

ONEIDA NATION PUBLIC MEETING NOTICE

Friday, November 22, 2019, 12:00 pm

Norbert Hill Center-Business Committee Conference Room
N7210 Seminary Rd., Oneida, Wisconsin

Find Public Meeting Materials at

[Oneida-nsn.gov/government/register/public meetings](http://Oneida-nsn.gov/government/register/public%20meetings)

Send Public Comments to

LOC@oneidanation.org

Ask Questions here

LOC@oneidanation.org

920-869-4312



CITATIONS LAW

The purpose of this law is to provide a consistent process that governs all citations that fall under the jurisdiction of the Oneida Nation in order to ensure equal and fair treatment to all persons who come before the Judiciary to have their citations resolved.

The Citations law will:

1. Provide what information must be included on a citation;
2. Describe how a citation shall be served on an individual;
3. Provide a process for an individual to enter into a stipulation agreement with an authorized attorney of the Nation to settle citations;
4. Provide a process for how an individual may contest his or her citation in court; and
5. Provide the various timelines and procedures for citation hearings.


PUBLIC COMMENTS PERIOD CLOSES TUESDAY, DECEMBER 3, 2019


During the Public Comment Period, anyone may submit written comments. Comments may be submitted to the Oneida Nation Secretary's Office or the Legislative Reference Office in person, by U.S. mail, interoffice mail, or e-mail.

PROVIDING EFFECTIVE PUBLIC COMMENTS

Providing public comment is an important way to make your voice heard in decision making. Public comments can strengthen a decision or provide different perspectives. The Legislative Operating Committee wants to hear from you!



 **READ THE PUBLIC MEETING MATERIALS:** Before you provide comments familiarize yourself with the legislation. A public meeting packet is made for every public meeting and it includes 1) a notice with the date, time, location, 2) a draft of the proposed legislation, and 3) a plain language review of the legislation and its impact on the Oneida Nation.

 **PREPARE YOUR COMMENTS:** When you are familiar with the legislation, start to prepare comments. The LOC is responsible for reviewing every comment received. To get your message across effectively, frame your comment clearly and concisely. Here is an example of how to create an effective comment:

Least Effective Comment	More Effective Comment	Most Effective Comment
We shouldn't use citations.	We need to make sure the citation process is fair to all individuals.	Section 807.4-4(c) which allows service by publication may not be fair to those individuals who do not receive the newspaper.



Kayanl[^]sla Ol\$wa>

CITATIONS LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: LOC	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Proposed Law	To establish a consistent process for citations issued for violations of laws of the Nation, including: <ul style="list-style-type: none">- What must appear on a citation form;- How a citation must be served;- A process for entering into stipulation agreements to settle citations;- A process for how individuals can contest their citations in court; and- Timelines and procedures for citation hearings.		
Purpose	To provide a process that governs all citations that fall under the jurisdiction of the Oneida Nation [8 O.C. 807.1-1].		
Affected Entities	Any person issued a citation under the laws of the Nation; Agencies responsible for enforcement and issuing citations under the laws of the Nation (Oneida Police Department, Conservation Wardens, Oneida Environmental Health Safety and Land Division, Licensing Department), the Nation's Judiciary, Oneida Law Office, GTC Legal Resource Center, Utilities Department, and Oneida Land Commission.		
Related Legislation	Domestic Animals law; Hunting, Fishing and Trapping law; All-Terrain Vehicle law; Public Use of Tribal Land law; Recycling and Solid Waste Disposal law; Tribal Environmental Response law; Well Abandonment law; Onsite Waste Disposal Ordinance; Water Resources law; Emergency Management and Homeland Security law; Tobacco law; Oneida Food Service Code; Tattoo and Body Piercing law; Notary Act; Non Metallic Mine Reclamation law; Zoning and Shoreland Protection law; Marriage law, Sanitation Ordinance, Rules of Civil Procedure; Rules of Appellate Procedure, Judiciary Law Rule No. 1 – Oneida Trial Court Rules.		
Public Meeting	A public meeting has not yet been held.		
Fiscal Impact	A fiscal impact statement has not yet been requested.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Oneida Nation exercises its sovereignty through the enactment and enforcement of its own laws. These laws cover a variety of topics, including health and public safety, environmental and natural resources, property and land, and many others. When a person violates a law of the Nation, several laws authorize the Nation to enforce that law through the issuance of citations, fines and penalties. However, the Nation's laws do not include a uniform process for what happens after a citation is issued. This has led to implementation issues for agencies involved in the citation process.
- B. During development of the Domestic Animals law amendments, the LOC worked collaboratively with several of the Nation's agencies. During this process, the need to develop a more detailed procedure for the issuance and processing of citations was discussed. Rather than add a detailed process only to the Domestic Animals law, the LOC decided to begin drafting a new Citations law that can apply to violations of all laws of the Nation that allow for citations.

- 13 C. The LOC added the proposed Citations law to the Active Files List on May 15, 2019. Since that time,
14 a work group of representatives from Oneida Police Department, Environmental Resource Board,
15 Oneida Law Office and Oneida Legal Resource Center met to work on the proposed law.
- 16 D. This proposed law applies only to citations issued by the Nation for violations of the Nation's laws.
17 Officers of the Oneida Police Department are cross-deputized by the Brown County Sheriff's
18 Department and also have the authority to issue citations for violation of state laws that may be heard
19 in Wisconsin Circuit Courts (for example, violations for operating while intoxicated).

21 **SECTION 3. CONSULTATION AND OUTREACH**

- 22 A. Representatives from the following departments or entities participated in the development of this law
23 and legislative analysis: Oneida Police Department, Oneida Law Office, Oneida Judiciary, Oneida
24 Legal Resource Center, and Oneida Environmental Resource Board.
- 25 B. The following laws were reviewed in the drafting of this analysis: Domestic Animals law; Hunting,
26 Fishing and Trapping law; All-Terrain Vehicle law; Public Use of Tribal Land law; Recycling and
27 Solid Waste Disposal law; Tribal Environmental Response law; Well Abandonment law; Onsite Waste
28 Disposal Ordinance; Water Resources law; Emergency Management and Homeland Security law;
29 Tobacco law; Oneida Food Service Code; Tattoo and Body Piercing law; Notary Act; Non Metallic
30 Mine Reclamation law; Zoning and Shoreland Protection law; Motor Vehicle Registration law;
31 Marriage law; Sanitation Ordinance; Clean Air Policy; Alcohol Beverage Licensing law; Oneida
32 Woodcutting Ordinance; Building Code law; Rules of Civil Procedure; Rules of Appellate Procedure,
33 and Judiciary Law Rule No 1 – Oneida Trial Court Rules.

35 **SECTION 4. PROCESS**

- 36 A. Thus far, amendments to this law have followed the process set forth in the Legislative Procedures Act
37 (LPA).
- 38 B. The law was added to the Active Files List on May 15, 2019.
- 39 C. The following work meetings were held regarding the development of this law and legislative analysis:
- 40 ■ May 21, 2019: Work meeting with Oneida Police Department, Oneida Law Office, Environmental
41 Resource Board and Legal Resource Center.
 - 42 ■ May 23, 2019: Work meeting with LOC.
 - 43 ■ June 13, 2019: Work meeting with LOC.
 - 44 ■ August 6, 2019: Work meeting with Oneida Police Department, Oneida Law Office and Oneida
45 Judiciary clerks.
 - 46 ■ August 29, 2019: Work meeting with LOC.
 - 47 ■ October 2, 2019: Work meeting with LOC.

49 **SECTION 5. CONTENTS OF THE LEGISLATION**

50 **A. *Commencement of a Citation Action.***

- 51 ■ *What is a Citation?* A citation is a “legal document that services as a notice or summons to appear
52 in a court of the Nation in response to a charge against an individual of a violation of law” [8 O.C.
53 807.3-1(b)]. The issuance of a citation begins a civil action in the Judiciary for violating a law of
54 the Nation for the purpose of collecting a fine or penalty imposed by the law [8 O.C. 807.4-1].
- 55 ■ *Authority to Issue.* An officer may issue a citation to any person he or she has reasonable grounds
56 to believe has committed a violation of a law of the Nation. For the purposes of this law, an “officer”
57 is defined as “any individual authorized by a law of the Nation to issue a citation for a violation of
58 said law” [8 O.C. 807.3-1(g)].
 - 59 ○ For most laws of the Nation, the individual authorized to issue a citation is an officer of the
60 Oneida Police Department or a Conservation Warden.

B. Form of Citation. This law creates a standard list of information that must be included on a citation form when it is issued. These requirements match the information included on the current citation form used by the Nation [8 O.C. 807.4-3].

■ **Identifying Information:**

- Name of the officer who issued citation;
- Name, address, and date of birth of the defendant. Enrollment number and/or license number of the defendant, if applicable.

■ **Information About the Alleged Violation:**

- The violation alleged, the law violated, the time and place of the violation, and a description of the violation.

■ **Court Hearing & Fine Information:**

- A notice of when and where to appear at a citation pre-hearing and whether the pre-hearing is mandatory;
- Provisions for payment of citation and stipulation in lieu of an appearance in Court, if applicable. In other words, the option for individuals to pay their fine without having to make a court appearance;
- Notice that if the defendant does not pay the citation or stipulate an agreement prior to the pre-hearing and fails to appear in Court at the time listed on the citation, the Court may issue a default judgment which may include any fine amount due, restitution and/or suspension of any rights, privileges, or licensures, or any other penalty authorized by law;
- Notice that failure to satisfy a fine, restitution, or any other party of the judgment may result in per capita attachment, wage garnishment, revocation, suspension of any rights, privileges, licensures, and/or any other action authorized by law and/or other collection processes available to the court.

Current Oneida Nation Citation Form – Front

ONEIDA NATION CITATION #20 _____ – IR# _____

Appearance Required <input type="checkbox"/> No <input type="checkbox"/> Yes		Date: _____		See back for court/ payment information		Fine/Other Penalties \$ _____	
Oneida Judiciary 2630 West Mason Street, Green Bay, WI 54303		Time: _____ <input type="checkbox"/> AM <input type="checkbox"/> PM				Court Costs \$ _____	
Day of Week	Date of Violation	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	COUNTY	TWP-Village-City		Total \$ _____	
NAME (Last, First, MI)				Area Code - Telephone No.			
Tribal ID		Driver's License/ID #				State	Exp Year
Street Address				City		State	Zip Code
Date of Birth MM/DD/YYYY	Sex	Race	HT	WT	Hair	Eyes	Case Type <input type="checkbox"/> Adult <input type="checkbox"/> Juvenile
				Parent's Name (Juvenile Only)		Parent's Phone (Juvenile Only)	
						Parents Notified <input type="checkbox"/> No <input type="checkbox"/> Yes	
Violation Code			Violation Name				
Description of Violation							
Print Officer Name		Officer Signature		Title	Badge Number	Department/Agency	
YOU ARE HEREBY NOTIFIED TO APPEAR IN FRONT OF THE ONEIDA JUDICIARY A failure to appear and defend may result in a default judgment against the Defendant							
Issuance Information		Method of Service		Personal	Mail	Left with _____ at defendant's residence	

Distribution: White-Court Yellow-Defendant Pink-Law Office Goldenrod-Agency

87 *Current Oneida Nation Citation Form – Back*

Mandatory Appearance If your citation is marked “Yes” under the “Appearance Required,” you **MUST** appear in Court.

Disputing a Citation If you wish to dispute the citation, you must appear in court for a pre-hearing where a “contest” or “admit” plea will be entered verbally. A hearing date will then be scheduled.

If you do not wish to dispute the Citation You may mail in a money order or cashier’s check made payable to the Oneida Judiciary; include a copy of your citation and send to Oneida Judiciary at P.O. Box 19 Oneida, WI 54155 before the Court date stated on your citation. Or you may pay in person at the Oneida Judiciary located at 2630 West Mason Street, Green Bay, WI 54303.

If you do nothing The Court may enter a default judgement which may include, but is not limited to, any fine amount that is due, restitution and/or suspension of any rights, privileges or censures with the Oneida Nation.

Failure to satisfy Penalty/Restitution A failure to satisfy and fine, restitution or any other part of the judgement, may result in the following, but is not limited to, intercept of Per Capita, wage garnishment, revocation and/or suspension of any rights, privileges, censures, or any other action authorized by law with the Oneida Nation.

OP25352 R11/17

88
89 **C. Service of a Citation.** When an officer issues a citation, the citation must be “served” on the individual
90 alleged to have violated the law [8 O.C. 807.4-4].

- 91 ▪ **Personal Service.** An officer must first attempt to personally serve the citation on the defendant
92 (i.e. hand the citation to the defendant) or leave a copy of the citation at the defendant’s home in
93 the presence of a competent family member at least fourteen (14) years of age or an adult who
94 resides in the home of the defendant.

- 95 ○ *Why age 14?* In the state of Wisconsin, a service of summons may be left in the presence
96 of a competent family member at least fourteen (14) years of age if, with reasonable due
97 diligence, the defendant cannot be personally served [Wis. Stats 801.11]. This provision is
98 modeled after WI statutes.

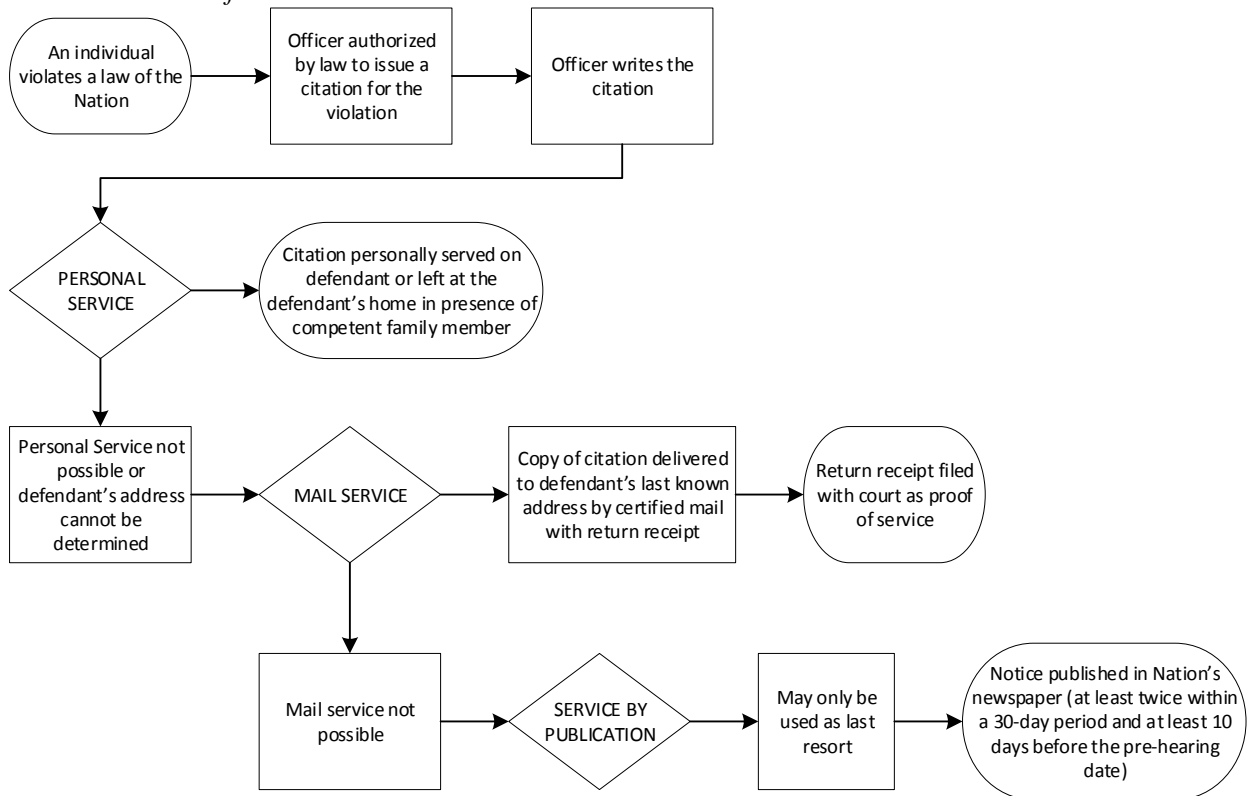
- 99 ▪ **Mail Service.** If personal service is not possible and the defendant’s address can be determined,
100 then mail service may be used. For service by mail, a copy of the citation may be delivered to the
101 defendant’s last known address by certified mail with return receipt. The certified mail return
102 receipt will be signed by the defendant or competent family member at least fourteen (14) years of
103 age or an adult who resides in the home of the defendant. The certified mail return receipt will be
104 filed with the Court as proof of service.

- 105 ▪ **Service by Publication.** As a last resort, after a showing of due diligence that personal and mail
106 service are not possible, then service may be completed by publication in the Nation’s newspaper
107 (the Kalihwisaks). The notice must be published at least two (2) times within a 30-day period. The
108 notices must be published at least ten (10) days before the citation pre-hearing.

- 109 ▪ **Filing a Citation.** The department of the officer who issued the citation must file the citation with
110 the Court along with proof of service, if applicable, at least thirty (30) days prior to the date of the
111 pre-hearing. Citations may be filed in person or electronically transmitted [8 O.C. 807.4-5].

- 112 ○ *Amendments to Citations.* A citation may be amended by an officer or the authorized
113 attorney prior to the citation pre-hearing. A copy of the amended citation must be provided
114 to the defendant at least five (5) days prior to the citation pre-hearing.

Chart 1. Service of a Citation.



D. Stipulations. An authorized attorney of the Nation is granted the discretion to seek the settlement of the citation. This means that the Nation and the defendant can agree to a lower fine amount or other condition to settle the case [8 O.C. 807.5].

- *Who is an Authorized Attorney of the Nation?* An attorney of the Nation who represents the department or entity of the officer who issued the citation, such as the attorney for the Oneida Police Department [8 O.C. 807.3-1]. Attorneys of the Nation work in the Oneida Law Office.
- *Form of Stipulation.* The stipulation, or agreement, between the Nation's attorney and defendant must be in writing, signed by both parties, and include the following information:
 - A summary of the violation that resulted in the citation,
 - The details of the stipulation including any fine, penalty, condition or payment plan the defendant must comply with,
 - A statement that the defendant admits that he or she committed the act or is entering a plea of no contest and waives his or her right to contest the citation in Court; and
 - A statement that all parties signed the agreement free of duress and coercion.
- *Current Practice.* It is the Nation's current practice to offer stipulations to defendants for violations of the Nation's Domestic Animals law. Stipulations typically involve the Nation lowering a fine amount. Currently, this practice is not outlined in detail in any law of the Nation.
 - *Comparison to State of WI.* For cases in Wisconsin circuit court, stipulations are typically handled by the prosecutor's office. Oneida Nation does not have a prosecutor or exercise criminal jurisdiction, so in this instance, the Nation is represented by an attorney of the Law office who assumes these responsibilities for violations the Nation's civil laws.
- *Effect.* Although offering stipulations is the current practice of the Nation, placing the process in the law will formally establish this authority for the authorized attorneys of the Nation.

E. Citation Pre-Hearing. All citations will include a pre-hearing date with the Court which will be set at least thirty (30) days after the citation was issued, unless stated otherwise by a law of the Nation [8

141 *O.C. 807.6-1*]. The Judiciary’s current practice is to hold citation pre-hearings on the third Thursday of
142 each month.

- 143 ■ **Mandatory Appearance.** Appearance at a pre-hearing is only mandatory when a law, policy, rule
144 or resolution of a Nation requires a mandatory appearance for that specific violation of the law.
145 Most violations of the Nation’s laws do not require a mandatory appearance.

- 146 ○ Example: The Domestic Animals law fine, penalty and licensing fee schedule requires a
147 mandatory court appearance for mistreatment of animals [*BC Resolution 05-08-19-D*].

- 148 ■ **Paying Fine or Penalty.** If an appearance is not mandatory and the individual does not want to
149 contest (or challenge) the citation, the individual may pay the fine or penalty listed on the citation
150 before the pre-hearing date and the citation will be considered satisfied.

- 151 ■ **Contesting a Citation.** If an individual wants to contest their citation, that person can appear at the
152 pre-hearing to contest the citation. If an appearance at the pre-hearing isn’t mandatory, that
153 individual can also send a written notice to the Court with a copy to the Law Office notifying the
154 court that they wish to contest the citation.

- 155 ■ **Default Judgment.** If the defendant does not pay their fine or enter into a stipulation before their
156 pre-hearing date and fails to appear at their pre-hearing or provide notice to the court, then the court
157 may enter a default judgment against the defendant. In other words, if a defendant “ignores” their
158 citation, the court can automatically find them guilty of the violation.

- 159 ○ **Consequences.** A default judgment can include the fine amount due, restitution, suspension
160 of rights, privileges and licenses, or any other penalty authorized by laws of the Nation.

- 161 **F. Citation Hearing.** If a defendant contests that they committed the violation that resulted in the citation,
162 then the Court will schedule a hearing within ninety (90) days of the pre-hearing date. In other words,
163 if the defendant argues that they did not commit the violation or that the citation was issued
164 inappropriately, the defendant has an opportunity to challenge their citation at a court hearing [*8 O.C.*
165 *807.6-2*].

- 166 ■ **Burden of Proof.** The burden of proof at a citation hearing is “clear and convincing evidence.” This
167 means that the Nation must provide evidence “indicating that the [allegation] to be proved is highly
168 probably or reasonably certain” [*see Black’s Law Dictionary*].

- 169 ○ **Current Standard of Proof.** The Nation’s Rules of Civil Procedure state that the standard
170 of proof for all matters to be decided by the Court shall be proven by a “preponderance of
171 the evidence” standard, unless specified otherwise [*8 O.C. 803.4-8*]. “Preponderance of
172 the evidence” is the burden of proof in most civil trials and means that there is sufficient
173 evidence that there is a greater than 50% chance that the claim is true.

- 174 ○ **Effect.** This law sets a higher burden of proof than the Judiciary is currently using for
175 citation hearings under the laws of the Nation. This means that the Nation and its agencies
176 (represented by its authorized attorney) will have to meet this higher burden of proof when
177 a citation is challenged by a defendant. This will only apply to citation hearings. All other
178 hearings of the court will utilize the “clear and convincing evidence” standard unless
179 otherwise noted in another law of the Nation.

- 180 ■ **Appeals.** Anyone who wishes to appeal a judgment of the court may appeal to the Nation’s Court
181 of Appeals in accordance with the Rules of Appellate Procedure [*8 O.C. 807.6-3*].

- 182 ○ The Rules of Appellate Procedure state that a notice of appeal must be filed within thirty
183 (30) days after the Trial Court’s order is rendered [*8 O.C. 805.5*].

- 184 **G. Exclusion.** This law will not apply to any law of the Nation that delegates hearing authority to a hearing
185 body other than the Judiciary [*8 O.C. 807.7*]. The Oneida Land Commission retains hearing authority
186 for citations issued under two of the Nation’s laws. Therefore, the proposed Citations law will not apply
187 to citations issued under the following two laws:

- 188 ■ Zoning and Shoreland Protection law [*6 O.C. 605*].
- 189 ■ Non-Metallic Mining Reclamation law [*4 O.C. 402*].

SECTION 6. EXISTING LEGISLATION

A. Which Laws of the Nation will this New Citations Process Apply to? Many laws of the Nation authorize citations, fines or forfeitures for violations. The intent of the proposed Citations law is to establish a uniform process that can apply to all of these laws without conflict. Some of these laws were updated after the creation of the Nation's Judiciary and conform cleanly with the process in this proposed Citations Law. However, other laws are decades-old and conform less clearly due to changes in drafting style and the Nation's organizational structure over the years. The following charts provide a summary of the Nation's laws that authorize citations, fines, forfeitures or penalties and whether the proposed Citations law will apply.

- **Laws that Authorize Citations & Include Judiciary Appeals Process with Timelines.** The following laws of the Nation specifically authorize the issuance of citations and included a process for contesting citations in the Judiciary Trial Court with required timelines for citations hearings. The proposed Citations law conforms with these timeframes and adds additional process and requirements.
 - *Conclusion:* The proposed Citations will apply to any citations issued under the following laws of the Nation:

Chart 2. Oneida Laws that Authorize Citations & Include Judiciary Appeals Process.

Chapter	Law	Authority to Enforce	Example Violation
304	<i>Domestic Animals</i>	Oneida Police Department and Oneida Conservation	Dangerous animal; prohibited animal; animal running at large.
406	<i>Hunting, Fishing and Trapping</i>	Oneida Police Department and Oneida Conservation	Failure possess license; Failure to tag, Unlawfully hunting/shooting from a vehicle.
410	<i>All Terrain Vehicle</i>	Oneida Police Department and Oneida Conservation	Operating all-terrain vehicle in a careless manner, on private property without consent, on tribal lands without consent
609	<i>Public Use of Tribal Land</i>	Oneida Police Department and Oneida Conservation	Trespassing.

- **Laws that Authorize Citations & Refer to Citations law for Judiciary Appeals Process.** The following laws of the Nation specifically authorize the issuance of citations and state that citations will be processed in accordance with the procedure contained "in the Nation's laws and policies governing citations." This refers to the proposed Citations law and Judiciary Law Rule No. 1 – Oneida Trial Court Rules.
 - *Conclusion:* The proposed Citations will to apply to any citations issued under the following law of the Nation:

Chart 3. Oneida Laws that Authorize Citations & Reference Citations law.

Chapter	Law	Authority to Enforce	Example Violation
308	<i>Curfew</i>	Oneida Police Department	Minor violating curfew.

- 220 ■ **Laws that Authorize “Fines, Penalties and Forfeitures” and Include Judiciary Appeals Process**
221 **with Timelines.** The following laws of the Nation authorize “fines, penalties or forfeitures” and
222 include a process for contesting citations in the Judiciary Trial Court with required timelines for
223 citation hearings. The proposed Citations law conforms with these timeframes and adds additional
224 process and requirements.

- 225 ○ *Conclusion:* The proposed Citations law appears to apply to any citations issued under the
226 following laws of the Nation:

227
228 *Chart 4. Laws that Authorize Fines and Include Judiciary Appeals Process w/Timelines.*

Chapter	Law	Authority to Enforce	Example Violation
401	<i>Tribal Environmental Response Law</i>	Environmental Health, Safety and Land Division	Violating a compliance order issued by Division for discharging hazardous substance.
404	<i>Well Abandonment Law</i>	Environmental Health, Safety and Land Division	Failure to comply within ten (10) days of written notice of violation.
407	<i>Onsite Waste Disposal Ordinance</i>	Environmental Health, Safety and Land Division (“Environmental Specialist”)	Failure to correct on-site waste disposal system, constituting threat to public health.
409	<i>Water Resources</i>	Oneida Conservation	Failure to report discharging substance to waters of reservation.

- 229
230 ■ **Laws that Authorize Citations and Do Not Include Judiciary Appeals Process.** The following
231 laws of the Nation specifically authorize citations but do not specify a process or timeframe for
232 how citations may be contested in the Judiciary. The process and timeframes included in the
233 Citations law will now apply to any citations issued under these laws.

- 234 ○ *Conclusion:* The proposed Citations law will apply to any citations issued under the
235 following law of the Nation:

236
237 *Chart 5. Oneida Laws that Authorize Citations and Do Not Include Judiciary Appeals Process.*

Chapter	Law	Authority to Enforce	Example Violation
405	<i>Recycling and Solid Waste Disposal*</i>	Oneida Police Department and Oneida Conservation	Improperly dumping solid waste within reservation boundaries

238 **The Recycling and Solid Waste Disposal Law is currently on the LOC’s Active Files List*
239 *for amendments.*

- 240
241 ■ **Laws that Authorize “Fines, Penalties and Forfeitures” and Include Judiciary Appeals Process**
242 **without Timelines.** The following laws of the Nation authorize “fines, penalties or forfeitures” and
243 state that appeals may be filed with the Judiciary, but do not specify a process or timeframe for
244 how those appeals will be handled. It appears that the process and timeframes included in the
245 Citations law will likely apply to any citations issued under these laws.

- 246 ○ *Conclusion:* The proposed Citations appears to apply to any citations issued under the
247 following laws of the Nation:

Chart 6. Oneida Laws that Authorize Fines and Include Judiciary Appeals Process w/o Timelines

Chapter	Law	Authority to Enforce	Example Violation
115	Tobacco	Oneida Police Department	Selling tobacco products in violation of the law.
302	Emergency Management and Homeland Security	Oneida Police Department	Willfully obstruct, hinder or delay the implementation of emergency response.
305	Oneida Food Service Code*	Environmental Health, Safety and Land Division and Licensing.	Selling food or food products on tribal property without a license.
306	Tattoo and Body Piercing	Environmental Health, Safety and Land Division and Licensing.	Performing tattooing or body piercing without a license.
701	Marriage	Licensing Department	False statement to obtain a marriage license.

*The Oneida Food Service Code is currently on the LOC's Active Files List for amendments.

- **Laws that Authorize “Fines, Penalties and Forfeitures” and Do Not Include Judiciary Appeals Process.** The following laws of the Nation authorize “fines, penalties and forfeitures” but do not specify a process or timeframe for how citations may be contested in the Judiciary. It appears that the process and timeframes included in the Citations law will likely apply to any citations issued under these laws.
 - **Conclusion:** The proposed Citations law appears to apply to any citations issued under the following laws of the Nation:

Chart 7. Oneida Laws that Authorize Fines and Do Not Include Judiciary Appeals Process.

Chapter	Law	Authority to Enforce	Example Violation
114	Notary Act	“Official designated by Oneida Business Committee.”	Impersonating a notary public.
408	Sanitation Ordinance	Utilities Department.	Continuing Violations.

- **Laws that Authorize Citations but include Land Commission Appeals Process.** The following laws of the Nation authorize citations, but direct that any appeals be filed with the Land Commission rather than the Nation’s Judiciary. Therefore, the following laws are excluded from the proposed Citations law [8 O.C. 807.7-1].
 - **Conclusion:** The proposed Citations law will not apply to citations issued under the following laws of the nation.

Chart 8. Oneida Laws that Authorize Citations and Conflict with Proposed Citations Law

Chapter	Law	Authority to Enforce	Example Violation
402	Non-Metallic Mine Reclamation	Environmental Health, Safety and Land Division or designee.	Violating an order requiring an operator to comply with the law.
605	Zoning and Shoreland Protection	Zoning Administrator.	Public Nuisance. Failure to obtain land use permit or conditional use permit.

- **Laws that include Penalties but Do Not Fall Under Proposed Citations law.** The following laws of the Nation authorize various alternative penalties for violations of the law, but do not include a citation process or Judiciary appeals process. It can be reasonably concluded that the following laws would not fall under the jurisdiction of the proposed Citations law as currently drafted.



- **Conclusion:** The proposed Citations law does not appear to apply to penalties issued under the following laws.

Chart 9. Oneida Nation Laws with Other Penalties Where Citations Law Does Not Apply.

Chapter	Law
403	Oneida Woodcutting Ordinance
411	Clean Air Policy
505	Motor Vehicle Registration
507	Alcohol Beverage Licensing Law
602	Leasing Law
603	Building Code

- B. Laws of the Nation that Authorize Citations with Land Commission Appeals Process.** The following laws of the Nation authorize citations but direct that appeals be heard by the Land Commission rather than the Judiciary:

- **Zoning and Shoreland Protection law [6 O.C. 605]**

- **Purpose.** The purpose of the Zoning and Shoreland Protection law includes establish a zoning plan for tribal lands, regulate the use of lands and buildings and provide for the administration and enforcement of this law, among other purposes [3 O.C. 304.1-1].
- **Enforcement.** Any person who violates any provision of this law, or who shall take any action on or with respect to any land or structure which is not in compliance with this law, shall be guilty of a civil infraction and shall be issued a fine in accordance with the schedule adopted by the Oneida Business Committee upon recommendation of the Land Commission.
- **Appeals.** Any person issued a fine under this law may contest the fine by attending a hearing before the Land Commission. The fine shall specify the date, time and place of the hearing. The hearing shall take place at least five (5) days after the fine is issued. After the hearing, the Land Commission shall determine whether the person is responsible for the fine, as was issued by the Zoning Administrator and may set a new date for when the fine shall be paid.
- **Conclusion.** The proposed Citations law states that citation hearings shall be heard in the Oneida Judiciary, while the Zoning and Shoreland Protection law states that fines issued under that law must be contested at a hearing of the Oneida Land Commission. Therefore, this law is excluded from the proposed Citations law [8 O.C. 807.7-1]. The proposed Citations law will not apply to citations issued under the Zoning and Shoreland Protection law.

- **Non Metallic Mine Reclamation law [4 O.C. 406]**

- **Purpose.** The purpose of the Non-Metallic Mine Reclamation law is to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place within the boundaries of the reservation [4 O.C. 402.1-1].
- **Enforcement.** The Oneida Zoning Department or designee may issue a citation to collect fines to enforce this law, a permit issued pursuant to this law or a reclamation plan approved under this law.
- **Appeals.** A person who is subject to a citation issued pursuant to this section shall have sixty (60) days to either appeal the citation to the Land Commission or review or pay the fine.

- 315 ○ *Conclusion.* The proposed Citations law states that citations hearings shall be heard in the
316 Oneida Judiciary, while the Non-Metallic Mine Reclamation Law states that appeals shall
317 be heard by the Land Commission. Therefore, this law is excluded from the proposed
318 Citations law [8 O.C. 807.7-1]. The proposed Citations law will not apply to citations
319 issued under the Non-Metallic Mine Reclamation law.
- 320 **C. Laws of the Nation that Authorize Citations.** The following laws of the Nation authorize citations, fines
321 or forfeitures and do not conflict with the proposed Citations law. The provisions of the proposed
322 Citations law will likely apply to citations issued under any of the following laws:
- 323 ■ **Domestic Animals law [3 O.C. 304]**
- 324 ○ *Purpose.* The purpose of the Domestic Animals law is to protect the health, safety, and
325 welfare of the community set minimum standards for treatment of animals; prohibit certain
326 species of animals from being brought on the reservation; regulate the keeping of livestock
327 on lots zoned residential, and establish consequences for damages caused by domestic
328 animals [3 O.C. 304.1-1].
- 329 ○ *Enforcement.* The Oneida Police Department and Oneida Conservation Wardens have the
330 authority to issue citations according to the fine and penalty scheduled developed in
331 accordance with the Domestic Animals law.
- 332 ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions
333 in the Domestic Animals law. The new requirements of the proposed Citations law will
334 now apply to any citations issued under the Domestic Animals law.
- 335 ■ **Curfew law [3 O.C. 308]**
- 336 ○ *Purpose.* to protect the health, safety, and welfare of persons and property within the
337 Reservation by regulating the activities of minors on the Reservation during certain
338 hours, while imposing certain obligations and responsibilities upon the parents,
339 guardians, and/or legal custodians of a minor for the control and supervision of that
340 minor [3 O.C. 308.1-1].
- 341 ○ *Enforcement.* The Oneida Police Department has the authority to enforce this law and issue
342 citations to the minor or minor's parent for curfew violations in accordance with the law
343 [3 O.C. 308.6].
- 344 ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions
345 in the Curfew law. The new requirements of the proposed Citations law will now apply to
346 any citations issued under the Curfew law.
- 347 ■ **Hunting, Fishing and Trapping law [4 O.C. 406]**
- 348 ○ *Purpose.* The purpose of the Hunting, Fishing and Trapping law is to protect and conserve
349 wildlife on the reservation and to promote respect among sportsmen and the environment
350 [4 O.C. 406.1-1].
- 351 ○ *Enforcement.* The Oneida Police Department and Oneida Conservation Wardens may issue
352 citations to any person found in violation of the law or corresponding rules. [4 O.C. 406.5-
353 4 and 406.10].
- 354 ○ *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions
355 in the Hunting, Fishing and Trapping law. The new requirements of the proposed Citations
356 law will now apply to any citations issued under the Hunting, Fishing and Trapping law.
- 357 ■ **All-Terrain Vehicle law [4 O.C. 410]**
- 358 ○ *Purpose.* The purpose of the All-Terrain Vehicle law is to govern the safe use of all-terrain
359 vehicles within the jurisdiction of the Oneida Reservation to allow enforcement for
360 protection of the community members and environment [4 O.C. 410.1-1].
- 361 ○ *Enforcement.* The Oneida Police Department and Oneida Conservation Wardens are
362 authorized to enforce and take any appropriate action to prevent or remove a violation of
363 this law. Citations for violations of this law and/or orders issued pursuant to this law

include sanctions, fines and penalties in accordance with the fine schedule developed in accordance with the law [4 O.C. 410.6 and 410.7].

- *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the All-Terrain Vehicle law. The new requirements of the proposed Citations law will now apply to any citations issued under the All-Terrain Vehicle law.

■ ***Public Use of Tribal Land law [6 O.C. 609]***

- *Purpose.* The purpose of the Public Use of Tribal Land law is to prevent improper access, use and trespass to tribal lands [6 O.C. 609.1-1].
- *Enforcement.* The Oneida Police Department and Oneida Conservation Wardens are authorized to take any appropriate action to prevent or remove a violation of this law. Citations for violation of this law may include fines, penalties and other orders in accordance with the citation schedule applicable to this law [6 O.C. 609.7].
- *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Public Use of Tribal Land law. The new requirements of the proposed Citations law will now apply to any citations issued under the Public Use of Tribal Land law.

■ ***Recycling and Solid Waste Disposal law [4 O.C. 405]***

- *Purpose.* The purpose of the Recycling and Solid Waste Disposal law is to promote the health, safety and welfare of residents and members of the Oneida Nation through the establishment of standards necessary to the sanitary and environmentally sound disposal of recyclable materials [4 O.C. 405.1-1].
- *Enforcement.* All Oneida Reservation Conservation Enforcement Officers and Police Officers shall be empowered to enforce the provisions of this law. Any person who violates a provision of this “ordinance” may be issued a citation by the Oneida Conservation Warden(s) [4 O.C. 405.12].
- *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Recycling and Solid Waste Disposal law. The new requirements of the proposed Citations law will now apply to any citations issued under the Recycling and Solid Waste Disposal law.

■ ***Tribal Environmental Response law [4 O.C. 401]***

- *Purpose.* The purpose of the Tribal Environmental Response law is to regulate the identification, investigation and remediation of discharges of hazardous substances to the environment, identify sites where discharge has occurred, and eliminate contamination from and control the threat of discharge of hazardous substances [4 O.C. 401.1-1].
- *Enforcement.* Any person who does not comply with a compliance order issued by the Environmental Health, Safety and Land Division may receive a penalty in accordance with the fine schedule. Any order issued pursuant to this law that is not complied with may be physically enforced by the Division [4 O.C. 401.10].
- *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Tribal Environmental Response law. The new requirements of the proposed Citations law will now apply to citations issued under the Tribal Environmental Response law.

■ ***Onsite Waste Disposal [4 O.C. 407]***

- *Purpose.* The purpose of the Onsite Waste Disposal law is to establish regulations to ensure that private onsite sewage treatment systems will fulfill Oneida Tribal goals for improving environmental health and safety [4 O.C. 407.1-2].
- *Enforcement.* The Environmental Specialist may issue an Administrative Enforcement Order when a violation of any provision of this law occurs... the Order shall be given to the party responsible for the violation and shall state the nature of the violation, possible penalties for failure to correct, and shall state the right to contested the matter with the Oneida Judiciary [4 O.C. 407.7-1].

- *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Onsite Waste Disposal law. The new requirements of the proposed Citations law will now apply to any citations issued under the Onsite Waste Disposal law.
- ***Water Resources [4 O.C. 409]***
 - *Purpose.* The purpose of the Water Resources law is to grant necessary powers and to organize a comprehensive program under a single tribal department for the enhancement of the quality management and protection of all waters of the Reservation, ground and surface, public and private [4 O.C. 409.1-2].
 - *Enforcement.* The Oneida Conservation Department shall enforce this law, and all rules and orders issued by the Department [4 O.C. 409.6-3].
 - *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Water Resources law. The new requirements of the proposed Citations law will now apply to any citations issued under the Water Resources law.
- ***Emergency Management and Homeland Security law [3 O.C. 302]***
 - *Purpose.* The purpose of the Emergency Management and Homeland Security law is to provide for the development and execution of plans for the protection of residents, property and the environment in an emergency or disaster [3 O.C. 302.1-1].
 - *Enforcement.* Violators of this law may be subject to a fine of not more than two hundred dollars (\$200) per violation to be issued by the Oneida Police Department [3 O.C. 302.9].
 - *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Emergency Management and Homeland Security law. The new requirements of the proposed Citations law will now apply to any citations issued under the Emergency Management and Homeland Security law.
- ***Oneida Food Service Code [3 O.C. 305]***
 - *Purpose.* The purpose of the Oneida Food Service Code is to protect and preserve the safety of Oneida Nation citizens and others within its jurisdiction in conjunction with the most current United States Public Health Service Food Code [3 O.C. 305.1-1].
 - *Enforcement.* In addition to the suspension or closing down of a business that violates the law, a food service vendor who violates any provision of the code shall forfeit not less than five dollars (\$5) nor more than five hundred dollars (\$500) upon conviction. Environmental Health, Safety and Land Division, Licensing Department and Oneida Police Department have authority to enforce various provisions of this law.
 - *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the current Oneida Food Service Code. The new requirements of the proposed Citations law will appear to apply to any citations issued under the Oneida Food Service Code.
- ***Tattoo and Body Piercing [3 O.C. 306]***
 - *Purpose.* The purpose of the Tattoo and Body Piercing law is to regulate tattooists, tattoo establishments, body piercers and body piercing establishments under the jurisdiction of the Tribe in order to protect public health and safety [3 O.C. 306.1-1].
 - *Enforcement.* Environmental Health and Safety Division and Licensing Department [3 O.C. 306.13].
 - *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Tattoo and Body Piercing law. The new requirements of the proposed Citations law appear to apply to any citations issued under the Tattoo and Body Piercing law.
- ***Tobacco law [1 O.C. 115]***
 - *Purpose.* The purpose of the Tobacco law is to regulate the sale, possession and distribution of cigarettes within the Reservation [1 O.C. 115].
 - *Enforcement.* Violators subject to the jurisdiction of the Nation shall be subject to a fine of not more than ten dollars (\$10) per pack of un-stamped cigarettes to be issued by the Oneida Police Department and paid to the Nation [1 O.C. 115.8-1].

- *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Tobacco law. The new requirements of the proposed Citations law will now apply to any citations issued under the Tobacco law.
- **Marriage law [7 O.C. 701]**
 - *Purpose.* The purpose of the Marriage law is to exercise the sovereign right of the Oneida Nation to regulate the rights and responsibilities relating to marriages [7 O.C. 701.1-1].
 - *Enforcement.* The Department shall promulgate rules that establish a fine schedule for persons who violate this law [7 O.C. 701.7-1].
 - *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Marriage law. The new requirements of the proposed Citations law appear to apply to any citations issued under the Marriage law.
- **Notary Act [1 O.C. 114]**
 - *Purpose.* The purpose of the Notary Act is to promote, serve and protect the public interest and to simplify, clarify and modernize the law governing notaries [1 O.C. 114.1-2].
 - *Enforcement.* A notary who knowingly and repeatedly performs or fails to perform any act prohibited or mandated, respectively, by this Act shall forfeit not less than \$50.00 nor more than \$500.00... Any and all of the sections of this Act may be enforced by an official designated by the Oneida Business Committee for separate issues, or for all issues [1 O.C. 114.6-4 – 114.6-9].
 - *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Notary Act law. The new requirements of the proposed Citations law appear to apply to any citations issued under the Notary Act.
- **Sanitation Ordinance [3 O.C. 306]**
 - *Purpose.* The purpose of the Sanitation Ordinance is to assure that any water and sanitary utilities that are developed within the jurisdiction of the Oneida Tribe shall be operated and maintained in a manner that is fiscally responsible, responsive to customer needs, environmentally safe and governmentally functional [4 O.C. 408].
 - *Enforcement.* Any person who shall continue any violation beyond the time limit provided for in sec. (b) may be assessed a fine of not more than \$250.00 [4 O.C. 408.11].
 - *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in Sanitations Ordinance. The new requirements of the proposed Citations law appear to apply to any citations issued under the Sanitation Ordinance law.
- D. References to Other Laws.** The following laws of the Nation are referenced in the Citations law. The proposed Citations law does not conflict with any of the referenced laws.
 - *Garnishment law.* The defendant's failure to satisfy a fine and/or restitution may result in per capita attachment, wage garnishment and/or other collection processes available to the Court [8 O.C. 807.6-2(d)].
 - *Per Capita law.* The defendant's failure to satisfy a fine and/or restitution may result in per capita attachment, wage garnishment and/or other collection processes available to the Court [8 O.C. 807.6-2(d)].
 - *Rules of Appellate Procedure.* Any person wishing to contest the determination of the Court may appeal to the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure [8 O.C. 807.6-3].
- E. Existing Judiciary Rules.** The Oneida Business Committee recently adopted Judiciary law Rule #1 – Oneida Trial Court Rules. This new rule, developed by the Judiciary and adopted by the Oneida Business Committee on September 25, 2019, includes procedures for how citation hearings are held at the Judiciary [8 O.C. 801 Judiciary law Rule #1 – 1.17 Citation Hearings].
 - *Conclusion.* The proposed Citations law does not conflict with the citation hearing procedures in Judiciary Law Rule No. 1 – Oneida Trial Court Rules.

SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

- A. *Effect on Existing Rights.* The proposed Citations law protects due process rights by:
- Requiring that all citations be properly noticed, including a notice of the defendant's rights and privileges, hearing dates and information;
 - Ensuring that defendants have the right to contest their citations in the Nation's Judiciary;
 - Establish a formal process for stipulations that require defendants to acknowledge that they are waiving their rights to contest the citation in court and sign a statement that they enter into the agreement free of duress and coercion.

SECTION 8. ENFORCEMENT AND ACCOUNTABILITY

- A. *Enforcement.* Each law of the Nation typically includes an "enforcement" section which gives authority to a specific agency or department to enforce the law. Most laws of the Nation are enforced by the Oneida Police Department or Conservation Wardens. For more information, see "Section 6: Existing Legislation."

SECTION 9. OTHER CONSIDERATIONS

- A. *Current Citation Data.* The following data is provided for information:
- *Oneida Police Department (September 2018 – August 2019)*
 - Nineteen (19) Domestic Animals citations issued in the past year. The most common citations were "mistreatment of animals" and "animal running at large."
 - The department did not report issuing citations under any other laws of the Nation.
 - *Source: Email communication with OPD (9/9/19).*
 - *Oneida Conservation Wardens*
 - Oneida Police Department reported that Conservation has no citations issued over the past year.
 - *Source: Email communication with OPD (9/11/19).*
- B. *Laws in Progress that Include Citations.* At the time this analysis was drafted, the LOC is actively working on drafting or amending the following laws which include citations:
- The Oneida Food Service Code and Recycling and Solid Waste Disposal law are both on the LOC's Active Files List for amendments.
- C. *Fiscal Impact.* A fiscal impact statement has not yet been requested.
- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].
 - A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee [1 O.C. 109.6-1(a) and (b)].

Title 8. Judiciary - Chapter 807
KayanlÁsla Olí-wa?
Laws of issues/matters
CITATIONS

807.1. Purpose and Policy
807.2. Adoption, Amendment, Repeal
807.3. Definitions
807.4. Commencement of a Citation Action

807.5. Stipulations
807.6. Hearing Procedure
807.7. Exclusion

807.1. Purpose and Policy

807.1-1. *Purpose.* The purpose of this law is to provide a process that governs all citations that fall under the jurisdiction of the Oneida Nation.

807.1-2. *Policy.* It is the policy of the Nation to provide a consistent process for handling citations of the Nation in order to ensure equal and fair treatment to all persons who come before the Judiciary to have their citations resolved.

807.2. Adoption, Amendment, Repeal

807.2-1. This law was adopted by the Oneida Business Committee by resolution BC-__-__-__.

807.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

807.2-3. 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.

807.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

807.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

807.3. Definitions

807.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Authorized attorney” means an attorney of the Nation who represents the department or entity of the officer who issued the citation.

(b) “Citation” means a legal document that serves as a notice or summons to appear in a court of the Nation in response to a charge against an individual of a violation of law.

(c) “Court” means the Nation’s Trial Court, Family Court, or any other specific courts or divisions of the Nation’s Judiciary created by a law of the Nation which have been granted jurisdiction to hear matters of citations.

(d) “Court of Appeals” means the branch of the Nation’s Judiciary delegated the authority of final appeals within the Nation’s Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.

(e) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

(f) “Nation” means the Oneida Nation.

(g) “No contest” means a plea by which a defendant will accept the charged violation of law but does not plead or admit guilt.

(h) “Officer” means an individual authorized by a law of the Nation to issue a citation for a violation of said law.

807.4. Commencement of a Citation Action

807.4-1. *Action.* The issuance of a citation shall commence a civil action in the Judiciary for a violation of a law of the Nation for the purpose of collecting a fine or penalty imposed by the law in the name of the Nation.

807.4-2. *Authority to Issue.* An officer may issue a citation to any person he or she has reasonable grounds to believe has committed a violation of a law of the Nation that expressly permits the issuance of a citation.

807.4-3. *Form of Citation.* A citation shall contain the following information:

- (a) The name of the officer who issued the citation.
- (b) The name, address, and date of birth of the defendant.
- (c) The enrollment number and/or license number of the defendant, if applicable.
- (d) Information about the alleged violation including:
 - (1) the violation alleged;
 - (2) the law violated;
 - (3) the time and place of the occurrence of the violation; and
 - (4) a description of the violation.
- (e) A notice to appear at a date, time and place for the citation pre-hearing, and a statement as to whether the appearance at the pre-hearing is mandatory.
- (f) Provisions for payment of citation and stipulation in lieu of an appearance in Court, if applicable.
- (g) Notice that if the defendant does not pay the citation or stipulate to an agreement prior to the pre-hearing and fails to appear in Court at the time fixed in the citation or provide written notice to the Court that he or she is contesting the citation, the Court may issue a default judgment which may include any fine amount due, restitution and/or suspension of any rights, privileges, or licensures, or any other penalty authorized by law.
- (h) Notice that failure to satisfy a fine, restitution, or any other part of the judgment, may result in per capita attachment, wage garnishment, revocation, suspension of any rights, privileges, licensures, and/or any other action authorized by law and/or other collection processes available to the Court.
- (i) Any other relevant information.

807.4-4. *Service of a Citation.* The defendant is served with a citation when one of the following occurs:

- (a) *Personal Service.* The citation is provided to the defendant directly by the officer, or a copy of the citation is left at the defendant’s home or usual place of abode by the officer:
 - (1) in the presence of a competent family member at least fourteen (14) years of age who shall be informed of the contents of the citation; or
 - (2) in the presence of a competent adult who resides in the home or usual place of abode of the defendant, who shall be informed of the contents of the citation.
- (b) *Mail Service.* If personal service is not possible, and the defendant’s address is known or with reasonable diligence can be ascertained, then mail service may be used. For service by mail, a copy of the citation may be delivered to the defendant’s last known address by certified mail with return receipt. The certified mail return receipt shall be signed by the

defendant or a competent family member at least fourteen (14) years of age or an adult who resides in the home of the defendant.

(1) The certified mail return receipt shall be filed with the Court as proof of service.
(c) *Service by Publication.* If after a showing of due diligence personal service and mail service were not possible, then service may be completed by publication as a last resort. The publication shall be in the Nation's newspaper and shall be designated as "Legal Notice." The department of the officer and/or authorized attorney shall publish this notice at least two (2) times within a thirty (30) day period. The two (2) notices shall be published a minimum of ten (10) days before the citation pre-hearing.

(1) Copies of the two (2) published notices and written report stating the facts surrounding the failure of personal and mail service shall be filed with the Court as proof of service.

(2) If service by publication is required and there is insufficient time for proper service before the pre-hearing, the Court may, on its own, order different time limits for service by publication and/or re-schedule the pre-hearing appropriately in order to provide for fair notice and opportunity for the defendant to respond.

(3) The Court may order the defendant to reimburse the department of the officer and/or the authorized attorney for any costs incurred from service by publication.

807.4-5. *Filing of a Citation.* Absent exigent circumstances, the department of the officer who issued the citation shall file the citation with the Court along with any applicable proof of service at least thirty (30) days prior to the date of the pre-hearing.

(a) Citations may be filed in person or electronically transmitted to the Court. Citations that are electronically transmitted to the Court are deemed filed upon confirmation of receipt by the Clerk of Court assigned to the branch of the Judiciary that will hear the citation.

(b) After filing the citation with the Court, the department of the officer who issued the citation shall forward the citation and all relevant accompanying information to the authorized attorney. Relevant information to accompany the citation may include, but is not limited to, a narrative by the officer and/or history of violations by the defendant.

807.4-6. *Amendments to the Citation.* A citation may be amended by an officer or the authorized attorney prior to the citation pre-hearing. A copy of the amended citation shall be provided to the defendant in accordance with section 807.4-4, and filed with the Court, at least five (5) days before the citation pre-hearing. After the hearing, the citation may only be amended at the discretion of the Court, upon notice to the parties and an opportunity to be heard.

807.5. Stipulations

807.5-1. *Authority for Stipulations and Case Settlement.* An authorized attorney of the Nation is granted the discretion to seek the settlement of a citation.

(a) When seeking to enter into a stipulation the authorized attorney shall explain to the defendant all provisions included in the stipulation as required by section 807.5-2(a)-(d).

807.5-2. *Form of Stipulation.* Any stipulation between an authorized attorney and the defendant shall be in writing and signed. The stipulation shall include the following:

(a) A summary of the citation violation information included on the citation;

(b) The details of the stipulation including any fine, penalty, condition, or payment plan the defendant shall comply with;

(c) A statement that by entering into the stipulation the defendant is admitting that he or she committed the act for which the citation was issued or is entering a plea of no contest

and thereby waives his or her right to contest the citation with the Court; and

(d) A statement that all parties signed the agreement free of duress and coercion.

807.5-3. *Submission of the Stipulation to the Court.* If the authorized attorney and defendant reach an agreement through the stipulation, the stipulation shall be submitted to the Court for the Court's approval.

(a) If the Court enters an order approving the stipulation as written, a copy of the order shall be provided to the authorized attorney and defendant.

(b) If the Court does not enter an order approving the stipulation as written or requests clarification, the Court shall schedule the matter for a hearing. The Court shall provide the authorized attorney and defendant notice of the hearing date and written explanation as to why the Court did not approve the stipulation of the parties.

807.5-4. If the authorized attorney and defendant do not reach an agreement as to a stipulation, then the parties shall proceed with the citation hearing process.

807.5-5. Compliance with a stipulation shall be monitored by the authorized attorney. The authorized attorney may file a motion with the Court to enforce the terms of a stipulation or file a motion for contempt if the defendant is non-compliant with the terms of the stipulation.

807.6. Hearing Procedure

807.6-1. *Citation Pre-Hearing.* All citations shall include a pre-hearing date with the Court which shall be set at least thirty (30) days after the citation was issued, unless stated otherwise by a law of the Nation.

(a) Appearance at the pre-hearing shall be mandatory only when a law, policy, rule, or resolution of the Nation requires a mandatory appearance for that specific violation of law.

(b) If an appearance is not mandatory, and a person does not wish to contest the citation, a person may pay the fine and/or penalty as listed on the citation prior to the pre-hearing date.

(1) If the person pays the fine and/or penalty as listed on the citation prior to the pre-hearing date the citation shall be considered satisfied.

(c) If a person wishes to contest the citation, the person shall provide notice to the Court in one (1) of the following manners:

(1) appear at the pre-hearing to contest the citation; or

(2) if an appearance is not mandatory, send written notice to the Court, with a copy to the Oneida Law Office, prior to the pre-hearing notifying the Court that the defendant wishes to contest the citation.

(d) At the pre-hearing the Court shall accept pleas which either contest or admit committing the act for which the citation was issued, or a plea of no contest.

(1) If the defendant admits committing the act for which the citation was issued the Court shall provide a statement that by admitting that he or she committed the act for which the citation was issued the defendant thereby waives his or her right to contest the citation with the Court. The Court shall obtain an affirmative acknowledgment from the defendant of that waiver of rights.

(e) In addition to scheduling requested hearings, the Court may also make conditional orders at the pre-hearing which are effective until the matter is resolved.

(f) If a defendant does not appear at the pre-hearing or submit written notice that he or she is contesting the citation when there is a non-mandatory appearance, and the defendant has not entered into a stipulation or paid the fine and/or penalty as listed on the citation, the Court may proceed to enter a default judgment.

(1) A default judgment may include any fine amount due, restitution, suspension of any rights, privileges, or licensures, and/or any other penalty authorized by law.

(2) Unless otherwise noted by the Court, a defendant shall have ninety (90) days to satisfy a default judgment by paying any fine and/or complying with any condition or penalty ordered.

807.6-2. *Citation Hearing.* For all persons entering a plea contesting the fact that he or she committed the act for which a citation was issued, the Court shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the pre-hearing when possible.

(a) The burden of proof at the citation hearing shall be by clear and convincing evidence.

(b) As a result of the citation hearing the Court may issue an order which includes a determination as to the underlying violation of law as well as any fine amount, restitution, suspension of any rights, privileges, or licensures, and/or any other penalty as authorized by law.

(c) A defendant who fails to satisfy a lawful order of the Court shall be subject to punishment for contempt of court which may include fines, revocation and/or suspension of any rights, privileges, licensures, or any other action authorized by law.

(d) The defendant's failure to satisfy a fine and/or restitution may result in per capita attachment, wage garnishment and/or other collection processes available to the Court.

807.6-3. *Appeals of the Court's Determinations.* Any person wishing to contest the determination of the Court may appeal to the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure.

807.7. Exclusion

807.7-1. This law shall not apply to any law of the Nation which delegates hearing authority to a hearing body other than the Oneida Judiciary.

End.

Adopted – BC-__-__-__-__