

ONEIDA NATION PUBLIC MEETING NOTICE

Thursday, February 6, 2020, 12:15 pm

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

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ONEIDA FOOD SERVICE CODE AMENDMENTS

The purpose of this law is to ensure the safety of food that is provided to consumers at retail or through an Oneida Nation Food Service Program by establishing a system of overlapping safeguards and to promote fair dealings with members of the community through adoption of licensing requirements, exemptions, regulation, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation.

The Amendments to the Oneida Food Service Code will:

1. Include mobile food trucks within the category of permanent food service establishments;
2. Add deadline, notice and other procedural requirements to the processing of applications for licensure to operate a food service business;
3. Create exemptions for cottage food sales and prepackaged restaurants;
4. Afford licensing fee waivers to protect food service businesses or prepackaged restaurants from duplicative payments that would be caused by overlapping jurisdictions; and
5. Allow the area manager the final determination on appeals of non-citation issued decisions unless one (1) of the three (3) express grounds exist to further appeal the decision.

PUBLIC COMMENTS PERIOD CLOSES THURSDAY, FEBRUARY 13, 2020

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 and 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
The Oneida Food Service Code is too lenient.	The Oneida Food Service Code is too lenient on temporary food service establishments	In section 305.7-1, the license period for temporary food service establishments should be decreased from 14 days to 10 days.



kahkwaʔó·ku
(gah kwa oh goo)
about the food

ONEIDA FOOD SERVICE CODE AMENDMENTS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Environmental, Health and Safety and Licensing Departments	SPONSOR: Ernest Stevens III	DRAFTER: Kristen M. Hooker	ANALYST: Maureen Perkins
Intent of the Amendments	<p>The proposed amendments to the Oneida Food Service Code (Law) intend to:</p> <ul style="list-style-type: none"> ▪ update the outdated Oneida Food Service Code including formatting required by the Legislative Procedures Act; ▪ update the exclusive authority of the Environmental, Health and Safety (EHS) Department to develop license fee and penalty schedules; both adopted by OBC resolution. The EHS Department is within the Environmental, Health, Safety and Land Division (EHSLD); ▪ include exemptions for cottage food sales and prepackaged restaurants; ▪ include mobile food trucks in the definition of permanent food service operators; ▪ include a waiver of license fees by the EHS Department when an applicant provides proof of payment to a governmental unit within the Reservation boundaries for the same term; ▪ include a thirty (30) day response time for EHS to make determinations regarding eligibility; ▪ require the EHS Department to provide applicants who have been denied licensure or license renewal a written explanation of the denial and an explanation of the appeals process; ▪ allow the EHS Department the discretion to accept alternate training options; ▪ include an internal appeal process at the division level (EHSLD) for certain decisions of the EHS Department; and ▪ update the title to Oneida Food Service. 		
Purpose	<p>To ensure the safety of food that is provided at retail or through Oneida Nation Food Service Programs to members of the community by establishing a system of overlapping safeguards designed to minimize foodborne illness; ensure employee health, industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable levels of sanitation on the premises of food service businesses; and promote fair dealings with consumers through adoption of licensing requirements, exemptions, regulation, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation [1 O.C. 305.1-1].</p>		
Affected Entities and Individuals	<p>Environmental, Health and Safety Department, Environmental, Health, Safety and Land Division, Oneida Nation Judiciary, Oneida Business Committee (OBC), Oneida Nation Members, Oneida Nation Food Service Programs, Cottage Food Operators, Independent Food Service Operators, Permanent Food Service Establishments, Prepackaged Restaurants, Licensing Department, Oneida Police Department, Risk Management Department</p>		
Related Legislation	<p>Judiciary law, Oneida Judiciary Rules of Civil Procedure, Rules of Appellate Procedure, Legislative Procedures Act</p>		
Public Meeting	<p>A public meeting has not yet been held.</p>		
Fiscal Impact	<p>A fiscal impact statement prepared in accordance with the Legislative Procedures Act has not yet been requested.</p>		

SECTION 2. LEGISLATIVE DEVELOPMENT

A. **Background.** The Oneida Food Dispensary and Vendor’s Licensing Regulations and Procedures law was adopted by the Oneida Business Committee on January 18, 1985 to regulate food preparation and sales by departments, enterprises and programs of the Nation and Oneida Tribal members. The Oneida Food Service Code was adopted on October 3, 2001 by resolution BC-10-03-01-D and replaced the Oneida Food Dispensary and Vendor’s Licensing Regulations and Procedures law. The Oneida Food Service Code was amended on February 25, 2015, by resolution BC-02-25-15-C to remove reference to the Oneida Appeals Commission and add reference to the Oneida Judiciary as the hearing body authorized to hear appeals to decisions of the EHS, Risk Management and Licensing departments.

B. **Expected Benefits.** The amendments comprehensively update the Oneida Food Service law with current food service standards and provides members of the Nation the opportunity to register for an exemption to sell cottage food products from their residence. The Oneida Nation is one of the first tribes in the country to offer cottage food exemptions [3 O.C. 305.8-1]. The cottage food amendments can be viewed as an act of food sovereignty exercised by the Nation because the amendments deviate from the model Federal Food Code intended to be used as guidance to develop state or tribal food codes [3 O.C. 305.5-2(a)(2)].

Additionally; the amendments add mobile food trucks to the definition of permanent food service establishment [3 O.C. 305.3-1(t)] which insures mobile food trucks operating within the Nation’s jurisdiction are regulated by the EHS Department.

SECTION 3. CONSULTATION AND OUTREACH

A. **Departments.** Representatives from the following departments participated in the development of this Law:

- Environmental, Health and Safety Department
- Licensing Department
- Risk Management Department
- Community Health Nursing
- Oneida Cannery Department

B. **Laws of the Nation.** The drafting of this legislative analysis included a review of the following laws of the Nation: Judiciary [8 O.C. 801], Oneida Judiciary Rules of Civil Procedure [8 O.C. 803], Rules of Appellate Procedure [8 O.C. 805] and Legislative Procedures Act [1 O.C. 109].

C. **Area and Tribal Laws.** The following state and tribal laws were reviewed in the development of this legislative analysis:

- 2009 Wisconsin Act 101
- University of Arkansas Model Tribal Cottage Food Law
- Minnesota Cottage Foods Law
- Stockbridge-Munsee Food Service Code
- Jamestown S’Klallam Tribe Tribal Food Code
- Montana Code 50-50-101-403

D. **Current Licenses Issued by the Nation**

- The Nation currently provides food service business licenses and inspections for thirty-four (34) food service businesses. Fifteen (15) of these food services are Oneida Nation Food Service Programs. The Nation has authority to license all entities within the jurisdiction of the Nation.

SECTION 4. PROCESS

A. The Oneida Food Service Code amendments have thus far followed the required process contained in the Legislative Procedures Act.

- 53 B. On September 19, 2018, the LOC added the Oneida Food Service Code Amendments to the active files
54 list and assigned Ernest Stevens III as the sponsor.
- 55 C. The following work meetings were held by Legislative Reference Office staff in the development of
56 the amendments to the Law:
- 57 ▪ October 4, 2018, a work meeting was held with EHS Department staff, Cannery Department
58 staff and Community Health Nursing Program staff.
 - 59 ▪ November 29, 2018, a work meeting was held with EHS Department staff and Licensing
60 Department staff.
 - 61 ▪ January 25, 2019, a work meeting was held with EHS Department staff.
 - 62 ▪ February 28, 2019, a work meeting was held with EHS Department staff and Licensing
63 Department staff.
 - 64 ▪ June 6, 2019, a work meeting was held with EHS Department staff.
 - 65 ▪ November 6, 2019, a work meeting was held with the LOC.
 - 66 ▪ November 15, 2019, a work meeting was held with the LOC.
 - 67 ▪ December 18, 2019, a work meeting was held with the LOC.
 - 68

69 SECTION 5. CONTENTS OF THE LEGISLATION

70 A. *Purpose and Policy* [3 O.C. 305.1]

- 71 • The Law was amended to meet the requirements in the Legislative Procedures Act related to
72 consistency in format and required sections [1 O.C. 109.11-1].
- 73 • The purpose and policy sections were updated to include Oneida Nation Food Service
74 Programs and to clearly state that the policy of the Law is to exercise the Nation's inherent
75 sovereignty over the Nation's resources and membership, as well as to strengthen self-
76 governance.
- 77 • The term vendor was removed from the purpose and policy section, as well as throughout the
78 Law [3 O.C. 305.1-2 of Current Law]. By removing the term vendor and the Licensing
79 Department from the Law; the application process is streamlined with the EHS Department
80 [Work Meeting 01/25/19].
- 81

82 B. *Definitions* [3 O.C. 305.3]. Distinction was made between the various types of licenses issued by the
83 EHS Department to indicate whether the business is permanent or temporary, as well as removing the
84 term vendor from the definitions. The definitions for licenses in the Law now include permanent food
85 service establishments, temporary food service establishments and independent food service operators.
86 Food service businesses include, both individually and collectively, permanent food service
87 establishments, temporary food service establishments and independent food service operators.
88 Permanent food service establishments now include Oneida Nation Food Service Programs and mobile
89 food trucks. The term food service business excludes private rummage sales and community sponsored
90 non-profit fundraising and/or charity events which are not governed by the Law, as well as cottage food
91 operators and prepackaged restaurants that satisfy the requirements in this Law and obtain an exemption
92 from the EHS Department [3 O.C. 305.3-1(l)]. The term permanent was added to the definition of food
93 service establishment for clarity [3 O.C. 3-1(e)].

- 94
- 95 ▪ The terms consumer, food and person were added and used in the Law to provide clarity.
- 96
- 97 ▪ The following definitions were added to reflect the addition of the cottage foods exemption [3
98 O.C. 305.8-1]: cottage food operator, cottage food products, direct sale, domestic residence,
99 home-canned foods, and potentially hazardous food.
- 100
- 101 ▪ The definition for prepackaged restaurant was added to reflect the prepackaged restaurant
102 exemption [3 O.C. 305.8-2].
- 103
- 104 ▪ Definitions were added for citation, fine and penalty.
- 105

- Definitions for Licensing Department and Risk Management were removed from the Law because these departments are no longer referenced in the Law. The Oneida Business Committee and the Oneida Police Department were removed from the definition of close down because these two entities are no longer involved in the decision or act of closing a food service business down. The term tribal property was removed as it is not used in the amended Law. The term compliance was removed as this word is used in the everyday sense and does not require a definition.

C. **Application** [3 O.C. 305.4]. A separate section was added detailing that the Law applies to food service businesses, cottage food operators and prepackaged restaurants located or operating within the Reservation. A provision was added titled Liberal Construction which means the words are interpreted in a loose way which allows the Nation to exercise its sovereign jurisdiction to the fullest extent [3 O.C. 305.4-2].

D. **Compliance** [3 O.C. 305.5]. This section was updated to provide clarity to the Law. The Law continues to adopt the current Federal Food Code and any additions or deviations from the Federal Food code are designed to be specific to the Nation. The Law will have priority with respect to any conflicts between the Law and the Federal Food Code [3 O.C. 305.5-2].

E. **Authority** [3 O.C. 305.6]. This section of the Law has been amended. This section in the current Law is titled Responsibilities and Duties. The EHS Department is now responsible for issuing all licenses pursuant to this Law [3 O.C. 305.6-1(a)]. Previously; the Licensing Department was responsible to issue licenses [3 O.C. 305.4-5 of Current Law]. Additionally; the EHS Department is now required to set licensing fees [3 O.C. 305.6-1(b)] which are approved by OBC resolution [3 O.C. 305.7-1(c)]. Previously, the Licensing Department and the EHS Department jointly determined licensing fees updated on an annual basis with OBC approval [3 O.C. 305.4-7 and 305.9-9 of Current Law].

- The current license fee schedule and fine and penalty schedule will be void with the adoption of the amended Law because these schedules are no longer included in the Law [3 O.C. 305 Attachment A and Attachment B of Current Law]. These schedules were removed from the law and implemented by OBC resolution to make them easier to update without requiring an amendment to the Law.

The requirement for EHS to conduct food handling classes was removed from this section [3 O.C. 305.4-2 of Current Law] and moved to the license eligibility section [3 O.C. 305.7-2(b)(2)(B) and (c)(2)(B)]. The Risk Management Department and the requirement to obtain insurance coverage was removed [3 O.C. 305.4-6 of Current Law].

F. **Licensing** [3 O.C. 305.7]. This section was amended. The licensing and fees sections have been combined [3 O.C. 305.6 and 305.5-9 of Current Law]. The EHS Department was granted authority to receive, issue and renew licenses [3 O.C. 305.7-1(a)]. A provision was added requiring the EHS Department to waive a licensing fee when a food service business provides proof of payment to another governmental unit located within the boundaries of the Reservation for a similar license that covers the same term [3 O.C. 305.7-1(c)(3)(B)]. The Licensing Department was removed from the Law as the authority to issue licenses and all licenses will now be processed by the EHS Department instead.

- **Impact.** This change makes the process of issuing licenses more efficient for the EHS Department and license applicants.

A process was added requiring the EHS Department to make a determination to issue or deny an application for a license or license renewal within thirty (30) days following the submission of a complete application including the payment of all applicable fees and any information contained in the standard operating procedure created by the EHS Department [3 O.C. 305.7-1(a)].

- **Impact.** This requirement ensures applicants for new and renewal licenses receive a timely response from the EHS Department to avoid any potential delays by the EHS Department that could impact the applicant's food service business. The current Law does not contain a timeframe for issuing decisions regarding decisions of license eligibility.

The license issued may be conditional upon a correction of a violation within a set period and if not corrected within that time will nullify the license. If an application is denied, the EHS Department will provide the applicant with the reason for the denial in writing and instructions on how to appeal the decision [3 O.C. 305.7-1(a)(2)].

- The current Law does not require written notification of the reason for the denial of a license.

The license fee schedule will be updated as necessary by the EHS Department and approved by the OBC by resolution [3 O.C. 305.7-1(c)].

The prorated formula used by the EHS Department related to a reduction of a license fee when the application is received after October 1st will be added to the required standard operating procedure [3 O.C. 305.7-1(c)(1)(B)]. A provision was added that grants the EHS Department discretion to approve equivalent training to satisfy the Temporary Food Service establishment requirements [3 O.C. 305.7-2(b)(2)(B)] and the Independent Food Service Operator requirements [3 O.C. 305.7-2(c)(2)(B)].

- **Impact.** This process alleviates the burden of duplicate training for applicants and the department when sufficient training has already been obtained by the applicant.

Oneida Food Service Programs are exempt from license fees. Additionally; the EHS Department will waive licensing fees when provided with proof that another governmental entity has already received payment [3 O.C. 305.7-1(c)(3)].

- **Impact.** This provision eliminates double payments of licensing fees when an overlapping jurisdiction has already collected a fee.

The requirement that vendor fees be used for the operational budget of the EHS Department (80%) and the administrative budget of the License Department (20%) was removed [3 O.C. 305.9-9 of Current Law]. The amended Law is silent regarding where licensing fees are allocated which means these funds will be directed to the General Fund.

Oneida Tribal Enterprises and Oneida Tribal Businesses were removed from the licensing section of the Law [3 O.C. 305.9-10 and 9-11 of Current Law]. Although it is unclear what Oneida Tribal Enterprise Units and Oneida Tribal Business Units is referring to because there are no definitions provided for these entities in the current Law; it can be assumed that these entities are included in the amended Law under the definition of permanent food service establishment which includes restaurants, a market or grocery store, a convenience store, and Oneida Nation Food Service Programs. Permanent food service establishments are required to adhere to the amended Law [3 O.C. 305.7-2(a)].

Licensing Timeframes

October 1 to September 31. The food service licenses issued by the Oneida Nation under this Law run from October 1 to September 31 of each year to match the Nation's fiscal year.

July 1 to June 30. Food service licenses in the State of Wisconsin and local municipalities within and around the Oneida Nation reservation run from July 1 to June 30 of each year.

- G. **Exemptions** [3 O.C. 305.8]. This section was amended. The amended Law provides exemptions to cottage food operators and prepackaged restaurants if certain requirements contained in the Law are met. The meaning of exemption in an everyday sense is the process of freeing from an obligation imposed on others.

Exemptions in the Current Law were Removed and are not Governed by the Amended Law

- The private rummage sales, community sponsored non-profit fund raising and/or charity events in the exemption section of the current Law [3 O.C. 305.11 of Current Law] were moved to the definition section of the amended Law [3 O.C. 305.3-1(m)] as an example of what does not qualify as a food service business and is therefore; although not explicitly stated in the Law, not governed by the Law.
- Food sold at GTC meetings was removed from the Law because this practice is not allowed.
- Food sold on land other than tribally owned land was removed because it is not necessary under the amended Law.

212 **Chart 1: Explanation of Exemptions**

The definition of food service business means, whether individually or collectively, a permanent food service establishment, a temporary food service establishment, and/or an independent food service operator. The following shall not qualify as a food service business under this Law [3 O.C. 305.3-1(m)]:	
The amended Law does not apply to the events listed below, so the exemption detailed in the current Law is no longer required [3 O.C. 305.11 of Current Law]. These events do not have to follow this Law. This has not changed from the current Law.	The entities listed below do not qualify for a food service business license, but are eligible for an exemption by meeting specific requirements further described in section 305.11:
<ul style="list-style-type: none"> • private rummage sales • community sponsored non-profit fundraising and/or charity events 	<ul style="list-style-type: none"> • cottage food operators • prepackaged restaurants

- 213 • Private rummage sales, community sponsored non-profit fundraising and/or charity events were
214 moved to the definition section as examples of events that do not qualify as a food service
215 business because these events are not governed by the amended Law.
- 216 • Cottage food operators and prepackaged restaurants do not qualify as a food service business
217 under the Law and are eligible for an exemption if specific requirements contained in the Law
218 are met. The purpose of the exemption in the amended Law is to remove much of the
219 requirements of the Law for these particular entities. The Nation is still afforded the opportunity
220 to have some oversight over these entities in certain circumstances such as inspection of an entity
221 if an outbreak of a foodborne illness occurs that can be tied back to the exempted entity.
222

<u>Cottage Food Sales [3 O.C. 305.8-1].</u> The EHS Department has the authority under the amended Law to add or subtract any additional qualifying foods from the list of cottage foods [3 O.C. 305.3-1(e)] that are processed or packaged at a person's home kitchen of a domestic residence and only for direct sale to the consumer [3 O.C. 305.3-1(d)]. Cottage food operators are exempt from the requirements of the Law upon registering with the EHS Department, which requires that they disclose the cottage food operator's name and domestic address where products will be produced. Additionally, the cottage food operator is required to package and label their cottage food products with the name and address of the operator, date processed, name of food product, and display a sign that states that the products are homemade and not subject to inspection by the Nation [3 O.C. 305.8-1]. Home canned foods require a food safety training approved by the EHS Department [3 O.C 308.8-1(c)]. The EHS Department has the authority to inspect the cottage food operator's domestic residence, if a complaint is received or event giving rise to the EHS Department's reasonable suspicion of noncompliance of the cottage food exemption [3 O.C. 305.8-3].	<p>Cottage Food Sales What Are Cottage Food Products? Cottage food products are foods produced in a home kitchen of a domestic residence that are non-potentially hazardous which means that it does not require any type of temperature control to prevent it from going bad. Cottage food products include:</p> <ol style="list-style-type: none"> 1. Home baked goods such as cakes, most fruit pies, breads, brownies, cookies and muffins, dry mixes, dried fruit; 2. Home canned naturally acidic fruits and vegetables or with a pH of 4.6 or lower such as apples, peaches and lemons; 3. Acidified by pickling or fermenting home canned salsas, pickled vegetables and hot sauces with a pH of 4.6 or lower; 4. Jams, jellies and applesauce; and 5. Other non-potentially hazardous foods the EHS department characterizes as cottage food products for purposes of this law. <p>Cottage food products have a low risk to health and most states in the country have exempted these products with varying levels of oversight, permit, license, or inspection requirements. Cottage food laws function as an exemption to general food safety laws and allow small processors to sell their products directly to consumers on a small scale [University of Arkansas Cottage Foods Model Food Code]. Some states have implemented a requirement to register an address and the name of the individual preparing cottage foods [Montana Code 50-50-116, page 10] to conduct some type of inspection should an outbreak occur directly linked to cottage food products [Montana Code 50-50-301(3), page 18].</p>
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Chart 2: Cottage Foods License Exemptions Comparison

Cottage Foods License Exemptions Comparison						
Home Bakers and Home Canners						
	Oneida Nation Reservation		State of Wisconsin		State of Minnesota	
Provision	Home Bakers	Home Canners	Home Bakers	Home Canners	Home Bakers	Home Canners
License	No	No	No	No (under \$5000 in sales)	No (under \$18,000 in sales)	No (under \$18,000 in sales)
Registration	Yes	Yes	No	No	Yes	Yes
Required Training	No	Yes	No	No (training is recommended)	Yes	Yes
Inspections	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion
Label Requirements	Yes	Yes	Yes	Yes	Yes	Yes

Although cottage food producers are exempt from the requirements of the Law, there will be some oversight to protect the Nation from potential foodborne illness that may arise from the production of cottage foods. The LOC decided that some oversight for cottage food producers would be in the best interest of the Nation. The Law will require home bakers and canners to label their products, register with their name and address of domestic residence where cottage foods are produced and undergo inspections if a complaint is made or if the EHS Department has reasonable suspicion of noncompliance with the requirements for a cottage food sales exemption [3 O.C. 305.8-3]. For comparison; the State of Wisconsin exemption requires labeling of cottage food products but does not require a license, registration or training for cottage food producers that make less than \$5,000 from the sale of cottage foods per year. Inspections are limited to certain circumstances. The State of Minnesota requires the labeling of cottage food products, registration of cottage foods producers with the local health authority in the county where the domestic residence is located, training requirements related to the production of cottage foods and inspections under certain circumstances.

Prepackaged Restaurants [3 O.C. 305.8-2]. Prepackaged restaurants are establishments that serve and/or sell only prepackaged foods with preparation on site limited to heating and serving [3 O.C. 305.3-1(w)]. The LOC added an exemption to the Law for prepackaged restaurants with the following criteria: a reduced fee, fewer inspections and no training requirement [LOC Work Meeting 11/15/19]. Prepackaged restaurants are exempt from the requirements of the Law except that they must apply with the EHS Department which includes a requirement for an inspection and agree to sell only prepackaged foods approved by the Department [3 O.C. 305.8-2]. The EHS Department has discretion to draft a standard operating procedure for the application process and will determine how the EHS Department will keep track of prepackaged restaurants [3 O.C. 305.8-2(a)]. The Food safety training or certification is not required but can be ordered by the EHS Department by the issuance of a corrective order [3 O.C. 305.8-2(b)]. The reason the training requirement was removed for prepackaged restaurants is because these establishments are limited to heating precooked foods according to directions on the package and the LOC determined this doesn't require food handling training due to low risk to public health. The EHS Department will provide written notice to the public of prepackaged foods allowed under this exemption [3 O.C. 305.8-2(a)(3)(A)]. The EHS Department may inspect prepackaged restaurants as often as deemed necessary for cause; but only once per year without cause [3 O.C. 305.8-2(c)].

Enforcement of cottage food operations and prepackaged restaurants includes an inspection by the EHS Department based on a receipt of a complaint or reasonable suspicion by the EHS Department [3 O.C. 305.8-3(a)] which may result in an action by the EHS Department according to the Violations, Enforcement section detailed below [3 O.C. 305.10]. Exemption status does not limit the liability of the owner of a cottage food operator or a prepackaged restaurant from damages that may happen due to the sale of their products [3 O.C. 305.8-3(c)].

H. **Inspections** [3 O.C. 305.9]. This section has been clarified. The EHS Department is authorized to conduct two (2) inspections at any time during reasonable hours per license term for any reason; in addition to any inspections required for the issuance of a license under section 305.7 of this Law [3 O.C. 305.9-1]. Additionally; the amendments clarify that the EHS Department may conduct an unscheduled inspection based on the receipt of a complaint, an outbreak of a foodborne illness or reasonable suspicion of a violation of this Law or an emergency [3 O.C. 305.9-2]. Any reinspection as a result of a violation of this Law requires additional fees [3 O.C. 305.9-3].

I. **Violations, Enforcement** [3 O.C. 305.10]. This section has been amended. The amendments authorize EHS Department as the sole entity to issue and enforce violations of this Law. Non-compliance with the Law may result in the EHS Department issuing the following: a license suspension or revocation, a corrective order which may include an order to close down, and/or a citation [3 O.C. 305.10-1]. Any food service business or prepackaged restaurant ordered to close down must comply with the corrective order issued, pass a reinspection and pay any applicable fees by the EHS Department before being eligible for operation. Citations were added to the Law and include fines, penalties and/or corrective orders as set forth in the fine and penalty schedule established by the EHS Department, subject to approval by the OBC resolution [3 O.C. 305.10-1(c)]. Any food service business or prepackaged restaurant ordered to close down will only be eligible for a probationary license for six (6) months which is the same as the current Law [3 O.C. 305.10-2(a)]. Food services business ordered to close down are not entitled to a reimbursement of any portion of the licensing fee or fees [3 O.C. 305.10-2(b)].

The Licensing Department, Oneida Police Department and Oneida Business Committee were removed from this section of the Law to streamline this process within the EHS Department [3 O.C. 305.12-5 of Current Law]. Forfeitures were removed from the Law [3 O.C. 305.12-7(d) of Current Law].

J. **Appeal Rights** [2 O.C. 305.11]. Persons who disagree with the decisions of the EHS Department regarding anything other than a citation can appeal the decision to the Area Manager of the Environmental, Health, Safety and Land Division [3 O.C. 305.11-1].

- The appeal must be made within ten (10) business days of receiving the decision from the EHS Department. The Area Manager has five (5) business days to make a determination and will send the decision in writing by registered mail (return receipt requested) or deliver the written determination in person to the person who filed the appeal. The Area Manager may suspend the time frames if an investigation is necessary [3 O.C. 305.11-1(b)(1)]. The Area Manager's decision is final unless appealed to the Trial Court of the Judiciary if it is believed that the decision was:

- contrary to law;
- without any reasonable basis; and/or
- an abuse of power.

- This Law authorizes the Trial Court to exercise jurisdiction over appeals of the Area Manager's decision [8 O.C. 801.5-2] when the above exist; following the Oneida Judiciary Rules of Civil Procedure [8 O.C. 803].
- Decisions of the Trial Court are appealable to the Court of Appeals [8 O.C. 801.8-2(a)(1)] following the Rules of Appellate Procedure [8 O.C. 805]. Decisions of the Court of Appeals are final.

Persons who wish to contest the issuance of a citation for violation of this Law must appear in person and will follow the procedure contained in the Nation's laws and policies governing citations [3 O.C. 305.11-2].

- There are not currently any laws of the Nation governing citations. A law is currently being developed governing citations.

K. **Minor Drafting Changes.** The Law has been clarified through additional minor drafting changes.

- L. **Insurance** [3 O.C. 305.7 of Current Law]. Insurance requirements and the Risk Management Department was removed from the Law. Insurance is no longer referenced in the Law. The LOC has determined that each individual food service business is liable for any damages caused by the food they sell, and insurance is obtained at the discretion of each food service business.

SECTION 6. RELATED LEGISLATION

- A. **Reference to Other Laws.** The following laws of the Nation are referenced in this Law and legislative analysis and are required to be followed:
- Judiciary [8 O.C. 801]. The Trial Court of the Judiciary has subject matter jurisdiction where laws of the Nation specifically authorize the Trial Court to exercise jurisdiction [8 O.C. 801.5-2]. The Oneida Food Service law authorizes the Trial Court to hear appeals of EHSLD Area Manager decisions related to anything not issued by citation and when the Area Manager's decision is believed to be contrary to law, without any reasonable basis or an abuse of power [3 O.C. 305.11]. The Judiciary law authorizes the Court of Appeals to review final orders and judgments of the Trial Court [8 O.C. 801.8-2(a)(1)].
 - Oneida Judiciary Rules of Civil Procedure [8 O.C. 803]. This Law governs the procedure used when filing an action with the Oneida Judiciary.
 - Rules of Appellate Procedure [8 O.C. 805]. This Law governs the procedure used when filing an action with the Court of Appeals and is used in conjunction with the Oneida Judiciary Rules of Civil Procedure.
 - Legislative Procedures Act [1 O.C. 109]. This Law governs the format that will be followed for all Laws of the Nation. The format of the amended law was updated to meet requirements in this Law.
- B. There are no conflicts between the proposed amendments and the Oneida Code of Laws.

SECTION 7. IMPLEMENTATION

- A. **Inspections.** Inspection authority has not changed. The EHS Department has authority to conduct inspections twice per year at their discretion [3 O.C. 305.9-2].
- B. **Resources and Implementation.** The EHS Department will utilize existing staff to implement and enforce this Law [3 O.C. 305.6]. The Licensing Department staff and Risk Management Department staff were removed from the Law.
- C. **Due Process.** Parties who disagree with decisions of the EHS Department regarding any decisions not issued by citation can appeal to the Area Manager of the Environmental, Health, Safety and Land Division. Area Manager decisions that are believed to be contrary to law, without any reasonable basis or an abuse of power can be appealed to the Trial Court of the Judiciary [3 O.C. 305.11]. Decisions of the Trial Court are appealable to the Court of Appeals [8 O.C. 801.8-2(a)(1)]. Citations issued can be appealed in person in accordance with the procedure contained in the Nation's laws and policies governing citations [3 O.C. 305.11-2].

SECTION 8. OTHER CONSIDERATIONS

- A. **Citations Law.** A citation for a violation of this Law will be processed in accordance with the procedure contained in the Nation's laws and policies governing citations [3 O.C. 305.10-1(c)(2)].
- There are currently no laws of the Nation governing citations. There is a Citations law on the LOC's active files list that is currently being developed.
- B. **Fiscal Impact.** Please refer to the fiscal impact statement for any fiscal impacts.
- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation.
 - i. A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee [1 O.C. 109.6-1].
 - ii. Fiscal impact statements may be prepared by any agency who may receive funding if the legislation is enacted, any agency who may administer a program if the legislation is enacted, any agency who may have financial information concerning the subject

- 368 matter of the legislation, or by the Finance Office, upon request of the Legislative
369 Operating Committee [1 O.C. 109.6-1(a) and (b)].
- 370 iii. The fiscal impact statement is important in the decision-making process related to
371 legislation developed by the Legislative Operating Committee. When a fiscal impact
372 statement is requested from the Finance Department; the Chief Financial Officer will
373 submit a Fiscal Impact Statement to the LOC within ten (10) days of final approval of
374 the draft legislation [Resolution BC-09-25-19].

375 **Research Citations**

376 Cottage Food Exemption, 2019 Minnesota Statutes. <https://www.revisor.mn.gov/statutes/cite/28A.152>

377
378 FDA Food Code <https://www.fda.gov/food/retail-food-protection/fda-food-code>

379
380 Montana Code Annotated Statute for: Retail Food, Temporary Event Permitting and Cottage Foods
381 <https://dphhs.mt.gov/Portals/85/publichealth/documents/FCS/Retail%20food%20MCAs.pdf>

382
383 2009 Wisconsin Act 101 <http://docs.legis.wisconsin.gov/2009/related/acts/101>

384
385 University of Arkansas Cottage Foods Model Food Code. <https://www.tribalfoodcode.com/>

Title 3. Health and Public Safety – Chapter 305

~~ONEIDA FOOD SERVICE CODE~~

Kahkwa'ó·ku

about the food

ONEIDA FOOD SERVICE

305.1-1. Purpose ~~and Policy~~

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305.12-1 Violations, Enforcement

305.13-1 ~~11. Appeal Rights~~

305.1. ~~6.~~ Authority

305. Amendment, Repeal

305.1-1. The Oneida Nation is a federally recognized Indian tribe with the sovereign authority to enact laws as authorized in Article IV, section 1 (f) of the Oneida Constitution.

305.1-2. The policy of this Code is to ensure the safe food handling and sales by food vendors who sell their products for profit on tribal property within the exterior boundaries of the Oneida Nation in Wisconsin through licensing, regulation, control and supervision of those vendors.

305.1-3. The purpose of this Code is to protect and preserve the safety of Oneida Nation citizens and others within it's jurisdiction in conjunction with the most current United States Public Health Service Food Code, hereinafter, the Federal Food Code.

305.1-4. The Federal Food Code is adopted along with this Code to provide guidelines regulating the retail sale, commercial and institutional service and vending of food; defining permit holder, person in charge, employee, food, potentially hazardous food, food establishment, safe material, sanitation, and other terms; and providing standards for employee food safety knowledge, health and practices, food sources, preparation, holding temperatures, and protection; equipment design, construction, installation, cleaning and sanitation, water and liquid and solid wastes, facilities construction and maintenance, and storage and use of poisonous and toxic materials; requiring a license to operate a food establishment; providing for the restriction or exclusion of employees, the examination and condemnation of food, and the enforcement of this code including the setting of penalties. (*Chapter 8 and the Chapter 8 annex, annex 1 of the Federal Food Code.*)

1. Purpose and Policy

305.1-1. *Purpose.* The purpose of this law is to ensure the safety of food that is provided to consumers at retail or through an Oneida Nation Food Service Program by establishing a system of overlapping safeguards designed to minimize foodborne illness; ensure employee health, industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable levels of sanitation on the premises of food service businesses; and promote fair dealings with members of the community through adoption of licensing requirements, exemptions, regulation, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation.

305.1-2. *Policy.* It is the policy of the Nation to protect the health, welfare and safety of the community and to strengthen the Nation’s self-governance by ensuring, through the exercise of its inherent sovereignty over the Nation’s resources and membership, that food provided at retail or through an Oneida Nation Food Service Program is unadulterated, prepared in a clean environment and honestly presented.

305.2. — Adoption, Amendment, Repeal

305.2-1.— This ~~Code is~~ law was adopted by the Oneida Business Committee by ~~Resolution# 6resolution BC-06-13-01-B~~ and amended by ~~resolution~~ resolutions BC-02-25-15-C and ~~is effective ten (10) business days after adoption.~~BC- - - - .

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

305.2-3.— Should a provision of this ~~Code~~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 ~~will continue~~are considered to have legal force without the invalid portions.

~~305.2-4.— All previously enacted or adopted Oneida laws, ordinances, policies or other regulations that are inconsistent or conflict with this Code are hereby repealed unless re-enacted after adoption of this Code.~~

305.2-4. 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.

305.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

305.3. — Definitions

305.3-1.— This section shall govern the definitions of words and phrases used within ~~the~~this law. All words not defined herein shall be used in their ordinary and everyday sense.—

~~(a) “Oneida Nation” means the Oneida Tribe of Indians of Wisconsin.~~

~~(b) —“Tribal Property” means property that is owned by.~~ (a) “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 a person of a violation of law.

(b) “Close-down” means an order issued by the Department to discontinue operation of a food service business or exempt operation under section 305.8 of this law in order to protect the health, safety and/or welfare of the community.

(c) “Consumer” means an individual who is a member of the public; takes possession of food; is not functioning in the capacity of a food service business, a cottage food operator, a prepackaged restaurant, or a food processing plant; and does not offer the food for resale.

(d) “Cottage food operator” means an individual who, exclusively within the home kitchen of his or her domestic residence, produces cottage food products for direct sale only.

(e) “Cottage food products” mean foods, produced within the home kitchen of a domestic residence, that are non-potentially hazardous, including non-perishable baked goods such as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit; jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or salsa, pickled vegetables and hot sauces; and other non-potentially hazardous foods that the Department characterizes as cottage food products for purposes of this law.

(f) “Department” means the Environmental, Health and Safety Department within the Nation’s Environmental, Health, Safety and Land Division.

(g) “Direct sale” means a consumer’s face-to-face purchase of a cottage food product from a cottage food operator that does not include purchases through consignment, mail order, or the internet, though nothing herein shall be interpreted to prohibit a cottage food operator from using the internet for the sole purpose of advertising his or her cottage food products.

(h) “Domestic residence” means the single-family house or unit in a multiunit residential structure located at the address that the applicant lists as being his or her primary residence when applying to the Department for a cottage food exemption under this law.

(i) “Emergency” means the occurrence or discovery of an unforeseen event that requires immediate attention, the absence of which could endanger the health or safety of others.

(j) “Federal Food Code” means the most current edition of the United States Public Health Service, Food and Drug Administration Food Code.

(k) “Fine” means a monetary punishment issued to a person for violation of this law.

(l) “Food” means a raw, cooked or processed edible substance; ice; beverage; or ingredient used or intended for use or for sale in whole or in part for human consumption or chewing gum.

(m) “Food service business” means, whether individually or collectively, a permanent food service establishment; a temporary food service establishment; and/or an independent food service operator. The following shall not qualify as a food service business under this law:

(1) Private rummage sales;

(2) Community sponsored non-profit fundraising and/or charity events;

(3) Cottage food operators who satisfy the requirements of this law; and/or

(4) Prepackaged restaurants that satisfy the requirements of this law.

(n) “Home-canned foods” means home-canned fruits and vegetables that are naturally acidic or have been acidified by pickling or fermenting and have an equilibrium pH of 4.6 or lower.

(o) “Independent food service operator” means a person, other than one who qualifies as a cottage food operator, who sells, for profit, food that is prepared off-site, independent of a permanent establishment, at or within a location approved by the Department.

(p) “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 to administer the judicial authorities and responsibilities of the Nation.

(q) “License” means the tangible proof of authorization from the Department to operate a permanent food service establishment, operate a temporary food service establishment and/or function as an independent food service operator.

(r) “Nation” means the Oneida Nation ~~in fee or held in trust for the~~.

(s) “Penalty” means a punishment, other than a fine, imposed on a person for violation of this law.

(t) “Permanent food service establishment” means a permanent unit and/or location where food is processed on the premises, usually for retail sale, and intended for individual consumption, whether on or off the premises, including, but not limited to, the following:

(1) A restaurant or other eating/drinking establishment that does not qualify as a prepackaged restaurant;

(2) A market or grocery store;

(3) A catering business;

- (4) A bakery or confectionary;
 (5) A convenience store or gas station store;
 (6) An Oneida Nation by the United States of America. Food Service Program;
 and/or
 (e) — “ (7) A mobile food truck that requires a Department approved service base to operate.
 (u) “Person” means a natural person(s), sole proprietorship, partnership, corporation, limited liability company or any other form of a legal entity.
 (v) “Potentially hazardous food” means food that requires time and temperature control for safety to limit toxin formation or the growth of pathogenic microorganisms.
 (w) “Prepackaged restaurant” means an establishment that serves or sells only packaged foods that are prepared and packaged off-premise by a licensed processor with preparation on the premise limited to heating and serving.
 (x) “Reservation” means that area in Wisconsin all the property within the exterior boundaries as set out in the of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the United States of America. Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
 (d) “Federal Food Code” means the most current United States Public Health Service Model Food Code.
 (e) “Food Service Establishment” means a permanent unit or location on tribal property which food is processed on site and intended for individual consumption usually for retail sale. The term includes any such place whether consumption is on or off premises, including, but not limited to the following:
 (1) A restaurant or eating/drinking establishment
 (2) A market or grocery
 (3) A catering business
 (4) A bakery or confectionary
 (5) A convenience store or gas station store
 (f) “Independent Food Service Vendors” are those individuals who sell food on tribal property for profit that prepare food off site independent of a permanent establishment such as a restaurant, at a source that has been approved by the Environment Health and Safety Department.
 (g) — (y) “Temporary Food Service” means a food service establishment means a non-permanent food service establishment that operates at a fixed location for a limited number of consecutive days in conjunction with a single event.

305.4. Application

305.4-1. This law shall apply to all food service businesses, prepackaged restaurants and cottage food operators located or operating within the Reservation.

305.4-2. Liberal Construction. The provisions of this law shall apply to the fullest extent of the sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

305.5. Compliance

305.5-1. No person shall operate a food service business without a valid, unexpired license from the Department.

(a) Licenses to operate a food service business are non-transferable.

(b) Unless otherwise provided herein, strict compliance with this law is required before a license may be issued or renewed.

305.5-2. Federal Food Code. The Nation finds that the Federal Food Code establishes a high level of stringent food and beverage handling safety standards that should govern all food service businesses to which this law applies.

(a) Unless otherwise provided herein, the Nation hereby adopts the entire Federal Food Code through incorporation by reference into this law.

(1) Any additions to or deviations from the Federal Food Code that are included within this law are designed to be specific to the Nation.

(2) Should a provision of this law conflict with a provision of the Federal Food Code, the provision of this law shall have priority over the Federal Food Code and govern.

(b) The Department shall maintain either an electronic or print copy of the most current edition of the Federal Food Code at its office location and shall make it available or accessible for inspection during regular business hours.

305.6. Authority

305.6-1. Authority of the Department. Subject to all applicable provisions and/or restrictions contained in this or any other governing law of the Nation, the Department shall be responsible for the administration and enforcement of this law, including, but not limited to, that the Department shall have the power to:

(a) Grant, deny, renew, suspend, reinstate and/or revoke licenses to operate food service businesses and make all other determinations regarding suitability for licensure and exemption from licensure;

(b) Establish licensing fee, fine and penalty schedules;

(c) Establish standard operating procedures to govern how it administers and enforces the provisions of this law;

(d) Perform all requisite inspections and conduct investigations when necessary; and/or

(e) Issue citations and corrective orders for violations of this law and/or when necessary to protect the welfare of the community.

305.7. Licensing on tribal property

305.7-1. Licenses. The following shall govern the process for obtaining and renewing a license to operate a food service business:

(a) *License Application.* Persons shall be required to apply to the Department to receive or renew a license to operate a food service business pursuant to the application process established by the Department through adoption of a standard operating procedure that conforms to this law and includes, at a minimum, the following:

(1) That, the applicable licensing fee must accompany the application for licensure or license renewal; and

(2) That, the Department shall be required to issue or deny a license within thirty (30) days after receiving a complete application for licensure or license renewal, all applicable fees, and any other information required under the governing standard operating procedure.

(A) The issuance or renewal of a license may be conditioned on the applicant correcting a violation of this law within a set period of time, which if not corrected within the set time or after an extension of time approved by the Department, would render the license null and void.

(B) If the Department denies an application for licensure or license renewal, it shall provide the applicant, in writing, with its reason or reasons for the denial and information on how to appeal its decision.

(b) License Period.

(1) Licenses for permanent food service establishments and independent food service operators shall be issued and renewed by the Department for terms of one (1) year, commencing October 1st and ending September 30th of every year.

(2) Licenses for temporary food service establishments shall be issued by the Department to cover one (1) single event for a period of not more than fourteen (14) consecutive days in conjunction with a single event or celebration.

(h) “Environmental Department” means the Oneida Environment Health and Safety Department, hereinafter, EHS.

(i) “(c) License Fee. The Compliance” means to operate a food service business, i.e. a food service establishment, an independent food service or a temporary food service in conformity with the requirements of this Code, the Federal Food Code and the EHS standard operating procedures.

(j) The “Licensing Department” means that department within the organizational structure of the Compliance Division of the Oneida Nation responsible for administering and issuing licenses within the tribal jurisdiction in accordance with Oneida Laws, Ordinances and Codes.

(k) “The Business Committee” means the Oneida Business Committee

(l) “Risk Management” means the Oneida Risk Management Department.

(m) “Emergency” means that situation an unforeseen occurrence that requires immediate attention, the absence of which would endanger the health or safety of others due to the imminent nature of the circumstance.

(n) “Close down” means that the food service vendor, by order of the Compliance Division in conjunction with the Business Committee and the Oneida Police Department, based upon the recommendation of the EHS, will be prohibited to be open for business to the public for the protection of the health, safety or welfare of the community.

(o) “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC 01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

(p) Adopt all other definitions as written in the Federal Food Code.

305.4. Responsibilities and Duties

305.4 1. The EHS Department shall administer and regulate the requirements of this Code and the Federal Food Code pursuant to their updated Standard Operating Procedures, hereinafter, “SOP’s”, for Food Service Vendors.be

305.4 2. The EHS Department shall conduct food handling classes that are required for to set a licensing of independent and temporary food vendors. Food service establishment vendors are exempt from this requirement but are to uphold other requirements per the Federal Food Code.

305.4 3. ~~The EHS Department shall have a copy of the most current Federal Food Code available for inspection at the EHS offices by any and all food service vendors during regular business hours.~~

305.4 4. ~~The EHS Department shall have a copy of their SOP's for Food Service Vendors available for inspection at the EHS offices by any and all food service vendors during regular business hours.~~

305.4 5. ~~Risk Management shall make the determination to ensure that the vendor has adequate insurance coverage.~~

305.4 6. ~~The fee schedule, subject to **Licensing** Department shall issue a Food Service License, Temporary Food Service License, and a badge for Independent Food Vendors upon successful compliance of the requirements of this Code and the Federal Food Code.~~

305.4 7. ~~The Licensing Department, in conjunction with the EHS Department, shall determine the fees for the Food Service Licenses annually and post these prominently in the EHS a Licensing Department.~~

305.4 8. ~~The Licensing Department shall determine the monetary fines for noncompliance with this Code as approved by the Business Committee.~~

~~305.5. — Compliance~~

305.5 1. ~~Strict compliance with the specific laws found in this Code and the Federal Food Code are required.~~

305.5 2. ~~Additions or modifications to the Federal Food Code found in this Code are designed to be Oneida specific.~~

305.5 3. ~~Non-compliance with this Code or the Federal Food Code will be addressed by the License Department of the Compliance Division upon written complaint and or recommendation from the EHS or Risk Management Departments.~~

~~305.6. — Requirements for Licensing~~

305.6 1. ~~No person or person, corporation or firm shall operate a food service establishment either permanent or temporary, or sell food as an independent food service vendor on tribal property, who does not have a valid, unsuspended, unrevoked Oneida Food Vendors License issued by the License Department.~~

305.6 2. ~~Only a person or persons, corporation or firm that complies with the requirements of this Code and the Federal Food Code shall be entitled to receive and retain an Oneida Food Vendors License.~~

305.6 3. ~~A valid license shall be posted in every food service establishment or temporary food service premises; and every independent food vendor shall prominently display the valid badge issued by the EHS Department.~~

305.6 4. ~~A Food Service License will be issued as follows:~~

(a) ~~All Food Service Establishments, Independent Food Service vendors and Temporary Food Service vendors must meet the general requirements of the Federal Food Code.~~

(b) ~~Independent Food Vendors and Temporary Food Vendors are required to satisfy the requirements of the EHS safe food handling instruction and certificate of completion of training must be presented to the Licensing Department prior to the issuance of a Food Service License.~~

Food Service Establishments must satisfy the requirements of the EHS's pre-inspection report which will be provided to the Licensing Department prior to the issuance of a Food Service License.

(c) The Licensing Department shall issue a Food Service License pursuant to the recommendations by EHS regarding assurances that the applicant has met the conditions that are required for a satisfactory score pursuant to this Code, the EHS SOP's and the Federal Food Code guidelines with the Hazard Analysis and Critical Control Point, Techniques of Quality Control.

(d) Food Service Licenses for permanent Food Service Establishments and Independent Food Service vendors shall be issued by the License Department for a 12-month period beginning at the fiscal year, October 1 and ending September 30 of the following fiscal year.

(e) Those food vendors that initiate their business at a time other than October 1 of any given year shall have their fees prorated for that year.

(f) Renewal of a license will be for an additional 12 months per fiscal year by the License Department upon approval of ~~by~~ the EHS Department.

(g) Temporary Food Service Licenses shall be issued for no more than 14 days at a time.

(h) Temporary Food Service Vendors must have at least one food handler that has successfully completed the EHS food handling instruction and have their certificate of completion displayed at all times during hours of operation.

(i) Food Service Licenses for Food Service Establishments and Temporary Food Service vendors shall be displayed in a conspicuous location within the permanent or temporary food service establishments.

(j) Independent Food Service Vendors must display their badges. (See 305.10, below.)

(k) No food prepared by a Food Service Vendor shall be prepared in any room used as, or adjacent to, living or sleeping quarters.

305.6-5.—Oneida Tribal Enterprise Units and Oneida Tribal Business Units shall be required to adhere to the requirements of this code when selling food for profit on tribal property.

305.6-6.—Food Service Licenses are non-transferable.

305.7. Insurance

~~305.7-1.~~ Food Service Establishments and Independent Vendors are required to have adequate insurance as determined by the Risk Management Department's Standard Operating Procedures.

~~305.7-2.~~ Upon satisfying the requirements of the EHS Department, Food Service Establishments and Independent Food Service Vendors must provide the necessary documents of insurance to Risk Management Department.

~~305.7-3.~~ At any time during the term of the food service license, if the vendor loses his or her insurance coverage, this must be reported immediately by the vendor to Risk Management and/or the License Department.

~~305.7-4.~~ Temporary Food Service vendors are exempt from the requirement for additional insurance under this section.

305.8. Inspections

~~305.8 1.— Food Establishment Vendors and Temporary Food Service Vendors who apply for a license must undergo a pre-inspection of the permanent or temporary establishment by the EHS Department inspector that results in a satisfactory score under the Federal Food Guidelines.~~

~~305.8 2.— Independent Food Service Vendors who apply for a license must undergo a pre-inspection of the kitchen or original food preparation premises by the EHS Department inspector that results in a satisfactory score under the Federal Guidelines.~~

~~305.8 3.— Inspections of the food service premises by the EHS Department will be scheduled twice a year.~~

~~305.8 4.— At any time during the term of the license, either upon receipt of a complaint or upon their own volition, the EHS Department may conduct an unscheduled inspection of a vendors food preparation site.~~

~~305.8 5.— A reinspection conducted as a result of a prior violation of this code or the Federal Food Code, will be an additional fee to the vendor and must achieve a satisfactory score under the Federal guidelines to cure the violation.~~

~~305.9.— Fees~~

~~305.9 1.— The Food Service license fees shall cover a twelve (12) month period and shall be paid in advance with the application for licensure.~~

~~305.9 2.— The fee shall be paid annually at the beginning of each fiscal year which is October 1~~Committee ~~through September 30 of the following year~~adoption of a resolution, that is applicable to all food service businesses.

~~305.9 3.— The license fees will be prorated for those applicants who start up their business prior to the beginning of the fiscal year.~~

~~305.9 4.— The fee shall be returned in full if the application is denied.~~

~~305.9 5.— The licensing agent shall keep fee records.~~

~~305.9 6.— Food Service vendors that have had their license suspended or their businesses closed will not be entitled to a refund of their fees.~~

~~305.9 7.— The fee for a food service license shall be pursuant to an equitable fee schedule as established by the EHS and License Department as reviewed and approved by the Business Committee and shall be available in the Licensing and EHS Departments for review.~~

~~305.9 8.— The fee schedules may be adjusted annually.~~

~~305.9 9.— Food Service vendor fees shall be used for the operational budget of the EHS (80%) and administrative budget of the License Department (20%).~~

~~305.9 10.— Oneida Tribal Enterprise Units are required to pay the license fees under this code.~~

~~305.9 11.— Oneida Tribal Business Units are exempt from the fee requirements.~~

~~305.10.— Independent Food Service Vendors Badge~~

~~305.10 1.— Upon compliance with the requirements of this Code and the Federal Food Code, the Independent Food Service Vendors and their employees, if any, will be issued a badge by EHS with the vendors/employee's photograph and license number clearly visible.~~

~~305.10 2.— The badge must be worn by the licensed Independent Food Service Vendor and employees in a manner that is clearly visible to the public at all times while engaging in the sale of their food product.~~

(1) The fee amount shall cover the initial license term for permanent food service establishments and independent food service operators and shall cover a single

event of not more than fourteen (14) consecutive days for temporary food service establishments.

(A) A separate licensing fee shall be required when applying to renew a license for a permanent food service establishment or independent food service operator.

(B) The licensing fee for a permanent food service establishment license or independent food service operator license that was issued after October 1st shall be prorated for that term pursuant to a standard operating procedure established by the Department.

(C) Unless otherwise provided herein, if an application for licensure or license renewal is denied by the Department, the licensing fee submitted with the application shall be returned to the applicant in full.

(2) The Department shall post the licensing fee schedule in a prominent area within its offices and elsewhere as it deems appropriate.

(A) The licensing fee schedule shall include the fee established by the Department to operate a prepackaged restaurant pursuant to section 305.8 of this law.

(B) The Department may amend the licensing fee schedule as it deems necessary, subject to approval by the Oneida Business Committee through adoption of a resolution.

~~(3) 305.10-3. Independent Food Service vendor badges are non-transferable and must be worn only by the individual to whom it was issued.~~

305.11. Exceptions and Exemptions.

~~305.11-1.~~ (A) The following Oneida Nation Food Service Programs and other non-profit service programs of the Nation shall not be required to pay a licensing fee to obtain a license under this law.

(B) The Department shall waive the licensing fee required hereunder upon proof from a food service vendors will be business or prepackaged restaurant of payment to another governmental unit located within the boundaries of the Reservation for a similar license or permit to operate that covers the same term.

305.7-2. License Eligibility.

(a) *Permanent Food Service Establishments.* To be eligible to receive a license to operate a permanent food service establishment, applicants must:

(1) Submit the appropriate licensing fee with their application;

(2) Pass an inspection by the Department of the proposed premises for the permanent food service establishment; and

(3) Satisfy any other provision within or arising out of this law that is a prerequisite for licensure to operate a permanent food service establishment.

(b) *Temporary Food Service Establishments.* To be eligible to receive a license to operate a temporary food service establishment, applicants must:

(1) Submit the appropriate licensing fee with their application;

(2) Submit proof of having undergone either:

- (A) Certification under the applicable food safety training offered through the Department; or
- (B) Certification or training that the Department, in its discretion, deems equivalent to the corresponding food safety training offered through the Department.
- (3) Pass an inspection by the Department of the proposed premises for the temporary food service establishment; and
- (4) Satisfy any other provision within or arising out of this law that is a prerequisite for licensure to operate a temporary food service establishment.
- (c) Independent Food Service Operators.* To be eligible to receive a license to function as an independent food service operator, applicants must:
- (1) Submit the appropriate licensing fee with their application;
- (2) Submit proof of having undergone either:
- (A) Certification under the applicable food safety training offered through the Department; or
- (B) Certification or training that the Department, in its discretion, deems equivalent to the corresponding food safety training offered through the Department.
- (3) Pass an inspection by the Department of the proposed premises designated in writing by the applicant as the food preparation site; and
- (4) Satisfy any other provision within or arising out of this law that is a prerequisite for licensure to function as an independent food service operator.
- (d) Training.* The Department shall provide reasonable opportunities for persons to undergo the food safety training that is referenced in section 305.7-2(b)(2)(A) and (c)(2)(A) of this law.

305.7-3. License Placement.

- (a) Permanent and Temporary Food Service Establishments.* A valid license shall, at all times, be posted in a conspicuous area within the premises of every permanent food service establishment and every temporary food service establishment.
- (b) Independent Food Service Operators.* A valid license shall, at all times, be prominently displayed on the body of the license holder whenever functioning as an independent food service operator.

305.8. Exemptions

305.8-1. Cottage Food Sales. Cottage food operators are exempt from the requirements of this Code law, except as follows:

- (a) Registration.* Before selling any cottage food products, individuals must register with the Department as a cottage food operator by providing, at a minimum, their:
- (1) Full name;
- (2) Address of domestic residence; and
- (3) Any additional information required by a standard operating procedure that the Department may establish, consistent with this law, to govern cottage food sales.
- (A) By registering as a cottage food operator, the individual is confirming that the information he or she provided is correct and agreeing to operate within the confines of the exemption.
- (b) Labeling.* Cottage food products must be labeled with the following information:

(1) The name and address of the cottage food operator;

(2) The name of the cottage food product and the date on which it was prepared, processed or canned; and

(3) A clearly legible sign or placard that states: “this product is homemade and not subject to inspection by the Nation.”

(c) *Home-canned Foods.* Individuals who intend to sell home-canned foods under the cottage food sales exemption must first complete the food safety training approved by the Department.

305.8-2. *Prepackaged Restaurants.* Prepackaged restaurants are exempt from the requirements of this law, except as follows:

(a) *Authorization.* Before selling or serving any prepackaged foods, persons must apply to the Department for permission to operate as a prepackaged restaurant pursuant to the application process established by the Department through adoption of a standard operating procedure that conforms to this law and includes, at a minimum, the following:

(1) That, the fee established by the Department to operate a prepackaged restaurant, as set forth in the licensing fee schedule referenced in section 305.7-1 of this law, must accompany the application;

(2) That, the applicant passes an inspection by the Department of the proposed premises for the prepackaged restaurant; and

(3) That, by applying to operate as a prepackaged restaurant, the applicant is agreeing to serve and/or sell only the prepackaged foods that are approved by the Department and to not engage in any food processing or preparation on the premises of the prepackaged restaurant other than the heating and serving of the food.

(A) The Department shall provide written notice, accessible to the public, of the prepackaged foods approved hereunder.

(b) Permission to operate as a prepackaged restaurant shall not be conditioned on any prior training or certification in food safety.

(1) Paragraph (b) shall not prohibit the Department from issuing a corrective order under section 305.10 of this law that requires food safety training or certification.

(c) The Department may reinspect the prepackaged restaurant premises during reasonable hours as often as it deems necessary so long as it does not exceed more than one (1) time per year, absent cause.

305.8-3. *Enforcement.* Violations of this section shall be enforced pursuant to section 305.10 of this law.

(a) Upon receipt of a complaint or its own reasonable suspicion of noncompliance with this section, the Department, in its discretion, may conduct an inspection of a prepackaged restaurant or a cottage food operator’s domestic residence; provided, the inspection of the cottage food operator’s domestic residence is limited to the subject matter of the complaint or event giving rise to the Department’s reasonable suspicion.

(b) This section does not preempt the application of any other law of the Nation or other local governing ordinance to which individuals must comply.

(c) This section does not limit the liability of the owner of a prepackaged restaurant or a cottage food operator for damages that arise out of their sale or service of food hereunder.

305.9. *Inspections*

305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two (2) times per license term, the Department may, for any reason, enter a food service business to conduct an inspection, so long as at a reasonable hour.

~~305.9-2.(a) Private rummage sales.~~

The Department may, at any time during the term of a license, enter a food service business to conduct an unscheduled inspection based on the following:

(a) Receipt of a complaint;

(b) ~~Community sponsored non-profit fund raising~~ Outbreak of a food borne illness; and/or charity events.

(c) Reasonable suspicion of a violation of this law or an emergency.

305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of this law, will result in an additional fee as set forth in the license fee schedule.

~~305.10.(c) Official Tribal meetings such as GTC Meetings.~~

~~(d) Food sold on land other than tribally owned land.~~

305.12. — Violations, Enforcement

~~305.10-1.305.12-1. — Selling food or food products on tribal property without a license is strictly prohibited and will result in a fine and/or the suspension of the vendor's right to continue to sell food, i.e., the business will be closed down.~~

~~305.12-2. — A food service vendor's license will be suspended and the food service closed down if the licensed vendor is in non-compliance with the requirements of this Code, the Federal Food Code or for any other reasons related to the protection of the Oneida Nation's community public health, safety or welfare.~~

~~305.12-3. — A food service vendor's loss of insurance coverage or inadequate coverage for their entity will be cause for a suspension of license and the business will be closed down until the vendor procures adequate coverage and provides the documents thereof to the Risk Management Department.~~

305.12-4. — *Non-compliance.* Violations of this law may result in any one or more of the following as determined by the Department:

(a) The suspension or revocation of a license or license exemption status;

(b) The issuance of a corrective order, including, but not limited to, an order to close-down; and/or

(c) The issuance of a citation that may include one or more of the fines, penalties and/or corrective orders set forth in the fine and penalty schedule established by the Department, subject to approval by the Oneida Business Committee through adoption of a resolution.

(1) Failure to pass an inspection conducted ~~by the EHS~~ pursuant to this law may be cause for ~~a penalty, revocation or suspension of the license pursuant to EHS and Federal Code guidelines.~~ the issuance of one or more of the enforcement mechanisms set forth herein.

(2) Citations shall be issued and processed in accordance with the procedures contained in the Nation's laws and policies governing citations.

~~305.10-2. 305.12-5. — The vendor's food service business may be closed down by the License In addition to satisfying any other mandate issued by the Department in conjunction with the Oneida Police Department for an uncorrected, critical~~ hereunder, a food service business, cottage food operator or prepackaged restaurant that has been closed-down due to a violation of this ~~Code or~~

~~the Federal Food Code~~ law must further pass a reinspection by the Department before being eligible for operation.

(a) A food service business that has been closed-down may only receive a probationary license for six (6) months upon evidence of satisfactory compliance with this law.

(1) After six (6) months of satisfactory compliance with this law, as determined by EHS and as approved by the Business Committee the Department upon a follow-up inspection, the license holder may apply for an annual license.

~~305.12-6. The EHS may close down a business~~ (b) A food service business or prepackaged restaurant that has had its license or license exemption status suspended or has become subject to a close-down order shall not be entitled to a reimbursement of all or any portion of the fee or fees submitted in accordance with the licensing fee schedule.

~~305.10-3. Emergency.~~ The Department may order a close-down of a food service business, cottage food operation and/or prepackaged restaurant immediately on an emergency basis upon evidence of a serious health and/or safety threat to the community ~~due to the imminent nature of the food service violation.~~

~~305.12-7. Any food service vendor that has been closed-~~ (a) Persons issued a close-down order by ~~EHS~~ the Department as an emergency measure ~~due to the evidence of a serious health or safety threat~~ hereunder must provide evidence of satisfactorily corrected compliance to the ~~EHS~~ Department and pass an inspection by the Department prior to being allowed to ~~reopen the business.~~

(a) Any food vendor that has been closed due to a violation of the Food Code must be reinspected by EHS at the vendors cost with a resulting satisfactory score pursuant to this Code and the Federal Food Code guidelines.

(b) Any food service vendor that has been closed down may only receive a probationary license for six months upon evidence of satisfactory compliance with this Code ~~re-open~~ and the Federal Food Code ~~/or continue operations.~~

(c) After six months of satisfactory compliance with this Code and the Federal Food Code, as determined by EHS pursuant to follow up inspections, the vendor may apply for an annual license as before.

(d) Any food service vendor who violates any provision of this Code, upon conviction, shall forfeit not less than \$5.00 nor more than \$500.00, together with the costs of prosecution. In default of payment of such forfeitures and costs, the Food Service business shall be closed down or remain closed down until such forfeitures and costs are paid and all other areas of non-compliance with this Code or the Federal Food Code have been cured.

305.13.—11. Appeal Rights

~~305.13-11-1. Parties who disagree with the decisions~~ *Decisions Not Issued Pursuant to a Citation. Decisions* of the ~~EHS, Licensing or Risk Management Departments, regarding issues of licensing, inspections, or insurance~~ Department that are not issued pursuant to a citation may be appealed, in writing, to the Department's Area Manager.

(a) The written appeal shall be submitted to the Area Manager within ten (10) business days of receiving the decision upon which the appeal is based.

(b) The Area Manager shall render a decision within five (5) business days of receiving the appeal. The decision shall be sent by registered mail (return receipt requested) or delivered in person to the appellant.

(1) The Area Manager may suspend the time limits for rendering a decision if he or she determines that more investigation on the matter is necessary.

(c) The Area Manager's decision shall be final unless a good faith argument exists to appeal to the Trial Court of the Judiciary on one or more of the following grounds:

~~305.13-~~ (1) That, the decision is contrary to law;

(2. ~~Hearings by the~~) That, the decision is without any reasonable factual basis; and/or

(3) That, the decision constitutes an abuse of power.

(A) Appeals initiated hereunder shall be conducted in accordance with the Judiciary ~~will be pursuant to the law and any applicable rules established for the Judiciary of procedure.~~

305.11-2. Decisions Issued Pursuant to a Citation. Decisions of the Department that are issued pursuant to a citation may be contested in accordance with the procedures contained in the Nation's laws and policies governing citations.

(a) A mandatory appearance at the citation pre-hearing is required of all persons wishing to contest a citation issued by the Department hereunder.

End.

Adopted ~~BC-10-03~~06-13-01-DB

Amended ~~BC-02-25-15-C~~

Attachment A.**Food Service License Fees for 2001-2002**~~(To be adjusted annually)~~~~1. Food Service Establishment License~~~~a. Restaurants and Eating/Drinking Establishments~~~~1. With 0-49 seats \$100.00~~~~2. With 50-100 seats \$150.00~~~~3. With 101+ seats \$350.00~~~~b. Retail Food Market, Grocery Store \$175.00~~~~c. Retail Food Market, Grocery Store
With restaurant \$225.00~~~~d. Bakery/Confectionary \$100.00~~~~e. Convenience Store/Gas Station \$100.00~~~~f. Catering Business \$100.00~~~~2. Independent Food Service License~~~~a. \$75.00 annually~~~~3. Temporary Food Service License~~~~a. \$25.00 for each event, not to exceed fourteen consecutive days~~~~4. Tribal Schools No Fee~~**~~THIS LICENSE IS NOT TRANSFERABLE~~**~~All licenses expire on September 30th annually. A penalty of \$50.00 will be applied to renewal applications postmarked after October 15th. Operation in any fiscal year requires a licence.~~

Schedule of Fines
For Non-Compliance with this code or the Federal Food Code

~~Any food service vendor who violates any provision of this chapter, upon conviction, shall forfeit not less than \$5.00 nor more than \$500.00, together with costs of prosecution. In default of payment of such forfeiture and costs, the Food Service business will be closed and/or remain closed until such forfeitures and costs are paid and all areas of non-compliance with this Code or the Federal Food Code have been cured. Oneida Food Code 305.12-7(d).~~

1st Offense, non critical:	<u>\$25.00</u>
2nd Offense in Five Years, non critical:	<u>\$100.00</u>
3rd Offense in Five Years, non critical:	<u>\$200.00</u>
All Subsequent Non-Critical Offenses in Five Years:	<u>\$250.00</u>
1st Offense, Critical:	<u>\$100.00</u>
2nd Offense in Five Years, Critical:	<u>\$300.00</u>
3rd Offense in Five Years: Critical:	<u>\$500.00</u>
All Subsequent Critical Offenses in Five Year:	<u>\$750.00</u>

~~***Note:** Five or more critical offenses in five years will result in the suspension of the license for one year, the business will be closed down and a fine will be imposed to be paid prior to reinstatement.~~

~~Fees for reinspection as a result of an original finding of non-compliance by EHS is \$100.00.~~

~~ONEIDA NATION IN WISCONSIN~~~~APPLICATION~~~~FOR LICENSE FOR THE SALE OF FOOD ON TRIBAL PROPERTY~~~~ENVIRONMENTAL HEALTH AND SAFETY DEPARTMENT-
COMPLIANCE DIVISION LICENSE DEPARTMENT-~~

~~In accordance with the Oneida Food Code, I the undersigned, do hereby respectfully make application to the Environmental Health and Safety Department of the Oneida Nation in Wisconsin, for a license to sell food on tribal property for the year ending September 30, 2002.~~

~~I hereby certify that I am familiar with the Federal laws and Oneida Food Code pertaining to the conditions of said establishment on Oneida Nation tribal property, and I hereby agree, if granted said license, to obey all provisions of said Federal laws and Oneida Food Code.~~

~~ESTABLISHMENT NAME~~ _____

~~ESTABLISHMENT ADDRESS~~ _____

~~ESTABLISHMENT TELEPHONE~~ _____

~~AGENT/MANAGER HOME PHONE~~ _____

~~LEGAL LICENSE~~ _____

~~(List the name of the Individual, Partnership or Corporation)~~

~~LICENSEE ADDRESS~~ _____

~~PROPERTY OWNER~~ _____

~~DATE WHEN ONEIDA FOOD HANDLING COURSE COMPLETED~~ _____

~~NAME OF INSURER~~ _____

~~(Attach copy of Insurance deck sheet)~~

~~SIGNATURE OF APPLICANT~~ _____

~~* MUST BE SIGNED TO OBTAIN A CURRENT LICENSE.~~

~~*****~~

~~*****~~

~~APPROVED: _____ TOTAL FEE PAID: _____~~

~~Environment Health and Safety Dept.~~

~~ONEIDA NATION~~~~ONEIDA FOOD VENDOR'S LICENSE~~~~October 1, 2002 through September 30, 2003~~~~Business: _____ Licensee:~~~~(Name and address of business) _____ (Name of Person, partnership or corporation)~~~~The person, firm or corporation whose name appears on this license has complied with the provisions of the Oneida Food Code and, as adopted, the Federal Food Code and is hereby authorized to engage in the activity as indicated below at the location named from October 1, 2001 to September 31, 2001. This license is non-transferrable.~~~~_____
(Name of type(s) of food service; restaurant, independent, _____ (License fee)

temporary, market, bakery, caterer, etc.)~~~~Dated at the office of the Oneida License Department, this _____ (Date issued) _____.~~~~_____
Oneida License Department Officer _____ Oneida Health and Safety Department Officer~~~~POST IN A CONSPICUOUS PLACE~~ ~~Amended – BC- - - -~~

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Title 3. Health and Public Safety – Chapter 305

Kahkwaʔó·ku

about the food

ONEIDA FOOD SERVICE

305.1. Purpose and Policy

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305.3. Definitions

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305.1. Purpose and Policy

305.1-1. *Purpose.* The purpose of this law is to ensure the safety of food that is provided to consumers at retail or through an Oneida Nation Food Service Program by establishing a system of overlapping safeguards designed to minimize foodborne illness; ensure employee health, industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable levels of sanitation on the premises of food service businesses; and promote fair dealings with members of the community through adoption of licensing requirements, exemptions, regulation, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation.

305.1-2. *Policy.* It is the policy of the Nation to protect the health, welfare and safety of the community and to strengthen the Nation’s self-governance by ensuring, through the exercise of its inherent sovereignty over the Nation’s resources and membership, that food provided at retail or through an Oneida Nation Food Service Program is unadulterated, prepared in a clean environment and honestly presented.

305.2. Adoption, Amendment, Repeal

305.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-13-01-B and amended by resolutions BC-02-25-15-C and BC-__-__-__-__.

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

305.2-3. 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.

305.2-4. 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.

305.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

305.3. Definitions

305.3-1. 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) “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 a person of a violation of law.

(b) “Close-down” means an order issued by the Department to discontinue operation of a food service business or exempt operation under section 305.8 of this law in order to protect the health, safety and/or welfare of the community.

- (c) “Consumer” means an individual who is a member of the public; takes possession of food; is not functioning in the capacity of a food service business, a cottage food operator, a prepackaged restaurant, or a food processing plant; and does not offer the food for resale.
- (d) “Cottage food operator” means an individual who, exclusively within the home kitchen of his or her domestic residence, produces cottage food products for direct sale only.
- (e) “Cottage food products” mean foods, produced within the home kitchen of a domestic residence, that are non-potentially hazardous, including non-perishable baked goods such as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit; jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or salsa, pickled vegetables and hot sauces; and other non-potentially hazardous foods that the Department characterizes as cottage food products for purposes of this law.
- (f) “Department” means the Environmental, Health and Safety Department within the Nation’s Environmental, Health, Safety and Land Division.
- (g) “Direct sale” means a consumer’s face-to-face purchase of a cottage food product from a cottage food operator that does not include purchases through consignment, mail order, or the internet, though nothing herein shall be interpreted to prohibit a cottage food operator from using the internet for the sole purpose of advertising his or her cottage food products.
- (h) “Domestic residence” means the single-family house or unit in a multiunit residential structure located at the address that the applicant lists as being his or her primary residence when applying to the Department for a cottage food exemption under this law.
- (i) “Emergency” means the occurrence or discovery of an unforeseen event that requires immediate attention, the absence of which could endanger the health or safety of others.
- (j) “Federal Food Code” means the most current edition of the United States Public Health Service, Food and Drug Administration Food Code.
- (k) “Fine” means a monetary punishment issued to a person for violation of this law.
- (l) “Food” means a raw, cooked or processed edible substance; ice; beverage; or ingredient used or intended for use or for sale in whole or in part for human consumption or chewing gum.
- (m) “Food service business” means, whether individually or collectively, a permanent food service establishment; a temporary food service establishment; and/or an independent food service operator. The following shall not qualify as a food service business under this law:
- (1) Private rummage sales;
 - (2) Community sponsored non-profit fundraising and/or charity events;
 - (3) Cottage food operators who satisfy the requirements of this law; and/or
 - (4) Prepackaged restaurants that satisfy the requirements of this law.
- (n) “Home-canned foods” means home-canned fruits and vegetables that are naturally acidic or have been acidified by pickling or fermenting and have an equilibrium pH of 4.6 or lower.
- (o) “Independent food service operator” means a person, other than one who qualifies as a cottage food operator, who sells, for profit, food that is prepared off-site, independent of a permanent establishment, at or within a location approved by the Department.
- (p) “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 to administer the judicial authorities and responsibilities of the Nation.

(q) “License” means the tangible proof of authorization from the Department to operate a permanent food service establishment, operate a temporary food service establishment and/or function as an independent food service operator.

(r) “Nation” means the Oneida Nation.

(s) “Penalty” means a punishment, other than a fine, imposed on a person for violation of this law.

(t) “Permanent food service establishment” means a permanent unit and/or location where food is processed on the premises, usually for retail sale, and intended for individual consumption, whether on or off the premises, including, but not limited to, the following:

(1) A restaurant or other eating/drinking establishment that does not qualify as a prepackaged restaurant;

(2) A market or grocery store;

(3) A catering business;

(4) A bakery or confectionary;

(5) A convenience store or gas station store;

(6) An Oneida Nation Food Service Program; and/or

(7) A mobile food truck that requires a Department approved service base to operate.

(u) “Person” means a natural person(s), sole proprietorship, partnership, corporation, limited liability company or any other form of a legal entity.

(v) “Potentially hazardous food” means food that requires time and temperature control for safety to limit toxin formation or the growth of pathogenic microorganisms.

(w) “Prepackaged restaurant” means an establishment that serves or sells only packaged foods that are prepared and packaged off-premise by a licensed processor with preparation on the premise limited to heating and serving.

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

(y) “Temporary food service establishment” means a non-permanent food service establishment that operates at a fixed location for a limited number of consecutive days in conjunction with a single event.

305.4. Application

305.4-1. This law shall apply to all food service businesses, prepackaged restaurants and cottage food operators located or operating within the Reservation.

305.4-2. *Liberal Construction.* The provisions of this law shall apply to the fullest extent of the sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

305.5. Compliance

305.5-1. No person shall operate a food service business without a valid, unexpired license from the Department.

(a) Licenses to operate a food service business are non-transferable.

(b) Unless otherwise provided herein, strict compliance with this law is required before a license may be issued or renewed.

305.5-2. *Federal Food Code*. The Nation finds that the Federal Food Code establishes a high level of stringent food and beverage handling safety standards that should govern all food service businesses to which this law applies.

(a) Unless otherwise provided herein, the Nation hereby adopts the entire Federal Food Code through incorporation by reference into this law.

(1) Any additions to or deviations from the Federal Food Code that are included within this law are designed to be specific to the Nation.

(2) Should a provision of this law conflict with a provision of the Federal Food Code, the provision of this law shall have priority over the Federal Food Code and govern.

(b) The Department shall maintain either an electronic or print copy of the most current edition of the Federal Food Code at its office location and shall make it available or accessible for inspection during regular business hours.

305.6. Authority

305.6-1. *Authority of the Department*. Subject to all applicable provisions and/or restrictions contained in this or any other governing law of the Nation, the Department shall be responsible for the administration and enforcement of this law, including, but not limited to, that the Department shall have the power to:

(a) Grant, deny, renew, suspend, reinstate and/or revoke licenses to operate food service businesses and make all other determinations regarding suitability for licensure and exemption from licensure;

(b) Establish licensing fee, fine and penalty schedules;

(c) Establish standard operating procedures to govern how it administers and enforces the provisions of this law;

(d) Perform all requisite inspections and conduct investigations when necessary; and/or

(e) Issue citations and corrective orders for violations of this law and/or when necessary to protect the welfare of the community.

305.7. Licensing

305.7-1. *Licenses*. The following shall govern the process for obtaining and renewing a license to operate a food service business:

(a) *License Application*. Persons shall be required to apply to the Department to receive or renew a license to operate a food service business pursuant to the application process established by the Department through adoption of a standard operating procedure that conforms to this law and includes, at a minimum, the following:

(1) That, the applicable licensing fee must accompany the application for licensure or license renewal; and

(2) That, the Department shall be required to issue or deny a license within thirty (30) days after receiving a complete application for licensure or license renewal, all applicable fees, and any other information required under the governing standard operating procedure.

(A) The issuance or renewal of a license may be conditioned on the applicant correcting a violation of this law within a set period of time, which if not corrected within the set time or after an extension of time approved by the Department, would render the license null and void.

(B) If the Department denies an application for licensure or license renewal, it shall provide the applicant, in writing, with its reason or reasons for the denial and information on how to appeal its decision.

(b) *License Period.*

(1) Licenses for permanent food service establishments and independent food service operators shall be issued and renewed by the Department for terms of one (1) year, commencing October 1st and ending September 30th of every year.

(2) Licenses for temporary food service establishments shall be issued by the Department to cover one (1) single event for a period of not more than fourteen (14) consecutive days.

(c) *License Fee.* The Department shall be required to set a licensing fee schedule, subject to approval by the Oneida Business Committee through adoption of a resolution, that is applicable to all food service businesses.

(1) The fee amount shall cover the initial license term for permanent food service establishments and independent food service operators and shall cover a single event of not more than fourteen (14) consecutive days for temporary food service establishments.

(A) A separate licensing fee shall be required when applying to renew a license for a permanent food service establishment or independent food service operator.

(B) The licensing fee for a permanent food service establishment license or independent food service operator license that was issued after October 1st shall be prorated for that term pursuant to a standard operating procedure established by the Department.

(C) Unless otherwise provided herein, if an application for licensure or license renewal is denied by the Department, the licensing fee submitted with the application shall be returned to the applicant in full.

(2) The Department shall post the licensing fee schedule in a prominent area within its offices and elsewhere as it deems appropriate.

(A) The licensing fee schedule shall include the fee established by the Department to operate a prepackaged restaurant pursuant to section 305.8 of this law.

(B) The Department may amend the licensing fee schedule as it deems necessary, subject to approval by the Oneida Business Committee through adoption of a resolution.

(3) *Exemptions.*

(A) The Oneida Nation Food Service Programs and other non-profit service programs of the Nation shall not be required to pay a licensing fee to obtain a license under this law.

(B) The Department shall waive the licensing fee required hereunder upon proof from a food service business or prepackaged restaurant of payment to another governmental unit located within the boundaries of the Reservation for a similar license or permit to operate that covers the same term.

305.7-2. *License Eligibility.*

(a) *Permanent Food Service Establishments.* To be eligible to receive a license to operate a permanent food service establishment, applicants must:

- 231 (1) Submit the appropriate licensing fee with their application;
232 (2) Pass an inspection by the Department of the proposed premises for the
233 permanent food service establishment; and
234 (3) Satisfy any other provision within or arising out of this law that is a prerequisite
235 for licensure to operate a permanent food service establishment.
236 (b) *Temporary Food Service Establishments*. To be eligible to receive a license to operate
237 a temporary food service establishment, applicants must:
238 (1) Submit the appropriate licensing fee with their application;
239 (2) Submit proof of having undergone either:
240 (A) Certification under the applicable food safety training offered through
241 the Department; or
242 (B) Certification or training that the Department, in its discretion, deems
243 equivalent to the corresponding food safety training offered through the
244 Department.
245 (3) Pass an inspection by the Department of the proposed premises for the
246 temporary food service establishment; and
247 (4) Satisfy any other provision within or arising out of this law that is a prerequisite
248 for licensure to operate a temporary food service establishment.
249 (c) *Independent Food Service Operators*. To be eligible to receive a license to function as
250 an independent food service operator, applicants must:
251 (1) Submit the appropriate licensing fee with their application;
252 (2) Submit proof of having undergone either:
253 (A) Certification under the applicable food safety training offered through
254 the Department; or
255 (B) Certification or training that the Department, in its discretion, deems
256 equivalent to the corresponding food safety training offered through the
257 Department.
258 (3) Pass an inspection by the Department of the proposed premises designated in
259 writing by the applicant as the food preparation site; and
260 (4) Satisfy any other provision within or arising out of this law that is a prerequisite
261 for licensure to function as an independent food service operator.
262 (d) *Training*. The Department shall provide reasonable opportunities for persons to
263 undergo the food safety training that is referenced in section 305.7-2(b)(2)(A) and (c)(2)(A)
264 of this law.

265 **305.7-3. License Placement.**

- 266 (a) *Permanent and Temporary Food Service Establishments*. A valid license shall, at all
267 times, be posted in a conspicuous area within the premises of every permanent food service
268 establishment and every temporary food service establishment.
269 (b) *Independent Food Service Operators*. A valid license shall, at all times, be prominently
270 displayed on the body of the license holder whenever functioning as an independent food
271 service operator.

272
273 **305.8. Exemptions**

274 305.8-1. *Cottage Food Sales*. Cottage food operators are exempt from the requirements of this
275 law, except as follows:

(a) *Registration.* Before selling any cottage food products, individuals must register with the Department as a cottage food operator by providing, at a minimum, their:

- (1) Full name;
- (2) Address of domestic residence; and
- (3) Any additional information required by a standard operating procedure that the Department may establish, consistent with this law, to govern cottage food sales.
 - (A) By registering as a cottage food operator, the individual is confirming that the information he or she provided is correct and agreeing to operate within the confines of the exemption.

(b) *Labeling.* Cottage food products must be labeled with the following information:

- (1) The name and address of the cottage food operator;
- (2) The name of the cottage food product and the date on which it was prepared, processed or canned; and
- (3) A clearly legible sign or placard that states: “this product is homemade and not subject to inspection by the Nation.”

(c) *Home-canned Foods.* Individuals who intend to sell home-canned foods under the cottage food sales exemption must first complete the food safety training approved by the Department.

305.8-2. *Prepackaged Restaurants.* Prepackaged restaurants are exempt from the requirements of this law, except as follows:

(a) *Authorization.* Before selling or serving any prepackaged foods, persons must apply to the Department for permission to operate as a prepackaged restaurant pursuant to the application process established by the Department through adoption of a standard operating procedure that conforms to this law and includes, at a minimum, the following:

- (1) That, the fee established by the Department to operate a prepackaged restaurant, as set forth in the licensing fee schedule referenced in section 305.7-1 of this law, must accompany the application;
- (2) That, the applicant passes an inspection by the Department of the proposed premises for the prepackaged restaurant; and
- (3) That, by applying to operate as a prepackaged restaurant, the applicant is agreeing to serve and/or sell only the prepackaged foods that are approved by the Department and to not engage in any food processing or preparation on the premises of the prepackaged restaurant other than the heating and serving of the food.

(A) The Department shall provide written notice, accessible to the public, of the prepackaged foods approved hereunder.

(b) Permission to operate as a prepackaged restaurant shall not be conditioned on any prior training or certification in food safety.

(1) Paragraph (b) shall not prohibit the Department from issuing a corrective order under section 305.10 of this law that requires food safety training or certification.

(c) The Department may reinspect the prepackaged restaurant premises during reasonable hours as often as it deems necessary so long as it does not exceed more than one (1) time per year, absent cause.

305.8-3. *Enforcement.* Violations of this section shall be enforced pursuant to section 305.10 of this law.

(a) Upon receipt of a complaint or its own reasonable suspicion of noncompliance with this section, the Department, in its discretion, may conduct an inspection of a prepackaged

restaurant or a cottage food operator's domestic residence; provided, the inspection of the cottage food operator's domestic residence is limited to the subject matter of the complaint or event giving rise to the Department's reasonable suspicion.

(b) This section does not preempt the application of any other law of the Nation or other local governing ordinance to which individuals must comply.

(c) This section does not limit the liability of the owner of a prepackaged restaurant or a cottage food operator for damages that arise out of their sale or service of food hereunder.

305.9. Inspections

305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two (2) times per license term, the Department may, for any reason, enter a food service business to conduct an inspection, so long as at a reasonable hour.

305.9-2. The Department may, at any time during the term of a license, enter a food service business to conduct an unscheduled inspection based on the following:

(a) Receipt of a complaint;

(b) Outbreak of a food borne illness; and/or

(c) Reasonable suspicion of a violation of this law or an emergency.

305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of this law, will result in an additional fee as set forth in the license fee schedule.

305.10. Violations, Enforcement

305.10-1. *Non-compliance.* Violations of this law may result in any one or more of the following as determined by the Department:

(a) The suspension or revocation of a license or license exemption status;

(b) The issuance of a corrective order, including, but not limited to, an order to close-down; and/or

(c) The issuance of a citation that may include one or more of the fines, penalties and/or corrective orders set forth in the fine and penalty schedule established by the Department, subject to approval by the Oneida Business Committee through adoption of a resolution.

(1) Failure to pass an inspection conducted pursuant to this law may be cause for the issuance of one or more of the enforcement mechanisms set forth herein.

(2) Citations shall be issued and processed in accordance with the procedures contained in the Nation's laws and policies governing citations.

305.10-2. In addition to satisfying any other mandate issued by the Department hereunder, a food service business, cottage food operator or prepackaged restaurant that has been closed-down due to a violation of this law must further pass a reinspection by the Department before being eligible for operation.

(a) A food service business that has been closed-down may only receive a probationary license for six (6) months upon evidence of satisfactory compliance with this law.

(1) After six (6) months of satisfactory compliance with this law, as determined by the Department upon a follow-up inspection, the license holder may apply for an annual license.

(b) A food service business or prepackaged restaurant that has had its license or license exemption status suspended or has become subject to a close-down order shall not be entitled to a reimbursement of all or any portion of the fee or fees submitted in accordance with the licensing fee schedule.

305.10-3. *Emergency*. The Department may order a close-down of a food service business, cottage food operation and/or prepackaged restaurant immediately on an emergency basis upon evidence of a serious health and/or safety threat to the community.

- (a) Persons issued a close-down order by the Department as an emergency measure hereunder must provide evidence of compliance to the Department and pass an inspection by the Department prior to being allowed to re-open and/or continue operations.

305.11. Appeal Rights

305.11-1. *Decisions Not Issued Pursuant to a Citation*. Decisions of the Department that are not issued pursuant to a citation may be appealed, in writing, to the Department's Area Manager.

- (a) The written appeal shall be submitted to the Area Manager within ten (10) business days of receiving the decision upon which the appeal is based.

- (b) The Area Manager shall render a decision within five (5) business days of receiving the appeal. The decision shall be sent by registered mail (return receipt requested) or delivered in person to the appellant.

- (1) The Area Manager may suspend the time limits for rendering a decision if he or she determines that more investigation on the matter is necessary.

- (c) The Area Manager's decision shall be final unless a good faith argument exists to appeal to the Trial Court of the Judiciary on one or more of the following grounds:

- (1) That, the decision is contrary to law;
(2) That, the decision is without any reasonable factual basis; and/or
(3) That, the decision constitutes an abuse of power.

- (A) Appeals initiated hereunder shall be conducted in accordance with the Judiciary law and any applicable rules of procedure.

305.11-2. *Decisions Issued Pursuant to a Citation*. Decisions of the Department that are issued pursuant to a citation may be contested in accordance with the procedures contained in the Nation's laws and policies governing citations.

- (a) A mandatory appearance at the citation pre-hearing is required of all persons wishing to contest a citation issued by the Department hereunder.

End.

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