approve the public meeting date of January 29, 2015 regarding the Furlough Policy; seconded by Tehassi Hill. Motion carried unanimously.

1/21/15 LOC: Motion by Jennifer Webster to ratify the Furlough Policy and Rules of Appellate Procedures Amendments Public Meeting Date E-poll; seconded by Tehassi Hill. Motion carried unanimously.

2/5/15: Public meeting held.

3/4/15 LOC: Motion by Jennifer Webster to accept the Furlough Policy public meeting comments and defer those comments to an LOC work meeting to be held immediately following the completion of this LOC meeting, seconded by Fawn Billie. Motion carried unanimously.

Work meeting held, attendees include: Brandon Stevens, Tani Thurner, Jennifer Webster, Jo Anne House, Tehassi Hill, Fawn Billie, Lynn Franzmeier, Candice Skenandore, Fawn Cottrell, Danelle Wilson, Rae Skenandore

04/15/15 LOC: Motion by Jennifer Webster to defer the Furlough Policy for two weeks for the noted considerations, minor changes, and a fiscal analysis; seconded by Fawn Billie. Motion carried unanimously.

5/6/15 LOC: Motion by Jennifer Webster to direct the Legislative Reference Office to make final changes to the Furlough Policy and bring back when ready; seconded by David P. Jordan. Motion carried unanimously.

9/16/15 LOC: Motion by David P. Jordan to defer the Furlough Policy back to the sponsor, to bring back with recommendations for the Standard Operating Procedure and the Policy; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- Review the draft and decide how Indian preference is to be used in the Policy and consider:
 - sending to a LOC work meeting for more specific direction; or
 - deferring to the LRO for additional changes

| | | |
|---|--|---|
| ONEIDA TRIBE OF WISCONSIN STANDARD OPERATING PROCEDURE | TITLE: Tribe-wide Furlough and Non-Furlough Options | ORIGINATION DATE: July 13, 2015 REVISION DATE: EFFECTIVE DATE: After last signature |
| AUTHOR: HRD | APPROVED BY: | DATE: |
| DEPARTMENT: All | APPROVED BY: <i>HRD Manager</i> | DATE: |
| DIVISION: All | COMPLIANCE REVIEW BY: <i>EEO</i> | DATE: |
| EEO REFERENCE NUMBER: | | |
| PAGE NO: 1 of 4 | | |

1.0 PURPOSE

- 1.1 To provide guidance and direction for management when the Business Committee deems furloughs necessary.

2.0 DEFINITIONS

- 2.1 Essential position – Position(s) identified by the General Manager Level position or Designee as being critical in meeting the goals, objectives, and missions of the department. These positions may require a Professional or Technical License, Certification, and/or Degree and/or require skills which cannot be reassigned to another less qualified employee.
- 2.2 Furlough - Temporary, unpaid time off of work for a specified period of time for which the employee shall not be able to use accrued personal or vacation time.
Note: A furlough is not a layoff.

3.0 WORK STANDARDS

General

- 3.1 The OBC will provide a directive, through resolution, to the appropriate General Manager Level identifying the effective dates of the furlough.
- 3.2 The OBC and/or the Finance Office will notify HRD and General Manager Level positions of the specific goal of the directive, e.g., reduce payroll by 10% in all applicable Divisions.
- 3.3 General Manager Level positions shall develop furlough plans for their respective departments and agencies. The furlough plans will be in compliance with Article V of the Furlough Policy.
- 3.4 Exempt employees must receive full days of pay; exempt employees cannot have partial days unpaid. Exempt employees can volunteer for a reduction in hours as long as the reduction results in maintaining the minimum salary threshold established by the Fair Labor Standards Act (FLSA).

- 3.5 Furloughed employees cannot use vacation or personal time on the day(s) the furlough is applied.
- 3.6 Employees will continue to receive other benefits during an involuntary furlough.
 - 3.6.1 If an employee’s weekly payroll is not enough to cover the weekly deductions for the following benefits, the deductions will be covered by the Tribe:
 - 3.6.1.1 Medical, Dental, Vision, and Short/Long Term Disability.
 - 3.6.2 If an employee’s weekly payroll is not enough to cover the weekly deductions for the following individual benefits, the deductions will be the responsibility of the employee:
 - 3.6.2.1 Term Life, Whole Life, Accident, Critical Illness, Individual Short Term Disability

Non-Furlough Options

- 3.7 General Manager Level positions may utilize non-furlough options prior to implementing a furlough plan.
 - 3.7.1 Non-furlough options may be prioritized based upon but not limited to:
 - 3.7.1.1 Essential versus non-essential positions,
 - 3.7.1.2 Years of service,
 - 3.7.1.3 Certifications/licensing,
- 3.8 The following is a list of potential non-furlough options:
 - 3.8.1 Time off without pay/reduced work schedule (available to regular status and temporary employees)
 - 3.8.2 Layoff(s)
 - 3.8.3 Leave of absence(s)
 - 3.8.4 Attrition (not filling open positions)
 - 3.8.5 Eliminating vacant position(s)

Furlough Plans

- 3.9 Furlough Plans shall be considered if the payroll goal has not been met by implementing non-furlough options.
- 3.10 General Manager Level positions will identify how employees will be selected for furlough. Examples of selection method may include but not limited to:
 - 3.10.1 Essential versus non-essential positions
 - 3.10.2 Years of Service
 - 3.10.3 Certifications/licensing
- 3.11 General Manager positions or delegates may choose from any of the following (or combination of) to meet the payroll goal:
 - 3.11.1 Voluntary furlough(s)
 - 3.11.1.1 Full-schedule furlough (full work week)
 - 3.11.1.2 Less than full-schedule furlough (less than full work week)
 - 3.11.2 Involuntary furlough(s)
 - 3.11.2.1 Full-schedule furlough (full work week)
 - 3.11.2.2 Less than full-schedule furlough (less than full work week)
- 3.12 Employees must be notified by their supervisor at least five (5) business days prior to a furlough being implemented.

4.0 PROCEDURES

Selection criteria for voluntary furlough and non-furlough options

- 4.1 Determine what voluntary option(s) will be offered based on business needs.
- 4.2 Offer voluntary option(s) to employees.
 - 4.2.1 Ensure employees understand the implications of their decision.
 - 4.2.1.1 For example: if an employee reduces their weekly hours to 25 hours a week, that will result in a status change from Full Time to Half Time. Resulting in changes to their benefit eligibility.
- 4.3 Determine which employee(s) will be allowed to take a voluntary option(s).
- 4.4 Notify employee(s) of the approval of their voluntary option(s) choice(s).
- 4.5 If not enough employees volunteer to meet the payroll goal, use involuntary non-furlough options.

Selection criteria for involuntary furlough(s)

- 4.6 Determine how many hours are still needed to meet the payroll goal identified by the Business Committee.
- 4.7 Determine which position(s) will be targeted for involuntary furlough based on business needs.
- 4.8 Determine the furlough option(s) (full-schedule or less-than full-schedule) to meet payroll goal based on business needs. For example:
 - 4.8.1 Furlough one exempt and two non-exempt positions – full-schedule
 - 4.8.2 Furlough twelve non-exempt positions – four hours per week.
 - 4.8.3 Furlough six exempt positions – two days per week.
- 4.9 Determine which employee(s) holding the targeted position(s) will be involuntarily furloughed.
 - 4.9.1 Use Indian Preference to make your selection when more than one person holds the targeted position and those employees have different Indian preference categories. For example, if you have ten employees and need to select five, use the following criteria in order to determine which employees will be furloughed:
 - 4.9.1.1 First furloughed - Non-Indian
 - 4.9.1.2 Second furloughed - Other Native American Indian
 - 4.9.1.3 Third furloughed - Documented first generation Oneida descendant
 - 4.9.1.4 Fourth furloughed - Oneida Indian eligible for enrollment with Oneida Tribe
 - 4.9.1.5 Last furloughed - Enrolled Oneida Tribal member
 - 4.9.2 If multiple employees are in the same Indian Preference category, and not all of them will be furloughed, the employee(s) with the most continuous years of service with the Tribe will not be furloughed. For example, if Joe & Jane are both non-Indian, Joe would not be furloughed because he has 15 continuous years of service with the Tribe versus Jane who has 14 continuous years of service.
- 4.10 Notify employee(s) of the number of hours per week they will be furloughed.

- 4.10.1 Ensure employees understand the implications of the decision.
- 4.11 Notify the Human Resources Department of the chosen employees and their furlough dates.

5.0 REFERENCES

- 5.1 Furlough Policy

6.0 FORMS

- 6.1 Furlough Notification Form

Furlough Policy

Article I. Purpose and Policy
 Article II. Adoption, Amendment, Repeal
 Article III. Definitions
 Article IV. Furlough

Article V. Furlough Plans
 Article VI. Supervisor Responsibilities
 Article VII. Appeal

| <i>Analysis by the Legislative Reference Office</i> | | | | | |
|---|---|---------|-----------------|---------|--------------|
| Title | The Furlough Policy ("The Policy") | | | | |
| Requester | Oneida Business Committee (OBC) | Drafter | Lynn Franzmeier | Analyst | Tani Thurner |
| Reason for Request | On October 15, 2013, the Oneida Business Committee (OBC) adopted a Furlough Policy on an emergency basis, which was extended and then expired on October 9, 2014. During the 2011-14 term, the Legislative Operating Committee (LOC) was processing the Furlough Policy for permanent adoption but did not complete it before the end of the term. This term, the OBC directed the LOC to continue processing that Policy for permanent adoption. | | | | |
| Purpose | This Policy sets out a process for the Tribe to furlough employees (temporarily reducing their work hours) as a cost-saving measure. | | | | |
| Authorized/ Affected Entities | General Manager Level Positions, Supervisors, Human Resources Department (HRD) and the OBC all have responsibilities; all employees could be affected. | | | | |
| Due Process | The Policy expressly states that furlough decisions cannot be appealed under any Tribal law, policy or the personnel grievance process. [7-1] | | | | |
| Related Legislation | Layoff Policy; Personnel Policies and Procedures | | | | |
| Policy Mechanism | Resolution adopted by OBC; Furlough Plans | | | | |
| Enforcement | None, but the Blue Book would govern any violations by Tribal employees. | | | | |

Overview

This is a new Policy that enables the Tribe to implement furloughs as a tool to remedy an operating budget deficit. [1-1] This policy applies to all employees of the Tribe, specifically including employees of Tribal programs and enterprises, and political appointees. Elected and appointed officials are specifically excluded; so they are not subject to furloughs. [1-2 and 3-1(a)]

Options/Policy Call

This proposal adds a definition for Indian Preference - "a preference granted to retain the Oneida member employee with all other factors being similar with non-member employees." The LOC is being asked to consider two alternative provisions and to identify whether one of these options should be incorporated into the Policy:

Option #1: Indian Preference. This option would add two provisions to the Policy:

1. When each department or agency furlough plan is developed, it must identify whether Indian preference is to be used as a consideration and if there are any critical positions within the business unit that will not be subject to Indian preference.
2. When a furlough is implemented, supervisors must immediately identify any critical positions within the department or agency which s/he believes should not be subject to Indian Preference in furlough decisions, and must request that furlough plan reflects this.

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21 **Option #2: No Indian Preference.** This option would state that Indian Preference may not be
22 used as a consideration in identifying employees to be furloughed.
23

24 The language proposed for Option #1 may need additional consideration. There are two specific
25 issues that arise:

- 26 1. This appears to require the General Manager Level Position to identify “critical
27 positions” in the Furlough plan that would be exempt from Indian Preference, but then
28 when a furlough must be implemented (after the furlough plan is already in place), each
29 supervisor must identify critical positions that should be exempt from Indian Preference,
30 and request that the furlough plan reflect this. It is not clear why supervisors would be
31 able to request exemptions after the furlough plan has been implemented, instead of
32 providing this input in advance. It may slow down the implementation of a furlough if
33 these matters must be addressed after a furlough has been called, but prior to
34 implementing the furlough.
- 35 2. Critical positions would “not be subject to Indian Preference in furlough decisions” –
36 however the intent may be to prohibit critical positions from being furloughed at all. It is
37 difficult to discern the intent here, in part because “critical positions” is not defined, but
38 as written, this Policy would appear to only protect non-Tribal members in critical
39 positions from being subject to Indian preference, it does not appear to protect all
40 employees in critical positions from being furloughed.

41

42

What is a furlough?

43 A furlough is a temporary unpaid leave from work for a specified period of time. [3-1(b)]
44 Employees may not use personal or vacation time while on furlough and are not eligible for back
45 pay when they return to work [4-6 and 4-8].

- 46 • Employees must be furloughed on days they are normally scheduled to work, or on Tribal
47 holidays, regardless of whether they were scheduled to work. [4-2]
- 48 • Employees on furlough cannot perform any work, including responding to work-related e-
49 mail or voicemail and traveling on behalf of the Tribe. [4-4]
- 50 • A furlough does not constitute a break in continuous service. [4-4] However, an employee
51 will not accrue personal and vacation time during a furlough. [4-6] This means that,
52 depending on years of service, an employee will not accrue the following amount of
53 personal/vacation time:
 - 54 ○ **0-3 years of service:** 0.554 hours for each full 8-hour day of furlough.
 - 55 ○ **4-7 years of service:** 0.708 hours for each full 8-hour day of furlough.
 - 56 ○ **8-14 years of service:** 0.923 hours for each full 8-hour day of furlough.
 - 57 ○ **15+ years of service:** 1.138 hours for each full 8-hour day of furlough.
- 58 • Employees are responsible for contacting the State to determine if they qualify for
59 unemployment insurance benefits while furloughed. [4-5]

60

Weekly Benefit Deductions for Furloughed Employees

61 Employees continue to receive all benefits (except personal/vacation time) during a furlough.
62 [4-6] Although not mentioned in the Law; the Standard Operating Procedure for furloughs
63 developed by the Human Resources Department states that if an employee’s weekly payroll is
64 not enough to cover their weekly payroll deductions for various benefits, then:

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- 65 • Deductions for medical, dental, vision, and short/long term disability would be covered
66 by the Tribe.
- 67 • Deductions for Term/Whole life, Accident, Critical Illness, and Individual Short Term
68 Disability would be the responsibility of the employee. [HRD Furlough SOP 3.6]
- 69 Josh Cottrell, Manager of HRD’s Employee Insurance program has identified that payment for
70 those deductions the employee is responsible for, could be deducted from future payroll,
71 however this is not stated in the SOP.

72 **Impact on workplace**

73 Furloughs must be scheduled in a way that allows departments to continue to provide a basic
74 level of service. [5-2(b)] Within each area, temporary employees must be furloughed first;
75 followed by any volunteers; and then all other employees are eligible to be furloughed. Section
76 II. C of the Personnel Policies and Procedures identifies several temporary classifications –
77 Emergency/Temp, Limited Term, Seasonal, Substitute/Relief, Youth Worker and Student/Intern.
78 According to Josh Cottrell, Employee Insurance Manager, it appears that HRD would interpret
79 this to mean that all of those temporary classifications would be furloughed first.

80 Employees cannot earn overtime during any pay period where another employee from the
81 same department/agency is furloughed; and cannot earn additional duty pay for performing
82 duties for furloughed employees from the same department/agency. [4-7(b)] Furloughs cannot be
83 used for disciplinary reasons. [5-2(e)]

84 This Policy requires General Manager-Level positions (GM-level positions) to
85 create/implement furlough plans, but does not identify requirements or a process for placing
86 political appointees (i.e. OBC assistants) on furlough. It appears the intent is for the OBC to
87 develop a standard operating procedure to govern such situations.

88 **Furlough Plans**

89 GM-level Positions must develop furlough plans to be kept on file with HRD, setting forth
90 how their respective departments/agencies intend to implement a furlough. A furlough plan must
91 explain how employees will be selected and the estimated number of employees that would be
92 affected; and must include a tentative schedule for a furlough and a summary of how the
93 furlough will relieve budget shortfalls. This requirement is similar to the layoff plans that are
94 required to be created in order to implement the Layoff Policy; except that furlough plans are not
95 specifically required to be approved by the OBC; and HRD is not specifically given a role in
96 helping to create furlough plans. [4-2(a), Article V]

97 **Furlough Process**

98 The Policy sets out the following process:

- 99 1. OBC identifies that a furlough is necessary due to a decrease/lapse in revenue/funding, or
100 any other budget situation warranting an unpaid leave. [4-1]
- 101 2. OBC gives the appropriate GM-Level positions a directive by passing a Resolution. (A
102 GM-Level position is defined as “the highest level in the chain of command under the
103 Oneida Business Committee, and who is responsible for a Tribal Department and/or
104 Division”) The Resolution must include furlough start and end dates. [4-1]
- 105 3. GM-Level positions must immediately carry out the furlough plans for his/her areas; and
106 notify the supervisors in their areas that furloughs are necessary. [4-2 and 6-1]
- 107 4. Supervisor identifies employees who will be furloughed. [6-1(a)]
- 108 5. Supervisor notifies employees of the furlough and of their furlough dates. Employees

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109 must be notified at least five days before their position is furloughed. [6-1(b) and 4-3]
110 6. Supervisor notifies HRD of the employees who were chosen to be furloughed and of their
111 furlough dates. [6-1(c)]

112 **Miscellaneous**

113 A Public Meeting was held on February 5, 2015, and the comments received from that
114 meeting and during the public comment period have been reviewed and considered. Any changes
115 made from that review have been incorporated into this draft.

116 **Considerations**

117 The following are remaining issues that the LOC may want to consider:

- 118 • 4-8 says furloughs shall not be used for disciplinary reasons, but 7-1 says that employees
119 cannot appeal a furlough decision. 4-8 may be difficult to enforce because 7-1 would prevent
120 an employee from appealing a furlough decision that s/he feels was disciplinary.
- 121 • The proposed Furlough Policy does not authorize Indian Preference to be utilized in making
122 furlough decisions.
 - 123 ○ However, the draft Furlough SOP developed by HRD (which sets out the process
124 for implementing this Policy) does allow for Indian Preference to be utilized in
125 making layoffs. If Indian Preference is to be utilized, it is recommended that the
126 Law establish more clear direction on when and how it is to be utilized; so that all
127 employees will be affected the same way and can more easily understand what to
128 expect during a furlough. For example:
 - 129 ▪ Ensuring that Indian Preference is utilized consistently – requiring all
130 departments to apply Indian Preference, if it can be applied.
 - 131 ▪ Identifying whether Indian Preference or Seniority would be applied first.
 - 132 ▪ Identifying how Indian Preference is applied – for example, within each
133 department, whether:
 - 134 • Only non-Indian employees will be furloughed, unless there aren't
135 any; or
 - 136 • Non-Indian employees will be furloughed for more hours than
137 other employees, but all employees will be furloughed, or
 - 138 • Any other method of applying Indian Preference would be applied.
139 (including the order of preference - for example, the HRD has
140 interpreted Indian Preference to mean a preference first for
141 enrolled Tribal members; then for those who are eligible for
142 enrollment – and not enrolled elsewhere; then first-generation
143 descendants not enrolled elsewhere, then members of other Native
144 American Indian tribes; then non-Indians. But the Layoff Policy
145 applies it differently, stating that Indian Preference means “a
146 preference granted to retain the Oneida member employee when all
147 other things being equal with non-member employees. Provided
148 that, a manager may identify critical positions within the business
149 unit which shall not be subject to Indian Preference. [Layoff Policy
150 D.1.]”
 - 151 • Whether there shall be any positions that are exempt from the

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152 Indian Preference requirement.
153 Comparison - Layoffs are generally one continuous break from employment, whereas a
154 furlough is a temporary absence from employment which can be done all at once, or in shorter
155 periods (i.e. one day a week for three months, etc). By requiring all employees within a
156 department to take furloughs in shorter periods, the impact of the furlough can be spread and
157 applied more evenly across the entire unit, with minimal impact to all persons. However,
158 depending on how it is intended to be applied, allowing Indian Preference could require non-
159 Oneida employees to bear the impact of a layoff completely, or to a much greater extent than
160 other employees; instead of having all employees in a specific area equally absorb a minimal
161 impact.

164 Furlough Policy

166 Article I. Purpose and Policy

167 1-1. *Purpose.* The purpose of this Policy is to enable the Tribe to implement a furlough as a tool
168 to remedy an operating budget deficit.
169 1-2. *Policy.* This Policy shall apply to all employees of the Tribe. To utilize a furlough, a
170 decrease or lapse of revenue or funding and/or any other budget situation warranting an unpaid
171 leave shall be identified.

173 Article II. Adoption, Amendment, Repeal

174 2-1. This Policy was adopted by the Oneida Business Committee by resolution BC _____.
175 2-2. This Policy may be amended or repealed by the Oneida Business Committee pursuant to the
176 procedures set out in the Legislative Procedures Act.
177 2-3. Should a provision of this Policy or the application thereof to any person or circumstances
178 be held as invalid, such invalidity shall not affect other provisions of this policy which are
179 considered to have legal force without the invalid portions.
180 2-4. In the event of a conflict between a provision of this Policy and a provision of another
181 policy, the provisions of this Policy shall control.
182 2-5. This Policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of
183 Wisconsin.

185 Article III. Definitions

186 3-1. This Article shall govern the definitions of words or phrases as used within this Policy. All
187 words not defined herein shall be used in their ordinary and everyday sense.
188 (a) "Employee" shall mean any individual who is employed by the Tribe and is subject
189 to the direction and control of the Tribe with respect to the material details of the work
190 performed, or who has the status of an employee under the usual common law rules
191 applicable to determining the employer-employee relationship. "Employee" includes, but
192 is not limited to, an individual employed by any program or enterprise of the Tribe and
193 political appointees, but does not include elected or appointed officials.
194 (b) "Furlough" shall mean a temporary, unpaid leave from work for a specified period of
195 time.

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196 (c) “General Manager Level position” shall mean the highest level in the chain of
197 command under the Oneida Business Committee and who is responsible for a Tribal
198 Department and/or Division.

199 (d) “Indian preference” shall mean a preference granted to retain the Oneida member
200 employee with all other factors being similar with non-member employees.

201 ~~(e)~~ “Supervisor” shall mean a person who directly oversees the work and performance
202 of an employee on a daily basis.

203 ~~(f)~~ “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.
204

205 **Article IV. Furlough**

206 4-1. *Furlough Resolution.* If the Oneida Business Committee has identified the necessity for a
207 furlough, a directive by resolution shall be given to the appropriate General Manager Level
208 positions. The resolution shall direct the beginning and ending dates of the furlough.

209 4-2. *Implementation of Furlough Plans.* Upon the passage of a resolution directing that a
210 furlough be implemented, all General Manager Level positions shall immediately carry out the
211 furlough plans for his or her respective departments or agencies. An employee shall be
212 furloughed on days that the employee is normally scheduled to work or on holidays recognized
213 by the Tribe, whether the employee is normally scheduled to work or not.

214 4-3. *Notice.* A supervisor shall give an employee notice at least five (5) business days prior to a
215 furlough being implemented for his or her position.

216 4-4. *Continuous Service.* A furlough shall not constitute a break in continuous service.
217 Employees shall not perform any work for the Tribe while furloughed. This includes responding
218 to work-related e-mail and voice mail, as well as traveling on behalf of the Tribe.

219 4-5. *Unemployment.* Furloughed employees shall be responsible for contacting the State of
220 Wisconsin Department of Workforce Development to determine if they qualify for
221 unemployment insurance benefits. Eligibility for unemployment insurance benefits is determined
222 by the State of Wisconsin.

223 4-6. *Benefits.* Employees shall not use or accrue personal or vacation time when on furlough.
224 Employees shall continue to receive other benefits during a furlough.

225 4-7. *Overtime and Additional Duty Pay.* When a furlough is implemented in a department or
226 agency, no employee in that department or agency shall be eligible for:

227 (a) overtime during the same pay period that another employee from the same
228 department or agency is on furlough; or

229 (b) additional duty pay for performing duties for other employees in his or her
230 department or agency who are on furlough.

231 4-8. *Back Pay.* Employees on furlough shall not be eligible for back pay awards upon return to
232 work.
233

234 **Article V. Furlough Plans**

235 5-1. *Furlough Plans.* The General Manager Level positions shall develop furlough plans for
236 their respective departments and agencies.

237 5-2. The furlough plans shall set forth how each department or agency intends to implement a
238 furlough. The plan shall include, but not be limited to, the following:

239 (a) an explanation of how employees will be selected;

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240 (1) Temporary employees shall be furloughed first, followed by employees who
241 volunteer to be furloughed. All other employees shall then be eligible to be
242 furloughed.

243 (2) Whether Indian preference is to be used and if there are any critical positions
244 within the department or agency that will not be subject to Indian preference in
245 furlough decisions.

246 (b) a tentative schedule for a furlough;
247 (1) Furloughs shall be scheduled in a way that allows the departments to continue
248 to provide a basic level of service.

249 (c) the estimated number of employees affected; and

250 (d) a summary of how the furlough will relieve budgetary shortfalls.

251 (e) Furloughs shall not be used for disciplinary reasons

252 5-3. Indian Preference. Indian preference may not be used as a consideration in identifying
253 employees to be furloughed.

254 5-43. All furlough plans shall be kept on file with the Human Resources Department.

255
256 **Article VI. Supervisor Responsibilities**

257 6-1. Upon notification from the appropriate General Manager Level position that furloughs are
258 necessary, a supervisor shall: immediately identify for the General Manager Level position any
259 critical positions within the department or agency which he or she believes should not be subject
260 to Indian preference in furlough decisions and request that furlough plan reflects this.

261 6-2. Upon receipt of the furlough plan, a supervisor shall:

262 (a) Identify those employees who will be furloughed.

263 (b) Notify those employees that they will be furloughed and their furlough dates;

264 (c) Notify the Human Resources Department of the chosen employees and their furlough
265 dates.

266
267 **Article VII. Appeal**

268 7-1. *Right to Appeal.* An employee who has been furloughed does not have the right to appeal
269 such a decision under any Tribal law, policy or the personnel grievance process.

270
271 *End.*

273 Emergency Adoption – BC-10-15-13-A
274 Emergency Adoption Extension BC-04-09-14-D

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: September 16, 2015
- 2) Contact Person(s): Norbert Hill Dept: Education & Training Admin
 Phone Number: 869-4037 Email: nhill@oneidanation.org
- 3) Agenda Title: Oneida Tribe of Indians of WI Research Protection Act
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
This Law is intended to assist Oneida w/consultation and research from tribal members. The goal is to use intellectual brain power of Oneida college graduates who'd be willing to serve as a tribal resource, ensuring future tribal growth/prosperity. We've invested scholarship dollars and should expect a ROI. Alumni will be able to "give back without moving back."

List any supporting materials included and submitted with the Agenda Request Form

- | | |
|---------------------------------|----------|
| 1) <u>Draft #1 Research Act</u> | 3) _____ |
| 2) _____ | 4) _____ |

- 5) Please List any laws, ordinances or resolution that might be affected:
None
- 6) Please List all other departments or person(s) you have brought your concern to:
None
- 7) Do you consider this request urgent? Yes No
 If yes, please indicate why: _____

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester:  NORBERT HILL

Please send this form and all supporting materials to:

LOC@oneidanation.org
 or
Legislative Operating Committee (LOC)
 P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376

**Oneida Tribe of Indians of Wisconsin
Research Protection Act**

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WHEREAS the Oneida Tribe of Indians of Wisconsin (“Tribe”), by and through the Tribal Council, has the inherent sovereign authority to regulate the conduct and activities on all lands within the jurisdiction of the Tribe, and as expressly established in the Constitution of the Tribe (“Constitution”), to promulgate, adopt, and enact laws for the control and regulation on all lands within the jurisdiction of the Tribe, and to protect the health, economic security, and general welfare of the Tribe and its members; and,

WHEREAS, the Tribal Council has determined that human subject research projects conducted within the Tribe’s Territory and involving the Tribe’s members has the potential to cause harm and should therefore be strictly regulated;

NOW THEREFORE BE IT ENACTED that the Tribal Council hereby approves the following law entitled, the “Research Protection Act”.

SECTION 1. FINDINGS AND POLICY

- 1.1 The natural and cultural landscapes, including wildlife, flora, fauna, waters, and biogenetics, among others, located on aboriginal and present day Tribal lands are owned by the Tribe and the disposition, development, and utilization thereof are under the Tribe’s full control and supervision.
- 1.2 The integrity and orientation of past, present, and future generations of the Tribe is founded upon a unique and invaluable cultural, historical and environmental ethic which defines and perpetuates an identity, language, history, and value system involving an irrevocable cultural attachment to the native landscape ecology, and the human inseparability and interdependence with species and biological diversity. *(AWK – sentence is too long)*
- 1.3 The Tribe has the right of self-determination and in exercising that right is the exclusive owner of indigenous traditional knowledge.
- 1.4 Indigenous knowledge, cultural and biogenetic resources, and intellectual property rights have been, and continue to be, damaged, destroyed, stolen, misappropriated, both on and off the Reservation. As members of the Tribe have been the subject of human research for decades, with virtually no benefits returning to the Tribe from such research.
- 1.5 The Tribe finds that it is in its best interests to establish a research review mechanism to prevent the continued abuses, and to protect the people’s traditional knowledge and properties, and thereby to ensure our rights to continue to practice traditional lifeway’s for our long term survival. ***Something similar to this wording should also be in the “Purpose” section.***
- 1.6 The established research review process is developed as a mechanism to improve relations between the Tribe and scientists/researchers, and to promote collaboration within the framework of mutual respect, equity, and empowerment, and maximize the benefits and reduce any risks to the Tribe.

SECTION 2. PURPOSE

2.1 The purposes of this Act is to: *So here it sounds like the Ordinance itself is meant to serve as a form of legal protection for the Tribe. Maybe the “established review process” should be mentioned here as well to demonstrate that the purpose of the Ordinance is also to outline the authority of the “established research review process”? I agree with comments 10 & 11 – the “established research review process” shouldn’t only be to protect the Tribe from research.*

- a. protect the people, culture, and natural resources of the Tribe and the Tribe’s future generations from unauthorized scientific research; and,
- b. to reduce any adverse effects of human subject research and related activities on the Tribe and its People; and,
- c. to ensure that researchers recognize the Tribe’s control of research activities and ownership of all data and information generated or produced by such research; and,
- d. to establish and provide a statutory basis for a process to review and govern any research, collection, database, or publication undertaken on the Reservation.

2.2 All research activities conducted on the Reservation must comply with this Act. *What about researchers from the tribe? For example, Tribal College... In section 12.3, it states the ordinance doesn’t apply to Tribal members...*

2.3 The Tribe reserves its right, through its inherent sovereign authority and its police power, to exclude individuals from the Reservation and to deny permission and access for any research activities whatsoever for any violations of this Act.

SECTION 3. DEFINITIONS

For purposes of this Act:

- 3.1 “Oneida Tribe of Indians of Wisconsin Indian Community” includes Tribal members, their descendants and ancestors, and other individuals, families, clans, and people residing within the reservation and the exterior boundaries of the Reservation.
- 3.2 “Academic Research” means research carried out to obtain educational qualifications, to further an academic career at an institution of higher learning, or for scientific advancement.
- 3.3 “Biodiversity” means the total variety of life in all its forms including levels that range from alleles to the biosphere and shall include alleles, genes, populations, species, ecosystems, landscapes, and the ecological processes of which they are a part.
- 3.4 “Biogenetic Resources” means biological and genetic resources, including plant material, animals, microorganisms, cells, and genes.
- 3.5 “Biological Samples” means, but is not limited to, bacteria and other microorganisms, plant, animal, or any human biological materials, genetic samples, any copies of the original genetic samples, any cell lines containing copies of the original genetic samples, and data derived from these samples.

- 3.6 “Commercial Purposes” means to sell, purchase, barter, trade, delay compensation for profit, exchange, transport, or offer to sell, purchase, barter, trade, delay compensation for profit, exchange, or transport.
- 3.7 “Cultural Research” means any endeavor, by means of critical investigation and study of a subject, to discover new or collate old facts or hypotheses on a cultural subject, the latter being defined as any ethnographic or anthropological study, including basic data collection, studies of or incorporating traditional knowledge or classification systems (e.g. studies of medicinal properties of plants), documentary films, archaeology, linguistics and ethno-historical accounts.
- 3.8 “Indigenous” means native, originating or growing naturally in a specific landscape and also refers to people descending from the original inhabitants of the Western Hemisphere who have maintained distinct languages, culture, or religion from time immemorial.
- 3.9 “Products of Research” means publications “including but not limited to reports, studies, articles, theses, books, manuscripts, sound recordings, film and video, media interviews, computer databases), field notes, illustrations, photographs, sound recordings, collected material artifacts, replicas, and specimens, including any derivative forms they may take such as translations, and communications through the electronic media, including the internet and world wide web.
- 3.10 “Research” includes identification, description, classification, collection, database, recordation, analysis, and publication in fields including, but not limited to, agronomy, archaeology, astronomy, biology, ethnobotany, ecology, environment, natural resources, health, ethnography, history, linguistics, paleontology, medicine, photography, psychology, remote sensing, sociology, theology, videography, and other investigative disciplines or approaches as identified by the Tribe.
- 3.11 “Reservation” means all lands outside or inside the exterior boundaries of the Oneida Tribe of Indians of Wisconsin Indian Reservation which are under the jurisdiction of the Tribe, ancestral lands where the tribe holds interest, and such lands as may hereafter be obtained or added to the jurisdiction of the Tribe.
- 3.12 “RRB” refers to a minimum *(to give yourself room to increase numbers without having to request the Ordinance be amended)* of five (5) members of the Research Review Board established under this Act.
- 3.13 “Taboo/Sacred” means subjects to which access is restricted to any degree which may include such subjects as places, names, knowledge, oral traditions, objects, and practices.
- 3.14 “Traditional Indigenous Intellectual Property” means the indigenous cultural information, knowledge, uses, and practices unique to the Tribe’s ways of life maintained and established over tribal homelands and aboriginal areas. This knowledge is based upon millennia of observation, habitation, and experience, and is a communal right held by the Tribe, and in some instances by individuals. This property includes, but is not limited to, the following:
- a. knowledge of remembered histories and traditions;
 - b. details of cultural landscapes and particularly sites of cultural significance;
 - c. records of contemporary events of historical and cultural significance;

- d. sacred property (images, objects, sounds, knowledge, material, culture or anything that is deemed sacred by the community);
 - e. knowledge of current use, previous use, and/or potential use of plant and animal species, soils, minerals, objects;
 - f. knowledge of preparation, processing, or storage of useful species;
 - g. knowledge of formulations involving more than one ingredient;
 - h. knowledge of individual species (planting methods, care for, selection criteria);
 - i. knowledge of ecosystem conservation (methods of protecting or preserving a resource);
 - j. biogenetic resources that originate (or originated) on indigenous lands and territories;
 - k. tissues, cells, biogenetic molecules including DNA, RNA, and proteins, and all other substances originating in the bodies of Tribal members, in addition to genetic and other information derived therefrom;
 - l. cultural property (images, sounds, crafts, art, symbols, motifs, names, performances); and;
 - m. knowledge of systems of taxonomy of plants, animals, and insects.
- 3.15 “Traditional Knowledge Right” means the traditional right of individuals to control the ways the information they provide is used and accessed. The issue of Traditional Knowledge Rights arises when individuals either own or are the custodians of specialized (or usually taboo/sacred) knowledge and its communication. This knowledge can include names, ceremonies, designs or forms, oral traditions, practices and skills. *If we try to give examples, are we limiting Traditional Knowledge Right to these categories?*
- 3.16 “Tribal Member” means an individual Indian who is enrolled in the Oneida Tribe of Indians of Wisconsin Tribe.
- 3.17 “Tribe” means the Oneida Tribe of Indians of Wisconsin Indian Tribe.

SECTION 4. RESEARCH REVIEW BOARD ESTABLISHED

- 4.1 There is hereby established a Research Review Board which shall be comprised of five (5) Tribal members who shall be appointed to serve on this Board by the Tribal Council;
- 4.2 The RRB shall have the following duties and responsibilities:
- a. to examine and comment on all proposals for research to be conducted within the Reservation or involving Members of the Tribe, and to monitor and regulate such research upon approval by the Tribe;
 - b. to promulgate rules under which the RRB shall operate subject to the laws of the Tribe.
 - c. to coordinate and insure that the interests of affected Tribal programs, departments, and members are protected.
 - d. to submit recommendations regarding proposals to the Tribal Council for final approval. *Something that OTIW Review Board has to decide is if they would like to be an autonomous body or would want all of the review board decisions regarding proposals to be approved by the tribe?*
 - e. to coordinate and interact with the researcher(s) in order to ensure the Tribe’s

control of the research process and the Tribe's ownership of data and information generated by such research.

- f. to negotiate the terms and conditions of a research agreement, and submit such agreement to the Tribal Council and Chairman for authorization and execution.

SECTION 5. GUIDING PRINCIPLES FOR RRB

Can we put something cultural here? How about the seven teachings? A quote from a tribal researcher? Or, we may want to define Native Science which recognizes that all living things have a spirit!

- 5.1 The RRB, in examining research proposals, shall be guided by the following principles:
 - a. Principle of Fully Informed Consent after Full Disclosure and Consultation – research should not be conducted until there has been full consultation with all potentially affected communities and individuals including all human research subjects, and each such community and individual has approved the research after full disclosure. Full disclosure includes the full range of potential benefits and harms of the research, all relevant affiliations of the person(s) or organization(s) seeking to undertake the research, and all sponsors of the researcher(s), the use and ownership of all material and information collected, the use and ownership of any derivatives obtained using any material collected as part of the research project, and whether any information or material gathered will be utilized or transferred to third parties.
 - b. Principle of Immediate Risks and Benefits to the Tribe - The research should be of direct benefit to the Tribe and its Tribal Members, *(something to consider, a lot of research by its very nature, doesn't provide immediate benefit to the Tribe or the participants, but provides more indirect benefit...)* and the risks associated with the research should be less significant than the benefits to be gained.
 - c. Principle of Confidentiality – This principle recognizes that the Tribe and any human research subjects, at its/their sole discretion, have the right to exclude from publication and/or to have kept confidential, any information including information concerning themselves, their health, or their culture, traditional knowledge, traditions, mythologies, or spiritual beliefs, and all researchers and other potential users shall guarantee such confidentiality.
 - d. Principle of Respect – This principle recognizes the necessity for researchers to respect the integrity, morality, and spirituality of the culture, traditions, and relationships of Tribal members with the world, and to avoid the imposition of external conceptions and standards.
 - e. Principle of Communication – This principle recognizes that communications should be carried out in the local language, using translators as necessary, or in a manner in which the human research subjects have a full understanding of the right to informed consent; and that each human research subject has, in fact, provided informed consent prior to the initiation of any research.

- f. Principle of Empowerment – This principle recognizes that empowerment is the sharing of power and is premised on mutual respect. Empowerment means that each affected party feels their needs are being met in a fair and equitable manner. Empowerment also means that research authorship must be shared between the Tribe and the researcher.
- g. Principle of Equity – This principle recognizes that equity is a sharing of resources. Both the researchers and the Tribe must bring equity to any research contract, agreement or understanding. Each of the participants in a professional research agreement must evaluate such equity in relation to the research. Finance or money is only one form of equity. Community knowledge, networks, personnel and political or social power are other forms of equity useful to a project. Each of these commodities has value and must be shared between the researchers and the Tribe if a proper agreement is to be formulated. The parties must continuously review equity over the duration of a research agreement.
- h. Principle of Mutual Respect – This principle recognizes that in order to develop a professional research agreement, the researchers and the Tribe must generate respect for each other. Respect is generated by understanding the social, political and cultural structures of the other party. The researchers and the Tribe cannot assume they both believe in the same things or share the same goals and expectations. Proper communication is required if a professional research agreement is to be concluded. Cultural sensitivity training for the researchers as well as research awareness presentations on the Reservation will help develop a mutual understanding in conducting the research project. The Tribe and the researchers must listen to each other with open minds.
- i. Principle of Prior Rights – This principle recognizes that indigenous peoples, traditional societies, and local communities have prior, proprietary rights and interests over all air, land, and waterways, and the natural resources within their territories that they have traditionally inhabited or used, together with all knowledge and intellectual property and traditional resource rights associated with such resources and their use.
- j. Principles of Self-Determination – This principle recognizes that indigenous peoples, traditional societies and local communities have a right to self-determination and that researchers and associated organizations must acknowledge and respect such rights in their dealings with these peoples and their communities.
- k. Principle of Inalienability – This principle recognizes the inalienable rights of indigenous peoples in relation to their traditional territories and the natural resources within such territories and associated traditional knowledge. These rights are collective by nature but can include individual rights. It shall be for indigenous peoples to determine for themselves the nature and scope of their resource rights regimes.
- l. Principle of Traditional Guardianship – This principle recognizes the holistic interconnectedness of humanity with the ecosystems of our Sacred Earth and the obligation and responsibility of indigenous peoples to preserve and

maintain their role as traditional guardians of these ecosystems through the maintenance of their cultures, mythologies, spiritual beliefs and customary practices. Some of the responsibility and obligation is granted to tribal members through traditional rites.

SECTION 6. RESEARCH PROPOSAL REQUIREMENTS

6.1 Time Frame:

As a cooperative venture, research, including human subject research, requires an appropriate time frame for review and approval by the Tribe. Researchers must begin working with the RRB in the earliest stages of planning their proposals. Depending on the nature of the proposed project, researchers are advised to allow sufficient time for the RRB to thoroughly review and understand all aspects of the research and to ask questions and resolve differences. Even the simplest of proposals must be submitted at least three (3) months prior to the anticipated project start date. The RRB reserves the right to reject last minute proposals.

6.2 Format:

A short (a maximum of five (5) pages, single sided) synopsis of the proposed project shall be submitted to the RRB. A full length proposal should be submitted as a supplement, upon request of the RRB. The synopsis must contain sufficient information to allow the RRB to make an informed decision. The following information must be included in any request for approval of a research project:

- a. **Statement of the Issue/Problem/Research Question:** The research applicant shall briefly describe the issue/problem the applicant is addressing by the proposed research. Specific questions related to this issue/problem and the theoretical rationale behind the questions shall be set forth. If the applicant has a specific hypothesis, the applicant shall briefly set forth such hypotheses.
- b. **Intent/Benefit to the Tribe:** The research applicant must clearly outline and discuss the intent of the research project and the benefit(s) that the project, research, or activity will have to the Tribe. Some questions to be answered are: 1) what are the anticipated consequences or results/outcomes of the project; 2) what groups will be affected and what groups will benefit; and 3) in what ways will these groups and the Tribe benefit?
- c. **Method:** As a part of the application process, the applicant shall briefly describe the procedure for the collection of all data to be used in the proposed study. The applicant shall include a description of subjects, settings, proposed procedures and the nature of the data to be collected.
- d. **Confidentiality:** A very important part of the application process is a description on how confidentiality will be protected. *The applicant shall identify the circumstances under which the obligations of the researcher may constitute a breach of confidentiality. What to do you mean here?* A description shall be given on how individual participants will be informed of the degree of confidentiality that will be maintained throughout the study. The Tribe will insist that, unless otherwise specified, only aggregate data, not individual data, shall be published or released to the general public. All individual identifiers such as names, addresses and phone numbers must be

kept confidential and no sale or transfer of databases outside the specific research project shall be allowed. The applicant must state in their application summary whether the community will be identified in any data released to the general public. The applicant shall also disclose whether, even without identifying information, the proposed research will have, or may likely have, any adverse impact on the Tribe or the human research subjects.

- e. Disposition of Data and Samples: A portion of the application process shall describe how individual participants will be informed of how data and samples will be used. Both the Tribe and the participants must clearly understand what the researcher plans to do with the information and samples that are collected, including any materials derived from collected samples. A description of the plans to provide individual participants with their own personal results must be provided. In addition, the research applicant shall describe how the community at large will be educated or empowered by the proposed research. A description of the frequency and manner by which the aggregate data and progress reports will be shared with the RRB must be set forth. Furthermore, communication strategies to present aggregate data to the Tribe, at large, shall be described.
- f. Risks: The applicant must describe any potential legal, financial, social, physical, or psychological risks that are anticipated in the research. Any risks of deleterious impact on the cultural, social, economic or political well-being of the Tribe or Tribal members shall be assessed. The assessment of risk will also address the steps that will be taken to minimize, ameliorate or repair any actual harm caused to the Tribe by the proposed research. An explanation shall also be provided on how potential risks will be explained to participants and how the risks are justified by the potential benefits of the research.
- g. Funding/Budget: If the study is funded by any public or private sources, the applicant shall provide a full reference of this funding source and explanation of any limits on the confidentiality of research results. If the researcher is currently seeking funding, the researcher shall list all funding agencies for which proposals are being sought. Researchers shall budget funding to cover cultural sensitivity training, and to provide adequate resources to cover community education and outreach efforts as part of the research, and finally, to rectify any harm to, or exploitation of, Tribal property or Tribal members resulting from the research.
- h. Cultural Sensitivity Training: All principal investigators, researchers, graduate students and any other people involved in the research will be required to undergo cultural sensitivity training to be provided at the researcher's expense. Costs will be determined based on the scope of the project. The training shall be provided by the Tribe or provided at the direction of the Tribe.
- i. Equity: The proposal must demonstrate how the participants and the Tribe will be given a fair and appropriate return for cooperation in the research. Just compensation or fair return includes, but is not limited to: obtaining copies of the research findings, authorship, co-authorship or acknowledgment, royalties, fair monetary compensation, copyright, patent, trademark, compensation for

- expenses incurred in reviewing/advising researchers, coverage of training/education or outreach expenses, or other forms of compensation.
- j. Consent: The proposal must address mechanisms for informed consent, which may be required from individual participants, families, clans or the Tribe. The applicant shall list all the agencies, professionals, government representatives, and individuals within the Tribe with which the applicant has previously discussed the proposed research and whether or not these individuals have given their informed consent, or other support, to the research.
 - k. Empowerment: The applicant shall describe how individuals and Tribal members will be empowered by the research process through employment, training, or outreach efforts. Native American preference must be given in employment and training in all phases of the project or activity, especially where the research is occurring on the Reservation. The Tribe's preference laws shall govern the order of priorities in hiring.
 - l. Intellectual Property Rights: The application shall address the plans (pre, during and post-project) for publication or commercialization of the research findings. If such publication or commercialization is contemplated, the applicant shall address how the Tribe will share in the authorship of publications or commercialization of the research findings. The Tribe also needs to know how the Tribe will have access to the project, research data or findings for the Tribe's own use. Researchers must inform the RRB of journals, publishing houses, or conferences that they plan to print or present the results of their studies before papers are submitted or presented. The proposal must demonstrate a process whereby the RRB and the Tribe will have an opportunity to review, critique, and approve the results of all studies before any publication, presentation, news conferences or release of data to the general public occurs. Researchers shall be responsible for addressing, correcting, and satisfying the concerns of the Tribe in drafts and final reports, papers, or data summaries before they are released to the general public.
 - m. Data Ownership/Archive: The Tribe reserves the right to require the deposit of raw materials or data, working papers or product in a repository designated by the Tribe, with specific safeguards to preserve confidentiality. Duplicates of data or split samples may be required to be stored in a local archive.
- 6.3 Administrative Fee: The researcher shall remit with the research proposal, an administrative fee in the amount of \$_____ *(not sure if we will charge a fee – some ways to think about fees: 1) Is this a one-time submission such as a publication? Or requires multiple reviews. If so, we can think of charging a fee at each annual review? 2) We can allow for exemptions for student researchers, etc., 3) Or we can charge a flat rate for every new submission? If I recall, Dr. Best used the figure of \$80 in a presentation he made before the tribe.)* to cover administrative costs associated with review of the proposal and permitting.
- 6.4 All publications, manuscripts and reports resulting from research must receive prior approval from the RRB and the Tribe.

SECTION 7. REVIEW OF RESEARCH PROPOSALS AND REVIEW PROCESS

- 7.1 All research proposals must be complete before the RRB is required to consider the proposal. A proposal is complete when it contains the fee and all of the information required in Section 6 that is necessary for the RRB to decide whether or not the proposal should be considered.
- 7.2 Any research summaries and support documents requested by the RRB pursuant to the proposal process should be sent to: TNRG-PO Box 1906, Belcourt, ND 58369.
- 7.3 The RRB shall review the application materials that are submitted and either:
- a. Return the proposal to the researcher with requests for additional information or with suggestions for clarification or change; or
 - b. Forward the proposal and request to the Tribal Council with a recommendation for approval or disapproval; or
 - c. Consult with other Tribal members, Tribal elders, professionals, technical experts, or specialists for a second evaluation before sending recommendations to the Tribal Council.
- 7.4 The review process and approval of the research is complete when the researcher receives a letter of notification from the RRB and enters into a binding Research Agreement (see Appendix) that contains the obligations and responsibilities of the parties. Upon approval, principal investigators, co-principal investigators, researchers, graduate students and any others involved in the research shall undergo cultural sensitivity training at the researcher's expenses before any project begins within the Reservation. The RRB expects periodic progress reports and will use these reports to update the Tribal Council on the status of the project.
- 7.5 The RRB may specify a Compliance Fee in an amount appropriate to ensure the researcher's compliance with the conditions of the research. Upon completion of the research, the compliance deposit may be refundable.
- 7.6 Following approval of the research, the researcher shall secure all permits and licenses that may be required by Tribal law, including but not limited to a permit as provided under Section 9.

SECTION 8. RESEARCH AGREEMENTS

- 8.1 An agreement specific to the research shall be developed so that studies proceed in a manner that is both culturally sensitive and relevant to the participants and the Tribe.
- 8.2 Where any of the products of the research are to be used for commercial purposes, a separate agreement will be made specifying the basis on which sales are to be made and the proceeds of sales are to be distributed. Where research is engaged in for commercial purposes, it is the responsibility of the researcher to make all informants and suppliers of information aware of this fact, and to come to an agreement with them on the amount of compensation to be paid. There must be a limit on samples that the researcher may obtain and take off the Reservation, and the approved list and amount of samples to be taken must be followed strictly.
- 8.3 A sworn, notarized declaration of noncommercial use of research products *and/or traditional and indigenous knowledge* (**THIS IS NOT CLEAR?**) is required in

conjunction with an Academic Research Agreement. This declaration may be included in the body of the Research Agreement.

- 8.4 If a research project receives approval by the Tribe, the approval remains in effect for the period of time specified in the research agreement unless substantial changes are made in the research protocol. At the end of the period approved for the research project, the researcher must submit a letter in writing which summarizes the status of the project (complete, incomplete, discontinued), any unanticipated problems that occurred during the data collection phase of the project, and a time schedule for completion of all work, including community education/outreach related to the project. If the project is incomplete, the researcher must also request, in writing, an additional period for the data collection, analysis and report phase of the project.
- 8.5 If there are changes in the PI or significant changes that may alter the course of the research, the change must be approved by the TRB. *Would be safer to say that all changes to the protocol, including changes to PI, must be approved by TRB?*

SECTION 9. PERMITS

- 9.1 The RRB shall develop standard application forms for Researcher Permit applicants and set forth the type of information that must be submitted.
- 9.2 The RRB shall develop a standard permit form, which, at a minimum, shall include the name(s) of the researcher(s) covered, name and/or brief description of the study approved, location(s) of research to be conducted, and effective start and ending dates of the permit.
- 9.3 Upon execution of a Research Agreement, all persons conducting research on the Reservation shall obtain, from the Office of the Tribal Secretary, a Research Permit in accordance with the terms of this Section.
- 9.4 An application form for a Research Permit may be obtained from the RRB or from the Office of the Tribal Secretary.
- 9.5 All persons covered by a Research Permit shall have such Permit in their possession at all times while conducting research. The Research Permit must be produced for inspection or surrendered upon demand by authorized Tribal officials.
- 9.6 A Research Permit issued under this Section may be suspended or revoked at any time by the RRB or Tribe (Tribal Chairperson, Tribal Council, or the RRB, *Let's discuss this before we put it in this section.* if a permit holder is engaged in activities not allowed by the permit, fails to abide by a permit term or condition, has committed fraud or misrepresentation or provided incorrect statements in the application or permitting process, or is engaged in or has engaged in activities prohibited by this Act or any other Tribal law or resolution.
- 9.7 The revocation or suspension of a permit issued pursuant to this Section may be appealed to the RRB and a decision by the RRB is final for purposes of judicial review exclusively in the Tribe's Courts.

SECTION 10. MODIFICATIONS OF AN APPROVED PROJECT

- 10.1 If the researcher wishes to make changes in his or her research project after receiving approval from the Tribe, he or she must submit a summary of the proposed modifications to the RRB.
- 10.2 Modifications in the data collection procedures must be reviewed by the RRB and approved by the Tribal Council. Modifications to the research project shall not be implemented until the researcher and the RRB have amended the research agreement and permits, and the researcher receives written approval from the RRB.

SECTION 11. REGULATION OF BIOLOGICAL SAMPLES

- 11.1 Any researcher who seeks to collect, acquire, or analyze any biological samples must agree and abide by the following conditions with regard to research with biological materials.
- 11.2 The Tribe, may at any time, decide to withdraw from the research project or any portion thereof, and request the return of all biological samples. The researcher, and any other parties, must comply.
- 11.3 *(include the deleted part)* Upon completion of the research project, or termination or cancellation of the project at any time prior to completion, the biological samples must be completely and fully returned to the Tribe.
- 11.4 No biological samples from this study may be released to, or used by, any other researcher(s), research institution, or any other entity, whether public or private, without the prior and fully-informed written approval of the Tribe.
- 11.5 If the Tribe permits any biological samples to be stored in any other locations, the Oneida Tribe of Indians of Wisconsin will maintain jurisdiction over the samples and the researcher shall maintain, at all times, a complete list thereof. The list shall include a description of the sample or data, source, specific use or purpose of each item, responsible person(s) at the location, and where the item is housed (e.g., in a "gene bank" or on a specific computer), and any relevant time lines with regard to use of, disposition, return, or destruction of the samples or data. The researcher shall provide an updated copy of the list to the Tribe whenever changes are made. The updated list shall include identification of changes made since the last copy of the list was provided to the Tribe.
- 11.6 Any situation where biological samples will leave the possession or control of the researcher will require a separate agreement between the Tribe and the external party in accordance with this act.
- 11.7 No entity may seek to patent or commercialize any biological materials obtained from the Tribe, from the Tribe's jurisdiction, or under the authority of the Tribe including, but not limited to, genetic samples, any copies of the original genetic samples, any cell lines derived from collected materials, and data derived from these samples.

SECTION 12. RESERVATIONS AND TERMINATION

- 12.1 The Tribe reserves the right to:

- a. Withdraw consent to use or release information and/or prevent the publication of data which is unauthorized, misrepresents or stereotypes the Tribe or its members or will harm the health, safety or welfare of the Tribe, its members, or the environment.
 - b. Deny researchers the opportunity to conduct research within the Tribe's jurisdiction. In addition, other researchers or scientists from the same research institution may be denied any future access to the Reservation.
 - c. Withdraw approval for projects. Should this occur, the Tribe will explain the rationale for withdrawing approval and explain why this project or the release of data is deemed to be harmful to individuals or the Tribe at large. In the case of withdrawal of approval by the Tribe, all information and copies of data must be returned to the Tribe.
 - d. Exclude individuals from the Reservation.
 - e. Seek injunctive relief, including an order restraining a person from continuing to enter the Reservation.
- 12.2 If a project is terminated, the research entity or individual must provide just compensation to any field staff or member of the Tribe for their time and efforts spent related to the research project.
- 12.3 This Act does not apply to Tribal members conducting research for their own use; provided that this Act shall apply if a Tribal member is conducting research for, or is affiliated with, an outside institution.

SECTION 13. PROHIBITED CONDUCT.

- 13.1 No person shall conduct any academic research or cultural research without first obtaining approval by the RRB pursuant to Section 7 of this Act;
- 13.2 No person shall conduct any academic research or cultural research without obtaining a fully executed research agreement pursuant to Section 8 of this Act;
- 13.3 No person shall conduct any academic research or cultural research without maintaining in their possession a permit issued pursuant to Section 9 of this Act;
- 13.4 No person shall collect, acquire, or analyze any biological samples without abiding by the provisions of Section 11 of this Act;
- 13.5 No person shall alter, damage, disturb, excavate, remove, or desecrate any biodiversity related resources, biogenetic resources, or traditional, indigenous, intellectual property on the Reservation or of the Tribe;
- 13.6 No person shall, while on the Reservation, conduct any visitation, inventory, collection, research, or filming related to any biodiversity related resources, biogenetic resources, or traditional, indigenous, intellectual property or disturb any animals, vegetation, or landscapes of the Reservation or Tribe.
- 13.7 No person shall sell, purchase, exchange, transport, receive, or offer to sell, purchase, exchange, transport, or possess any biodiversity related resources, biogenetic resources, biological samples, or traditional indigenous intellectual property if such resource or property was obtained in violation of this Act or any permits.

SECTION 14. PENALTIES *We should have tribal court put these in their law and order code.*

14.1 CRIMINAL PENALTIES

- a. Any person who violates any section of this Act, or any permit issued under this Act, shall be assessed a civil penalty not to exceed \$10,000 per violation, or if applicable, any civil penalty provided for under Federal laws or the laws of the Tribe.
- b. No civil penalty shall be assessed unless such person is given notice and an opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. The trial of any such violation shall be by the Tribal Court and the prosecution shall have the burden of proving the alleged violation occurred beyond a reasonable doubt.
- c. Any person who violates this Act, or any permit issued under this Act, may lose the privilege of doing business or conducting research on the Reservation.
- d. Any non-member of the Tribe who violates this Act or any permit issued under this Act may be excluded from the Reservation.

14.3 CIVIL DAMAGES

Assessment of Actual Damages: Any person who violates any section of this Act or any permit issued under this Act shall be liable to the Tribe for civil damages to be assessed by the Tribal Court after a hearing. "Civil Damages" shall be interpreted liberally by the Court to include, but not be limited to, the following:

- a. Cost of restoration and repair; and
- b. Enforcement costs associated with the enforcement of this Act; and
- c. Costs associated with the culturally appropriate disposition of resources, including conservation, curation, and/or reburial.
- d. Assessment of Treble Damages: In addition to actual damages, the Court, in its discretion, may assess damages of up to three times the amount of actual damages.

14.4 FORFEITURE – All objects or property in the possession of any person, and obtained in violation of this Act or in violation of a term or condition of a permit obtained thereunder, shall be seized by law enforcement agents and forfeited to the Tribe for disposition. A person may recover all such property incapacitated by paying to the Tribe the costs incurred by the Tribe in carrying out legal proceedings, and by paying all fines due for violations of Tribal law.

14.5 SEIZURE OF SECURITY – The citing law enforcement agent shall:

- a. Seize such property in the possession of the alleged perpetrator, including vehicles, or equipment involved in the violation, as the enforcement program or agent deems reasonably necessary to secure payment of any fine or civil damages which may be levied upon the defendant upon conviction of the infraction or crime, or to fulfill a civil judgment.
- b. The property seized shall be released to the owner upon timely payment of any related civil assessments.
- c. Any seized property shall be forfeited to the Tribe if the assessment has not been paid within fifteen (15) days of the hearing at which the civil

assessment was levied or fifteen (15) days from the final determination of any appeal taken pursuant to this Act, whichever is later.

SECTION 15. PERSONAL JURISDICTION

15.1 As to a cause of action arising under this Act, a court may exercise jurisdiction over a person not domiciled on the Reservation on any basis consistent with, and on the broadest basis permissible under, the Constitution of the United States and the Constitution of the Tribe.

SECTION 16. SEVERABILITY

16.1 If any provision of this Act or the application thereof to any person, court, or circumstance is held invalid by a Tribal Court or another court having competent jurisdiction, the invalidity shall not affect other provisions of this Act which can be given effect without the invalid provision or application and to this end, the provisions of this Act are severable.

SECTION 17. REPEAL OF CONFLICTING LAWS OR REGULATIONS

17.1 Any ordinance, resolution, act, or rules and regulations in conflict with the provisions of this Act shall be superseded and repealed to the extent of such conflict.

SECTION 18. WAIVER

18.1 No individual person, Tribal official, or Tribal employee is authorized to waive any part of this Act.

SECTION 19. SOVEREIGN IMMUNITY

19.1 The Tribe and all its constituent parts, subordinate organizations, Boards, including the RRB, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived by the Tribe by law.

SECTION 20. AMENDMENTS

20.1 This Act may be amended by the Tribal Council at any time.

SECTION 21. EFFECTIVE DATE

21.1 This Act is effective upon the date of enactment by the Tribal Council.

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: 9-28-15
- 2) Contact Person(s): Lori Elm/Amelia Cornelius Dept: DOLM
 Phone Number: 869-1690 ext. 6607 Email: LELM@ONEIDANATION.org
- 3) Agenda Title: Amend Real Property Law, Land Commission By-Laws and create, develop Probate law, Mortgage Law, and Landlord-Tenant Law
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
 1) Transferring all Land Commission hearing responsibilities to the Judiciary as the initial Trial Court
 a) Amend the Real Property Law
 b) Develop the Probate Law
 c) Develop the Mortgage Law d) Develop the Landlord-Tenant law

List any supporting materials included and submitted with the Agenda Request Form

- 1) Memo 3) _____
- 2) _____ 4) _____

- 5) Please List any laws, ordinances or resolution that might be affected:
Real Property Law, Land Commission By Laws, and develop Probate Law, Mortgage Law, and Landlord Tenant Law
- 6) Please List all other departments or person(s) you have brought your concern to:
Land Commission & DOLM
- 7) Do you consider this request urgent? Yes No
 If yes, please indicate why: _____

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester: LELM

Digitally signed by LELM
DN: dc=org, dc=OTIW, ou=User Accounts, ou=OTIW Users, cn=LELM
Date: 2015.10.01 11:18:48 -05'00'

Please send this form and all supporting materials to:

LOC@oneidation.org
or
Legislative Operating Committee (LOC)
 P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376

LAND COMMISSION



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.

P.O. Box 365 • Oneida, WI 54155

Telephone: 920-869-1690 • Fax: 920-869-1689

Memorandum

To: Legislative Operating Committee
CC: Legislative Reference Office
From: Amelia Cornelius, Chairwoman, Oneida Land Commission
Date: 9/21/2015
Re: Land commission Hearings



During a regular Land Commission (LC) meeting on September 14, 2015, requests for two probate hearings were on the agenda. The Land Commission accepted the requests. At the same time, Land Commissioners recognized that the Legislative Operating Committee (LOC) & the Business Committee (BC) are reviewing the initial hearing body functions throughout the Tribe to determine which, if any can be transferred to the Judiciary. The Land Commission is in full support of the LOC's initiative and accordingly has decided to proactively request that the LOC begin the process to amend the laws necessary to transfer the LC's original hearing body authority regarding probate, foreclosure and eviction actions.

Probate

It is our understanding that the first step that must be taken to transfer the LC's hearing body authority regarding probate to the judiciary requires amending the Real Property Law. The development of a Probate Law will also likely be necessary. The probate process in the Real Property law was not accepted by the BIA. In order for Oneida to exercise our sovereignty over Tribal Trust property, the process must comply with BIA requirements.

Foreclosure & Eviction

During discussions on Probate, Staff inquired about the remaining hearings that currently fall under the LC's hearing authority. Specifically, foreclosures and

September 21, 2015

evictions were identified. The LC agreed that along with Probate, original hearing body authority for both foreclosures and evictions should also be transferred to the Judiciary. It is acknowledged that a Mortgage Law and a Landlord Tenant Law need to be developed. Currently, the terms of the legal documents i.e. the mortgage & the lease, along with departmental SOP's serve as the grounds for the foreclosure and eviction. This would not be considered a good policy or a best practice. The LC does not want to speak for all involved parties, so we are merely bringing the request that the required laws be added to the active files list and defer to the LOC and the LRO to work with the affected parties, including the judiciary and housing. In summary, this request includes the following;

- 1) **Transferring all Land Commission hearing responsibilities to the Judiciary as the initial Trial Court, which, as the LC understands, requires the following:**
 - a) **Amend the Real Property Law**
 - b) **Develop the following;**
 - (i) **Probate Law**
 - (ii) **Mortgage Law**
 - (iii) **Landlord-Tenant law**

CONFIDENTIAL



Notice of

Public Meeting

to be held

October 29, 2015 at 12:15 p.m.

OBC Conference Room—2nd Floor, Norbert Hill Center



Topic: Public Use of Tribal Land Law Amendments

The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal that would:

- ◆ Allow the Environmental Resource Board (ERB) to prescribe permissible and/or prohibited uses for tribal land that has been designated as Oneida Community Access, Oneida Tribal Member Access or Open Access, provided that such uses do not contradict with the Zoning and Shoreland Protection Ordinance; and
- ◆ Require ERB to report the prescribed permissible and/or prohibited uses to the Oneida Business Committee and to post the uses on the affected tribal lands.

All community members are invited to attend this meeting to learn more about this proposal and/or to submit comments concerning this proposal.

Public Comment Period—Open until November 5, 2015

During the Public Comment Period, all interested persons may submit written comments regarding this legislative proposal; and/or a transcript of any testimony/spoken comments made during the Public Meeting. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, interoffice mail, e-mail or fax.

For more information about the public meeting process, or to obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office, which is located on the second floor of the Norbert Hill Center, Oneida WI.

Mail: **Legislative Reference Office**
PO Box 365
Oneida, WI 54155

Phone: **(920) 869-4376 or (800) 236-2214**
E-Mail: **LOC@oneidanation.org**
Fax: **(920) 869-4040**

CHAPTER 38 PUBLIC USE OF TRIBAL LAND

38.1. Purpose and Policy
 38.2. Adoption, Amendment, Repeal
 38.3. Definitions
 38.4. Environmental Resource Board

38.5. Land Access Map
 38.6. Trespass
 38.7. Violations and Appeals

| <i>Analysis by the Legislative Reference Office</i> | |
|---|---|
| Title | Public Use of Tribal Land |
| Requester | ERB Drafter Krystal John Analyst Candice E. Skenandore |
| Reason for Request | Give the Environmental Resource Board the authority to determine what actions are allowed or not allowed on designated Tribal properties. |
| Purpose | The purpose of this Law is to prevent improper access, use and trespass to Tribal lands |
| Authorized/ Affected Entities | Environmental Resource Board or its designated staff, Conservation Warden, Oneida Police Department, Oneida Environmental Health and Safety Division, the Oneida Division of Land Management, Geographic Land Information Systems and anyone accessing Tribal land. |
| Due Process | A person receiving a citation can appeal to ERB; if the person is dissatisfied with ERB's decision, he/she can appeal to the Tribe's judicial system [See 38.7-2 & 38.7-3]. |
| Related Legislation | Zoning and Shoreland Protection Ordinance |
| Policy Mechanism | A person that violates this Law may be issued a citation [See 38.7-1]. |
| Enforcement | ERB has the duty and power to carry out this Law and enforce the provisions of this Law [See 38.4-1]. |

Overview

According to the Environmental Health and Safety Division and the Environmental Resource Board, people have been camping and/or consuming alcohol at the Oneida Lake. It is because of these actions that the Environmental Resource Board (ERB) requested emergency amendments to the Public Use of Tribal Land Law (Law). The Oneida Business Committee adopted the emergency amendments on July 8, 2015. These amendments are now being considered as permanent amendments. The amendments include the following:

- ERB or its designated staff has the authority to prescribe permissible and/or prohibited uses, as deemed necessary, for property designated as Oneida Community Access, Oneida Tribal Member Access or Open Access, provided that the permissible and/or prohibited uses do not contradict with the Zoning and Shoreland Protection Ordinance [See 38.4-1 (g)].
- ERB must also notify the Oneida Business Committee of the permissible and/or prohibited uses and must post notice of such uses on the affected Tribal land [See 38.4-1 (g)].

Considerations

- These amendments do not allow the ERB or its designated staff to prescribe permissible and/or prohibited uses, as it deems necessary on Tribal property that is designated as Limited Access; however, the permit or lease may limit what uses are allowed on the Limited Access Land. Limited Access lands are open to anyone who is granted permission by the Tribe through a permit or lease for specific purposes [See 38.5-1 (a)].
- Although the Law requires ERB to notify Oneida Business Committee and to post notice of permissible and/or prohibited uses on the affect Tribal land, the LOC may want to consider requiring ERB to notice to the public of any permissible and/or prohibited uses or changes to those uses in the Tribal newspaper and/or on the Tribal website.

Miscellaneous

28 A public meeting has not been held. Additional minor language changes have been made
29 to the Law which do not affect the content.
30

31 38.1. Purpose and Policy

32 38.1-1. *Purpose.* The purpose of this Law is to prevent improper access, use and
33 ~~trespass~~Trespass to ~~Tribal land~~Tribal Lands.

34 38.1-2. *Policy.* It is the policy of the Tribe to limit access to ~~Tribal land~~Tribal Land to protect
35 and preserve the environment and natural resources including forests, wildlife, air and waters,
36 through appropriate uses of the land.
37

38 38.2. Adoption, Amendment, Repeal

39 38.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-05-15-14-C
40 and amended by BC-12-10-14-A.

41 38.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to
42 the procedures set out in the Legislative Procedures Act.

43 38.2-3. Should a provision of this Law or the application thereof to any ~~person~~Person or
44 circumstances be held as invalid, such invalidity ~~shall~~does not affect other provisions of this
45 Law which are considered to have legal force without the invalid portions.

46 38.2-4. In the event of a conflict between a provision of this Law and a provision of another law,
47 the provisions of this Law ~~shall~~controls.

48 38.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians
49 of Wisconsin.

50 38.2-6. This Law ~~shall~~may not be construed to preclude the Tribe from pursuing relief for
51 criminal ~~trespass~~Trespass under applicable law.
52

53 38.3. Definitions

54 38.3-1. This section ~~shall~~governs the definitions of words and phrases used within this Law.
55 All words not defined herein ~~shall~~are to be used in their ordinary and everyday sense.

56 (a) “Designation” means the term used to describe the type of access granted to certain
57 ~~Tribal land~~Tribal Lands.

58 (b) “Lease” means any lease or agreement, including business site leases, entered into by
59 the Tribe and any ~~person~~Person to allow the use of ~~Tribal land~~Tribal Lands.

60 (c) “~~Person~~Person” means any individual, group of individuals, corporation, partnership,
61 limited liability company, or any other form of business organization.

62 (d) “Reservation” means all the lands and waters within the exterior boundaries of the
63 Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838
64 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

65 (e) “Trespass” means the unauthorized use or entry on ~~Tribal land~~Tribal Lands,
66 including unauthorized uses under a Tribal law, permit or ~~lease~~Lease.

67 (f) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.

68 (g) “Tribal ~~land~~Land” means all Tribal trust lands, and any land or interest in land held
69 by the Oneida Tribe in fee or in any other form on the Reservation.
70

71 38.4. Environmental Resource Board

72 38.4-1. The Environmental Resource Board ~~shall have~~has the duty and power to carry out the
73 intent and purposes of this Law and enforce the provisions of this Law. The Environmental
74 Resource Board, or its designated staff, shall:

75 (a) Develop, approve and maintain the Land Access Map.

- 76 (b) Hold public hearings on proposed amendments to the Land Access Map.
77 (c) Hear and decide, as the original hearing body, contested cases that may arise under
78 this Law.
79 (d) Impose hearing costs and restitution against the ~~person~~Person for damages caused by
80 a violation of this Law.
81 (e) Determine which ~~Tribal land~~Tribal Land will be posted and ensure the appropriate
82 signs are posted.
83 (f) Implement and interpret the provisions of this Law.
84 (g) As it deems appropriate, prescribe permissible and/or prohibited uses for Tribal Land
85 that it designates as Oneida Community Access, Oneida Tribal Member Access or Open
86 Access, provided that such permissible and/or prohibited uses may not contradict with the
87 Zoning and Shoreland Protection Ordinance. Upon establishment of permissible and/or
88 prohibited uses, the Environmental Resource Board shall notify the Oneida Business
89 Committee of the permissible and/or prohibited uses and shall post notice of such uses on
90 the affected Tribal Land.
91

92 **38.5. Land Access Map**

93 38.5-1. *Designation of Tribal Lands.* A Land Access Map ~~shall~~must be created which
94 designates ~~Tribal land~~Tribal Land as one (1) of the following:

95 (a) Limited Access: Lands designated as “Limited Access” ~~shall~~beare open to all
96 ~~person~~Persons who are granted land access permission by the Tribe through a permit or
97 ~~lease~~Lease for specified purposes. The Environmental Resource Board may choose to
98 designate a portion of land as Limited Access in order to manage, preserve and protect
99 that land for environmental, cultural or other significance.

100 (b) Oneida Community Access: Lands designated as “Oneida Community Access” ~~shall~~
101 ~~beare~~beare open to Tribal members, and their spouses and descendants; members of other
102 federally recognized Indian tribes, bands or communities; authorized employees of the
103 Tribe; and ~~person~~Persons who are accompanied at all times by a Tribal member, the
104 spouse or descendant of a Tribal member, or an authorized employee of the Tribe.

105 (1) A Conservation Warden or Oneida Police Officer may require a ~~person~~Person
106 to demonstrate proof of eligibility to use Oneida Community Access lands.

107 (2) The Environmental Resource Board may choose to designate land as Oneida
108 Community Access in order to manage, preserve and protect access to locations
109 that have cultural or environmental significance.

110 (c) Oneida Tribal Member Access: Lands ~~designated~~s designated as “Oneida Tribal Member Access”
111 ~~shall~~beare open to Tribal members only. The Environmental Resource Board may
112 designate land as Oneida Tribal Member Access to protect the land for Tribal member
113 use due to the historical, spiritual, cultural and/or environmental significance of the land.

114 (d) Open: Lands designated as “Open Access” ~~shall~~beare generally open to all
115 ~~person~~Persons for the land’s designated use and enjoyment. The Environmental
116 Resource Board may designate land as Open Access where such ~~designation~~Designation
117 is deemed beneficial to the Tribe and where such ~~designation~~Designation does not pose
118 significant risk of damage to the policies of the Tribe and/or the land’s cultural or
119 environmental preservation.

120 38.5-2. Notwithstanding the restrictions of 38.5-1, nothing in this Law ~~shall~~may be construed as
121 preventing the following ~~person~~Persons from entering ~~Tribal land~~Tribal Land, regardless of the
122 land ~~designation~~Designation:

- 123 (a) Employees of the Tribe who are performing their job duties;

- 124 | (b) Those ~~person~~Persons who are performing grant or contractual obligations related to
125 | the ~~Tribal land~~Tribal Land and on behalf of the Tribe;
126 | (c) Emergency personnel who are providing, or attempting to provide, services; and
127 | (d) Those ~~person~~Persons who have been granted access to the land by the Environmental
128 | Resource Board.

129 | 38.5-3. *Development of the Land Access Map.* The Environmental Resource Board shall
130 | develop the Land Access Map in coordination with the Oneida Environmental Health and Safety
131 | Division, the Oneida Division of Land Management, Geographic Land Information Systems and
132 | other such designated agencies of the Tribe. The Environmental Resource Board shall adopt the
133 | initial Land Access Map.

134 | 38.5-4. *General Land Designation.* Unless otherwise designated, ~~Tribal Land~~Tribal Land shall
135 | ~~be~~is designated as Limited Access.

136 | 38.5-5. *Amending the Land Access Map.* The Environmental Resource Board may, from time to
137 | time, in the manner hereafter set forth, amend the Land Access Map, provided that due
138 | consideration ~~shall~~must be made for the intent and purposes of the ~~designation~~Designation.

139 | (a) Amendments may be proposed by any ~~person~~Person by filing an application with the
140 | Environmental Resource Board in such format and accompanied by such information as
141 | required by the Board.

142 | (b) *Public Hearing.* The Environmental Resource Board shall hold a public hearing on
143 | each application to amend the Land Access Map.

144 | (1) The Environmental Resource Board shall set a date for the public hearing and
145 | meet the notice requirements of the public hearing as soon as possible after the
146 | filing of the application is complete.

147 | (A) *Notice.* Not less than ten (10) business days and not more than thirty
148 | (30) business days prior to the public hearing, notice, including the time,
149 | place and purpose of the public hearing, ~~shall~~must be:

150 | (i) published in the Tribal newspaper; and

151 | (ii) mailed to all owners of land located within twelve hundred
152 | (1,200) feet of the outer boundaries of the land that is the subject of
153 | the public hearing.

154 | (B) Any ~~person~~Person who cannot attend the public hearing may be
155 | represented by an agent, advocate or attorney at the public hearing.

156 | (C) The Environmental Resource Board shall issue a decision or
157 | recommendation regarding amendments to the Land Access Map within
158 | seven (7) business days after the public hearing is held.

159 | (2) The Environmental Resource Board together with the Environmental Health
160 | and Safety Division shall, after holding a public hearing and reviewing any
161 | comments received, make written findings of fact and determine whether to
162 | amend the Land Access Map.

163 | (3) The Environmental Resource Board shall make findings based upon the
164 | evidence presented to it with respect to the following matters:

165 | (A) Existing uses of the land and buildings within the general area of the
166 | land in question.

167 | (B) Suitability of the land in question to the uses permitted under the
168 | existing Land Access Map.

169 | (4) The Environmental Resource Board ~~shall~~may not amend the Land Access
170 | Map unless it finds that adopting such amendment is in the Tribe's best interest
171 | and is not solely for the interest of the applicant.

172 (c) The Environmental Resource Board may grant or deny any application to amend the
173 Land Access Map; however, amendments ~~shall~~must require a two-thirds (2/3) vote of the
174 Environmental Resource Board if a written protest against any amendment is presented to
175 the Environmental Resource Board and is signed by:

176 (1) the lessees, assignees and owners of at least twenty percent (20%) of the acres
177 of land included in such amendment; or

178 (2) the lessees, assignees and owners of at least twenty percent (20%) of the land
179 immediately adjacent to the land included in such amendment, extending in a
180 radius of twelve hundred (1,200) feet of the outer boundaries of the land.

181 182 **38.6. Trespass**

183 38.6-1. A ~~person~~Person ~~trespass~~Trespasses if the ~~person~~Person enters or otherwise occupies
184 ~~Tribal land~~Tribal Land and:

185 (a) Refuses to leave land to which the ~~person~~Person has no reasonable claim or right of
186 possession when requested to do so.

187 (b) Enters upon such land after being noticed by the landowner or occupant that
188 permission for the ~~person~~Person to enter such land does not exist, or has been expressly
189 denied or revoked. A ~~person~~Person has been noticed that permission by the landowner or
190 occupant for such ~~person~~Person to enter such land does not exist if he or she has been
191 notified publicly, by publication of the Land Access Map on the Tribal website and/or in
192 the Tribal newspaper, or if the land is posted. Land is considered to be posted if one (1)
193 of the following requirements is met:

194 (1) A sign at least eleven (11) inches square is placed in at least two (2)
195 conspicuous places for every forty (40) acres of land to be protected. The sign
196 shall provide an appropriate notice and the name of the ~~person~~Person giving the
197 notice, followed by the word “owner” if the ~~person~~Person is the holder of legal
198 title to the land or by the word “occupant” if the ~~person~~Person is a lawful
199 occupant of the land, but not the holder of legal title.

200 (2) Markings at least one (1) foot long and, in a contrasting color, the phrase
201 “private land” and the name of the owner, are made in at least two (2)
202 conspicuous places for every forty (40) acres of land.

203 (c) Does any of the following without proper authorization through a ~~lease~~Lease, permit
204 or as otherwise required under applicable law:¹

205 (1) Destroys land, waters, livestock, poultry, buildings, equipment, or any
206 property without consent or permission.

207 (2) Cuts or destroys any wood, timber, plant, vegetation, or crop standing on the
208 land, or carries away any wood, timber, plant, vegetation or crop on the land.

209 (3) Engages in any act, or attempted act of hunting, trapping or fishing.

210 (4) Digs, takes, or carries away earth, soil, minerals, cultural resources, or any
211 other property.

¹ Current Tribal laws that authorize conduct described in 38.6-1(c): Chapter 12, Protection and Management of Archeological and Historical Resources; Chapter 34, Oneida Tribal Regulation of Domestic Animals Ordinance; Chapter 40, Tribal Environmental Response Law; Chapter 42, Wood Cutting Ordinance; Chapter 44, Recycling and Solid Waste Disposal; Chapter 45, Hunting, Fishing and Trapping Law; Chapter 49: All-Terrain Vehicle Law; Chapter 69, Zoning and Shoreland Protection Law.

- 212 (5) Erects, puts up, fastens, prints, or paints upon another's property, notices,
213 advertisements, signs or other writing designed to communicate to the general
214 public.
215 (6) Parks or drives any vehicle on the land.
216 (7) Permits or allows livestock or any domesticated animal to enter upon or
217 remain upon the land.
218 (8) Uses or possesses ~~lease~~Leased or sub~~lease~~-Leased lands beyond the
219 possessory rights granted by such ~~lease~~Lease or sub~~lease~~-Lease.
220 (9) Dumps, deposits, places, throws, burns, emits or leaves rubbish, refuse,
221 debris, substances, or other objects upon a highway, road, air, waters or any land.
222

223 **38.7. Violations and Appeals**

224 38.7-1. *Issuance of a Citation.* Any ~~person~~Person who violates any provision of this Law ~~shall~~
225 ~~be~~is guilty of a civil infraction, and ~~shall~~may be issued a citation, in writing, by a Conservation
226 Warden or Oneida Police Officer. The issuance of a citation or fine under any other law relating
227 to the same or any other matter ~~shall~~does not preclude the issuance of a citation under this Law.

228 (a) The Oneida Business Committee, upon recommendation of the Environmental
229 Resource Board, ~~shall~~may adopt a citation schedule.

230 (b) The citation ~~shall~~must specify the date, time and place of the hearing to contest the
231 citation. The hearing ~~shall~~must take place ~~at least five~~within (5) business days after the
232 citation is issued.

233 (c) The citation ~~shall~~must also state that the Environmental Resource Board may, in
234 addition to the citation, impose hearing costs and restitution against the ~~person~~Person for
235 damages caused by a violation of this Law.

236 38.7-2. *Citation Hearing.* Any ~~person~~Person issued a citation under this Law may contest the
237 citation by attending a hearing before the Environmental Resource Board. The ~~person~~Person
238 may appear in ~~person~~Person, or be represented by an agent, advocate or attorney.

239 (a) If the ~~person~~Person does not wish to contest the citation, he or she ~~shall~~must pay the
240 citation by the hearing date specified on the citation.

241 (b) After the hearing, the Environmental Resource Board shall:

242 (1) determine whether the ~~person~~Person is responsible for the citation, as was
243 issued;

244 (2) determine whether to impose hearing costs and/or restitution against the
245 ~~person~~Person for the value of any damage caused by a violation of this Law; and

246 (3) set a new date for when the citation, hearing costs and/or restitution ~~shall~~
247 must be paid, if necessary.

248 (c) Any restitution funds received shall be used to repair the damages caused by a
249 violation of this Law.

250 38.7-3. *Appeals from the Environmental Resource Board Decision.* Any party of interest may
251 appeal a decision of the Environmental Resource Board to the Tribe's judicial system.

252
253 *End.*
254

255 Adopted – BC-05-15-14-C
256 Emergency Amended – BC-07-23-14-C
257 Amended – BC-12-10-14-A
258 Emergency Amended – BC 07-08-15-C

CHAPTER 38
PUBLIC USE OF TRIBAL LAND

38.1. Purpose and Policy
38.2. Adoption, Amendment, Repeal
38.3. Definitions
38.4. Environmental Resource Board

38.5. Land Access Map
38.6. Trespass
38.7. Violations and Appeals

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38.1. Purpose and Policy

38.1-1. *Purpose.* The purpose of this Law is to prevent improper access, use and Trespass to Tribal Lands.

38.1-2. *Policy.* It is the policy of the Tribe to limit access to Tribal Land to protect and preserve the environment and natural resources including forests, wildlife, air and waters, through appropriate uses of the land.

38.2. Adoption, Amendment, Repeal

38.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-05-15-14-C and amended by BC-12-10-14-A.

38.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

38.2-3. Should a provision of this Law or the application thereof to any Person or circumstances be held as invalid, such invalidity does not affect other provisions of this Law which are considered to have legal force without the invalid portions.

38.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law controls.

38.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

38.2-6. This Law may not be construed to preclude the Tribe from pursuing relief for criminal Trespass under applicable law.

38.3. Definitions

38.3-1. This section governs the definitions of words and phrases used within this Law. All words not defined herein are to be used in their ordinary and everyday sense.

(a) “Designation” means the term used to describe the type of access granted to certain Tribal Lands.

(b) “Lease” means any lease or agreement, including business site leases, entered into by the Tribe and any Person to allow the use of Tribal Lands.

(c) “Person” means any individual, group of individuals, corporation, partnership, limited liability company, or any other form of business organization.

(d) “Reservation” means all the lands and waters 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.

(e) “Trespass” means the unauthorized use or entry on Tribal Lands, including unauthorized uses under a Tribal law, permit or Lease.

(f) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.

(g) “Tribal Land” means all Tribal trust lands, and any land or interest in land held by the Oneida Tribe in fee or in any other form on the Reservation.

42 **38.4. Environmental Resource Board**

43 38.4-1. The Environmental Resource Board has the duty and power to carry out the intent and
44 purposes of this Law and enforce the provisions of this Law. The Environmental Resource
45 Board, or its designated staff, shall:

- 46 (a) Develop, approve and maintain the Land Access Map.
47 (b) Hold public hearings on proposed amendments to the Land Access Map.
48 (c) Hear and decide, as the original hearing body, contested cases that may arise under
49 this Law.
50 (d) Impose hearing costs and restitution against the Person for damages caused by a
51 violation of this Law.
52 (e) Determine which Tribal Land will be posted and ensure the appropriate signs are
53 posted.
54 (f) Implement and interpret the provisions of this Law.
55 (g) As it deems appropriate, prescribe permissible and/or prohibited uses for Tribal Land
56 that it designates as Oneida Community Access, Oneida Tribal Member Access or Open
57 Access, provided that such permissible and/or prohibited uses may not contradict with the
58 Zoning and Shoreland Protection Ordinance. Upon establishment of permissible and/or
59 prohibited uses, the Environmental Resource Board shall notify the Oneida Business
60 Committee of the permissible and/or prohibited uses and shall post notice of such uses on
61 the affected Tribal Land.
62

63 **38.5. Land Access Map**

64 38.5-1. *Designation of Tribal Lands.* A Land Access Map must be created which designates
65 Tribal Land as one (1) of the following:

- 66 (a) Limited Access: Lands designated as “Limited Access” are open to all Persons who
67 are granted land access permission by the Tribe through a permit or Lease for specified
68 purposes. The Environmental Resource Board may choose to designate a portion of land
69 as Limited Access in order to manage, preserve and protect that land for environmental,
70 cultural or other significance.
71 (b) Oneida Community Access: Lands designated as “Oneida Community Access” are
72 open to Tribal members, and their spouses and descendants; members of other federally
73 recognized Indian tribes, bands or communities; authorized employees of the Tribe; and
74 Persons who are accompanied at all times by a Tribal member, the spouse or descendant
75 of a Tribal member, or an authorized employee of the Tribe.
76 (1) A Conservation Warden or Oneida Police Officer may require a Person to
77 demonstrate proof of eligibility to use Oneida Community Access lands.
78 (2) The Environmental Resource Board may choose to designate land as Oneida
79 Community Access in order to manage, preserve and protect access to locations
80 that have cultural or environmental significance.
81 (c) Oneida Tribal Member Access: Lands designated as “Oneida Tribal Member Access”
82 are open to Tribal members only. The Environmental Resource Board may designate
83 land as Oneida Tribal Member Access to protect the land for Tribal member use due to
84 the historical, spiritual, cultural and/or environmental significance of the land.
85 (d) Open: Lands designated as “Open Access” are generally open to all Persons for the
86 land’s designated use and enjoyment. The Environmental Resource Board may designate
87 land as Open Access where such Designation is deemed beneficial to the Tribe and where

88 such Designation does not pose significant risk of damage to the policies of the Tribe
89 and/or the land's cultural or environmental preservation.

90 38.5-2. Notwithstanding the restrictions of 38.5-1, nothing in this Law may be construed as
91 preventing the following Persons from entering Tribal Land, regardless of the land Designation:

- 92 (a) Employees of the Tribe who are performing their job duties;
- 93 (b) Those Persons who are performing grant or contractual obligations related to the
94 Tribal Land and on behalf of the Tribe;
- 95 (c) Emergency personnel who are providing, or attempting to provide, services; and
- 96 (d) Those Persons who have been granted access to the land by the Environmental
97 Resource Board.

98 38.5-3. *Development of the Land Access Map.* The Environmental Resource Board shall
99 develop the Land Access Map in coordination with the Oneida Environmental Health and Safety
100 Division, the Oneida Division of Land Management, Geographic Land Information Systems and
101 other such designated agencies of the Tribe. The Environmental Resource Board shall adopt the
102 initial Land Access Map.

103 38.5-4. *General Land Designation.* Unless otherwise designated, Tribal Land is designated as
104 Limited Access.

105 38.5-5. *Amending the Land Access Map.* The Environmental Resource Board may, from time to
106 time, in the manner hereafter set forth, amend the Land Access Map, provided that due
107 consideration must be made for the intent and purposes of the Designation.

108 (a) Amendments may be proposed by any Person by filing an application with the
109 Environmental Resource Board in such format and accompanied by such information as
110 required by the Board.

111 (b) *Public Hearing.* The Environmental Resource Board shall hold a public hearing on
112 each application to amend the Land Access Map.

113 (1) The Environmental Resource Board shall set a date for the public hearing and
114 meet the notice requirements of the public hearing as soon as possible after the
115 filing of the application is complete.

116 (A) *Notice.* Not less than ten (10) business days and not more than thirty
117 (30) business days prior to the public hearing, notice, including the time,
118 place and purpose of the public hearing, must be:

- 119 (i) published in the Tribal newspaper; and
- 120 (ii) mailed to all owners of land located within twelve hundred
121 (1,200) feet of the outer boundaries of the land that is the subject of
122 the public hearing.

123 (B) Any Person who cannot attend the public hearing may be represented
124 by an agent, advocate or attorney at the public hearing.

125 (C) The Environmental Resource Board shall issue a decision or
126 recommendation regarding amendments to the Land Access Map within
127 seven (7) business days after the public hearing is held.

128 (2) The Environmental Resource Board together with the Environmental Health
129 and Safety Division shall, after holding a public hearing and reviewing any
130 comments received, make written findings of fact and determine whether to
131 amend the Land Access Map.

132 (3) The Environmental Resource Board shall make findings based upon the
133 evidence presented to it with respect to the following matters:

- 134 (A) Existing uses of the land and buildings within the general area of the
135 land in question.
136 (B) Suitability of the land in question to the uses permitted under the
137 existing Land Access Map.
138 (4) The Environmental Resource Board may not amend the Land Access Map
139 unless it finds that adopting such amendment is in the Tribe’s best interest and is
140 not solely for the interest of the applicant.
141 (c) The Environmental Resource Board may grant or deny any application to amend the
142 Land Access Map; however, amendments must require a two-thirds (2/3) vote of the
143 Environmental Resource Board if a written protest against any amendment is presented to
144 the Environmental Resource Board and is signed by:
145 (1) the lessees, assignees and owners of at least twenty percent (20%) of the acres
146 of land included in such amendment; or
147 (2) the lessees, assignees and owners of at least twenty percent (20%) of the land
148 immediately adjacent to the land included in such amendment, extending in a
149 radius of twelve hundred (1,200) feet of the outer boundaries of the land.
150

151 **38.6. Trespass**

152 38.6-1. A Person Trespasses if the Person enters or otherwise occupies Tribal Land and:

- 153 (a) Refuses to leave land to which the Person has no reasonable claim or right of
154 possession when requested to do so.
155 (b) Enters upon such land after being noticed by the landowner or occupant that
156 permission for the Person to enter such land does not exist, or has been expressly denied
157 or revoked. A Person has been noticed that permission by the landowner or occupant for
158 such Person to enter such land does not exist if he or she has been notified publicly, by
159 publication of the Land Access Map on the Tribal website and/or in the Tribal
160 newspaper, or if the land is posted. Land is considered to be posted if one (1) of the
161 following requirements is met:
162 (1) A sign at least eleven (11) inches square is placed in at least two (2)
163 conspicuous places for every forty (40) acres of land to be protected. The sign
164 shall provide an appropriate notice and the name of the Person giving the notice,
165 followed by the word “owner” if the Person is the holder of legal title to the land
166 or by the word “occupant” if the Person is a lawful occupant of the land, but not
167 the holder of legal title.
168 (2) Markings at least one (1) foot long and, in a contrasting color, the phrase
169 “private land” and the name of the owner, are made in at least two (2)
170 conspicuous places for every forty (40) acres of land.
171 (c) Does any of the following without proper authorization through a Lease, permit or as
172 otherwise required under applicable law:¹
173 (1) Destroys land, waters, livestock, poultry, buildings, equipment, or any
174 property without consent or permission.

¹ Current Tribal laws that authorize conduct described in 38.6-1(c): Chapter 12, Protection and Management of Archeological and Historical Resources; Chapter 34, Oneida Tribal Regulation of Domestic Animals Ordinance; Chapter 40, Tribal Environmental Response Law; Chapter 42, Wood Cutting Ordinance; Chapter 44, Recycling and Solid Waste Disposal; Chapter 45, Hunting, Fishing and Trapping Law; Chapter 49: All-Terrain Vehicle Law; Chapter 69, Zoning and Shoreland Protection Law.

- 175 (2) Cuts or destroys any wood, timber, plant, vegetation, or crop standing on the
176 land, or carries away any wood, timber, plant, vegetation or crop on the land.
177 (3) Engages in any act, or attempted act of hunting, trapping or fishing.
178 (4) Digs, takes, or carries away earth, soil, minerals, cultural resources, or any
179 other property.
180 (5) Erects, puts up, fastens, prints, or paints upon another's property, notices,
181 advertisements, signs or other writing designed to communicate to the general
182 public.
183 (6) Parks or drives any vehicle on the land.
184 (7) Permits or allows livestock or any domesticated animal to enter upon or
185 remain upon the land.
186 (8) Uses or possesses Leased or sub-Leased lands beyond the possessory rights
187 granted by such Lease or sub-Lease.
188 (9) Dumps, deposits, places, throws, burns, emits or leaves rubbish, refuse,
189 debris, substances, or other objects upon a highway, road, air, waters or any land.
190

191 **38.7. Violations and Appeals**

192 38.7-1. *Issuance of a Citation.* Any Person who violates any provision of this Law is guilty of a
193 civil infraction, and may be issued a citation, in writing, by a Conservation Warden or Oneida
194 Police Officer. The issuance of a citation or fine under any other law relating to the same or any
195 other matter does not preclude the issuance of a citation under this Law.

- 196 (a) The Oneida Business Committee, upon recommendation of the Environmental
197 Resource Board, may adopt a citation schedule.
198 (b) The citation must specify the date, time and place of the hearing to contest the
199 citation. The hearing must take place within (5) business days after the citation is issued.
200 (c) The citation must also state that the Environmental Resource Board may, in addition
201 to the citation, impose hearing costs and restitution against the Person for damages
202 caused by a violation of this Law.

203 38.7-2. *Citation Hearing.* Any Person issued a citation under this Law may contest the citation
204 by attending a hearing before the Environmental Resource Board. The Person may appear in
205 Person, or be represented by an agent, advocate or attorney.

- 206 (a) If the Person does not wish to contest the citation, he or she must pay the citation by
207 the hearing date specified on the citation.
208 (b) After the hearing, the Environmental Resource Board shall:
209 (1) determine whether the Person is responsible for the citation, as was issued;
210 (2) determine whether to impose hearing costs and/or restitution against the
211 Person for the value of any damage caused by a violation of this Law; and
212 (3) set a new date for when the citation, hearing costs and/or restitution must be
213 paid, if necessary.

- 214 (c) Any restitution funds received shall be used to repair the damages caused by a
215 violation of this Law.

216 38.7-3. *Appeals from the Environmental Resource Board Decision.* Any party of interest may
217 appeal a decision of the Environmental Resource Board to the Tribe's judicial system.

218
219 *End.*
220

223 Amended – BC-12-10-14-A
224 Emergency Amended – BC 07-08-15-C

October 2015

| October 2015 | | | | | | |
|--------------|----|----|----|----|----|----|
| Su | Mo | Tu | We | Th | Fr | Sa |
| 4 | 5 | 6 | 7 | 8 | 9 | 10 |
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| November 2015 | | | | | | |
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| 29 | 30 | | | | | |

| | Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|----------------|--------|--------|---------|---|---|--------|----------|
| | Sep 27 | 28 | 29 | 30 | Oct 1 | 2 | 3 |
| Sep 27 - Oct 3 | | | | | | | |
| | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Oct 4 - 10 | | | | 9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar | | | |
| | 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| Oct 11 - 17 | | | | BC Meeting (BCCR) | 12:15pm 2:15pm Public Use of Tribal Land PM | | |
| | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| Oct 18 - 24 | | | | 9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar | | | |
| | 25 | 26 | 27 | 28 | 29 | 30 | 31 |
| Oct 25 - 31 | | | | BC Meeting (BCCR) | | | |

November 2015

| November 2015 | | | | | | | December 2015 | | | | | | |
|---------------|----|----|----|----|----|----|---------------|----|----|----|----|----|----|
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| 8 | 9 | 10 | 11 | 12 | 13 | 14 | 13 | 14 | 8 | 9 | 10 | 11 | 12 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 | 20 | 21 | 15 | 16 | 17 | 18 | 19 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 | 27 | 28 | 22 | 23 | 24 | 25 | 26 |
| 29 | 30 | | | | | | | | 29 | 30 | 31 | | |

| | Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|----------------|--------|--------|---------|---|----------|--------|--|
| Nov 1 - 7 | Nov 1 | 2 | 3 | 4 9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar | 5 | 6 | 7 |
| | 8 | 9 | 10 | 11 BC Meeting (BCCR) | 12 | 13 | 14 10:00am 6:00pm GTC Budget Meeting (Radisson) |
| Nov 8 - 14 | 15 | 16 | 17 | 18 9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar | 19 | 20 | 21 |
| | 22 | 23 | 24 | 25 BC Meeting (BCCR) | 26 | 27 | 28 |
| Nov 15 - 21 | 29 | 30 | Dec 1 | 2 | 3 | 4 | 5 |
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| Nov 22 - 28 | | | | | | | |
| Nov 29 - Dec 5 | | | | | | | |
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