



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2nd Floor Norbert Hill Center

March 4, 2020

9:00 a.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be Approved

1. February 19, 2020 LOC Meeting Minutes (pg. 2)

III. Current Business

1. Vehicle Driver Certification and Fleet Management Amendments (pg. 4)
2. Children's Burial Fund Amendments (pg. 80)
3. Oneida Food Service Code Amendments (pg. 102)
4. Curfew Law Amendments (pg. 139)
5. Domestic Animals Law Amendments (pg. 155)
6. Boards, Committees and Commissions Law Emergency Amendments (pg. 186)
7. Wellness Court Law (pg. 232)

IV. New Submissions

V. Additions

VI. Administrative Updates

1. Consideration of Legislative Solution to Election Issues Memo (pg. 240)

VII. Executive Session

VIII. Recess/Adjourn



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
February 19, 2020
9:00 a.m.

Present: Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King

Excused: David P. Jordan

Others Present: Brandon Wisneski, Clorissa N. Santiago, Kristen Hooker, Jennifer Falck, Paul Witek, Terry Cornelius, Jameson Wilson, Leyne Orosco, Jeff House, Lee Cornelius.

I. Call to Order and Approval of the Agenda

Kirby Metoxen called the February 19, 2020, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Ernest Stevens III to adopt the agenda: seconded by Jennifer Webster. Motion carried unanimously.

II. Minutes to be Approved

1. February 05, 2020

Motion by Jennifer Webster to approve the February 5, 2020, Legislative Operating Committee meeting minutes and forward to the Business Committee for consideration; seconded by Ernest Stevens III. Motion carried unanimously.

III. Current Business

1. Indian Preference in Contracting Law Amendments (1:19-8:47)

Motion by Ernest Stevens III to accept the updated public comment review memorandum, draft law and legislative analysis; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Jennifer Webster to approve the Indian Preference in Contracting Law Amendments fiscal impact statement request memorandum and forward to the Finance Department directing a fiscal impact statement be prepared and submitted to the LOC by March 4, 2020; seconded by Daniel Guzman King. Motion carried unanimously.

2. Vehicle Driver Certification and Fleet Management Amendments (10:22-14:01)

Motion by Jennifer Webster to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Daniel Guzman King. Motion carried unanimously.

3. Curfew Law Amendments (14:03-18:40)

Motion by Jennifer Webster to approve the draft law and the legislative analysis and defer to a work meeting for further consideration; seconded by Ernest Stevens III. Motion carried unanimously.



4. **Domestic Animals Law Amendments (18:43-20:35)**

Motion by Ernest Stevens III to approve the draft law and legislative analysis and defer to a work meeting for further consideration; seconded by Jennifer Webster. Motion carried unanimously.

5. **Tobacco Emergency Amendments (20:37-26:40)**

Motion by Jennifer Webster to approve the Tobacco Law Emergency Amendments adoption packet and forward to the Oneida Business Committee for consideration; seconded by Ernest Stevens III. Motion carried unanimously.

6. **Petition: N. Dallas – Make a Funeral Home and Petition: N. Dallas – Hold on Building (26:45-31:12)**

Motion by Jennifer Webster to approve the Petition: N. Dallas – Make a Funeral Home statement of effect and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Jennifer Webster to approve the Petition: N. Dallas – Hold on Building statement of effect and forward to the Oneida Business Committee for consideration seconded by Daniel Guzman King. Motion carried unanimously.

IV. New Submissions

1. **Petition: M. Debraska – Increase General Tribal Council Meeting Stipend (31:19-32:59)**

Motion by Jennifer Webster to add the petition: M. Debraska - Increase General Tribal Council Meeting Stipend to the active files list; seconded by Daniel Guzman King. Motion carried.

Ayes: Jennifer Webster, Daniel Guzman King

Opposed: Ernest Stevens III

2. **Boards, Committees and Commissions Law Emergency Amendments (33:00-34:14)**

Motion by Jennifer Webster to add Boards, Committees and Commissions law emergency amendments to the active files list with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

V. Additions

VI. Administrative Items

1. **FY 20 First Quarterly LOC Report (34:26-39:02)**

Motion by Jennifer Webster to approve FY20 First Quarterly LOC Report and forward to the Oneida Business Committee; seconded by Ernest Stevens III. Motion carried unanimously.

VII. Executive Session

VIII. Adjourn

Motion by Ernest Stevens III to adjourn at 9:39 a.m.; seconded by Jennifer Webster. Motion carried unanimously.



Legislative Operating Committee
March 4, 2020

Vehicle Driver Certification and Fleet Management Law Amendments

Submission Date: 2/7/18	Public Meeting: 1/23/20
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a

Summary: *The Human Resources Department and the Law Office have recommended changes to this law since its recent adoption and implementation.*

2/7/18 LOC: Motion by Ernest Stevens III to add the Vehicle Driver and Fleet Management amendments to active files list as a medium priority and assign Jennifer Webster as the sponsor. Seconded by Kirby Metoxen. Motion carried unanimously.

7/15/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Matthew J. Denny, Nic Reynolds, Barbara Kolitsch, Robert Keck, Destiny Prendiville. The purpose of this work meeting was to begin discussing potential amendments to the law. The work group reviewed the law line by line and discussed revisions that should be presented to the LOC for consideration.

7/29/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Matthew J. Denny, Nic Reynolds, Robert Keck, Wendy Alvarez, Gunladunt Webster. The purpose of this work meeting was to continue discussing potential amendments to the law. The work group continued reviewing the law line by line and discussing revisions that should be presented to the LOC for consideration.

8/13/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Barbara Kolitsch, Nic Reynolds, Robert Keck, Wendy Alvarez, Gunladunt Webster. The purpose of this work meeting was to continue discussing potential amendments to the Vehicle Driver Certification and Fleet Management law, as well as review research that was conducted on questions that arose during prior work meetings.

9/4/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Jameson Wilson. The purpose of this work meeting was to discuss a plan to move this item forward, as well as begin discussion policy considerations that will affect potential amendments to this law.

10/2/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Nic Reynolds, Robert Keck, Wendy Alvarez, Gunladunt Webster, Rick Fuss. After the previous three work meetings with HRD and Risk Management the LRO took many of their suggestions and recommendations and brought that information to the LOC. The LOC began making policy considerations. The purpose of this work meeting was to review the first draft of the proposed amendments to the

Law and obtain input from the effected entities so that information can be brought back to the LOC.

- 10/16/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review an updated draft of the proposed amendments and begin making policy considerations.
- 10/24/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review an updated draft of the proposed amendments, and make decisions as to how to move this item forward. LRO will schedule a work meeting between LOC, HRD, Risk Management, and Fleet Management.
- 11/5/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Robert Keck, Wendy Alvarez, Gunladunt Webster, Matthew J. Denny, Leyne Orosco. The purpose of this work meeting was to review the proposed draft and discuss any potential revisions that need to be made before it is placed on the LOC agenda on December 4, 2019.
- 12/4/19 LOC:** Motion by Ernest Stevens III to approve the draft and legislative analysis of the amendments to the Vehicle Driver Certification and Fleet Management law and forward to a work meeting for further discussion; seconded by Kirby Metoxen. Motion carried unanimously.
- 12/4/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to discuss and consider the considerations contained in the legislative analysis, as well as the comments that were received during the LOC meeting. LRO will update the draft and analysis based on these discussions, and prepare a public meeting packet to come to the next LOC meeting.
- 12/18/19 LOC:** Motion by Kirby Metoxen to approve the public meeting packet and forward the Vehicle Driver Certification and Fleet Management law amendments to a public meeting to be held on January 16, 2020; seconded by Ernest Stevens III. Motion carried unanimously.
- 12/18/19:** *E-Poll Conducted.* E-Poll was titled “Approval of January 23, 2020, Updated Public Meeting for the Vehicle Driver Certification and Fleet Management Law Amendments.” The requested action of this e-poll was to approve the updated public meeting packet and forward the Vehicle Driver Certification and Fleet Management law amendments to a public meeting to be held on January 23, 2020, instead of January 16, 2020. The e-poll was approved by David P. Jordan, Jennifer Webster, Ernest Stevens III, Kirby Metoxen. Daniel Guzman King did not provide a response.
- 1/15/20 LOC:** Motion by Kirby Metoxen to enter the E-poll into the record from 12/18/19 to approve the January 23, 2020 Updated public meeting for the Vehicle Driver Certification and Fleet Management Law Amendments; seconded by Daniel Guzman King. Motion carried unanimously.
- 1/23/20:** *Public Meeting Held.* Present: Kirby Metoxen, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Lee Cornelius, Nicolas Reynolds, Geraldine Danforth, Jacque Boyle, Barbara Kolitsch, Michelle Myers, Carol Silva, Rae Skenandore, Jeffrey Prevost, Lisa A. Moore. Two (2) individuals provided oral comments during the public meeting.
- 1/30/20:** *Public Comment Period Closed.* Two (2) individuals submitted written comments during the public comment period.
- 2/19/20 LOC:** Motion by Jennifer Webster to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Daniel Guzman King. Motion carried unanimously.

2/19/20: *Work Meeting.* Present: Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and consider all the public comments that were received during the public meeting and public comment period. The LOC directed the LRO to update the draft as discussed during this meeting.

2/27/20: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Clorissa N. Santiago. The purpose of this work meeting was to discuss a comment that was submitted after the public comment period closed.

Next Steps:

- Accept the updated public comment review memorandum, draft law, and legislative analysis.
- Approve the Vehicle Driver Certification and Fleet Management law amendments fiscal impact statement request memorandum and forward to the Finance Department directing that a fiscal impact statement be prepared and submitted to the LOC by March 18, 2020.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney *CNS*
DATE: February 19, 2020
RE: Vehicle Driver Certification and Fleet Management Amendments: Public Meeting
Comment Review

On January 23, 2020, a public meeting was held regarding the proposed amendments to the Vehicle Driver Certification and Fleet Management law ("the Law"). The public comment period was then held open until January 30, 2020. On February 19, 2020, the Legislative Operating Committee reviewed and considered all public comments that were received. This memorandum is submitted as the Legislative Operating Committee's review of the oral and written comments received within the public meeting and public comment period.

Comment 1 – Support for Revisions to Law:

Barbara Kolitsch (written): Hi –The below comments are to be directed to the Legislative Reference Office, but there's no such email, so I am submitting to Clorissa and LOC in hopes it will get to the correct office. I provided oral comments today, Jan 23, 2020. Below includes testimony I provided as well as testimony I did not have time to provide in the allotted five minutes. I appreciate the work on the LRO in revising this law. The revisions are well done! Thank you! It's simpler and easier to follow! I recommend some additional revisions...

Response

The commenter expresses support for the proposed revisions to the Law, and provides that she has submitted some additional potential revisions for the Legislative Operating Committee's consideration.

There is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment. The Legislative Operating Committee thanks the commenter for expressing her support for the proposed amendments.

Comments 2 through 4 – Mandatory Requirement of Training for all Employees:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- (d) Complete all driver training requirements imposed by the Nation or any federal or state agency regulations;

210.5. Responsibilities of a Certified Driver

210.5-2. Training Responsibilities. An individual with driver certification shall complete the driver safety training provided and monitored by the Human Resources Department every three (3) years.

- (a) **Exemption.** An individual who is required to maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies shall be exempt from the requirement to complete the driver safety training provided by the Human Resources Department.

Barbara Kolitsch (oral): Do I need to state my name or anything? Hello, my name is Barb Kolitsch. I work for Personnel Services in the Gaming Division. I'll start my comments in regarding the training that's required for the Vehicle Driver Training or vehicle driver policy. And I am going to speak initially from my training experience. I was a training director for many years, over twenty (20) years, I was a teacher for many, for a couple of years, I was a health educator for a couple of years and also coach and I'll tell you and anyone who reads these comments, training doesn't change behavior. So, when we look at a training that's required every three years, not only do people not remember what they were trained on every three years, training isn't changing behavior. There are other ways to help change behavior of a driver and (inaudible) called the influencer, there are a lot of better ideas on how to change behaviors if we are looking at changing behaviors of drivers. So, I would recommend to remove that driving requirement or that training requirement from the drivers, the three years, every three years having to do safety training, because I don't think that, you know a ten (10) to twenty (20) minute education on safety, driver safety, is changing behaviors of your drivers. What I would recommend though, is if we have drivers and I noticed in the packet here today that we have a lot of at-fault accidents and at-fault drivers. And so what I would recommend is then taking those at-fault drivers and putting them into a specialized course. I looked up before I came here, there are online courses that an employee could be responsible for paying for it if they are an at-fault driver and these online courses guarantee that they increase the, the behaviors of drivers. So, there are online courses, the one in particular that I looked at, specifically for fleet drivers for companies, was twenty-seven ninety-five (\$27.95). So, it's something that, maybe an idea for increasing at-fault or decreasing the at-fault drivers that we have using that sort of type of, you know looking at drivers who are actually not making good decisions and putting them through training may be a better decision than putting everybody in general through training.

Barbara Kolitsch (written): Training requirements: Safety every three years for all drivers – please remove safety training requirement for all. As a former Training Director, Trainer, School Teacher, Health Teacher, and professional Coach (35 years), training/teaching or education does not result in behavior change. Requiring all employees who drive to take safety training every three years is not going to change behaviors of our drivers. When I took the training, it was more-so an act of getting through the training for compliance reasons. The reason I feel this way is because I have only been in one accident in my life...I was rearended at no fault of my own. My belief, and most people's belief will be that they are doing the training due to other people being bad drivers. In the Public Hearing materials I noticed that of the accidents tracked, the majority of

them were our employees being at-fault. To improve and change behaviors, the law should place the burden on the drivers to take safety training who have an on-duty at-fault accident, and make the employee pay for that training. I found an on-line educational site for drivers where the company claims proven behavior and success rates with their training program for \$27.95. I would require drivers who are reported to be at-risk drivers and those who have accidents while performing driving duties for the Oneida Nation. For example, if I get a ticket while driving on official duty, require me to take training.

Barbara Kolitsch (written): Training as prevention is great, but maybe it should be “voluntary” for most drivers, and mandatory for drivers who demonstrate risky on-the-job driving, or drivers who get a ticket while on duty, or drivers who have an at-fault accident while on duty. If I voluntarily take training I’m much more likely to learn by the nature I’m choosing to take it – to learn. If I’m mandated, I’m much more likely to go through the motions. This is human behavior. If I’m mandated to watch it due to my behavior at my own cost – I think I would pay attention if there’s risk of losing my job if it happens again (though disciplinary action – in the new version of the law.) I mentioned a book called *Influencer* in my in-person comments. This testimony is further supported in the research presented in the book. I was certified as a Trainer to teach the training *Influencer* in 2018. Believe me, if I felt training would change behaviors, I would feel much safer on the road. I’ve been hit 11 times while riding my bicycle by distracted drivers. I’ve had many friends hit by cars on their bikes and one friend killed on his bike. This experience has made me a more attentive as a driver because I know it’s so easy to be distracted these days! I wouldn’t recommend putting all of our drivers on a bicycle to observe how most drivers are so distracted, there has to be a better way than traditional “training”.

Response

The commenter provides her disbelief that requiring every employee of the Nation to complete a driver safety training provided and monitored by the Human Resources Department would have any impact on the behavior or driving capabilities of an employee. Instead, the commenter suggests that the mandatory training requirement be removed from the Law and replaced with a requirement that any employee who has an at-fault accident while on duty be required to take a driver safety course.

The Law provides that in order to receive driver certification a person shall complete all driver training requirements imposed by the Nation or any federal or state agency regulations. [2 O.C. 210.4-2(d)]. The Law further provides that any individual with driver certification shall complete the driver safety training provided and monitored by the Human Resources Department every three (3) years. [2 O.C. 210.5-2]. An individual who is required to maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies is exempt from the requirement to complete the driver safety training provided by the Human Resources Department. [2 O.C. 210.5-2(a)].

What driver safety requirements to impose on an employee of the Nation is a policy consideration for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following considerations:

1. The Law should remain as currently drafted to require that in order to receive and maintain driver certification a person shall complete and maintain all driver training requirements imposed by the Nation or any federal or state agency regulations.
2. The Law should be revised so that the mandatory training requirement is removed from the Law and replaced with a requirement that any employee who has an at-fault accident while on duty be required to take a driver safety course. If the Legislative Operating Committee makes this determination then the following revision is recommended:

210.5. Responsibilities of a Certified Driver

210.5-2. *Training Responsibilities.* An individual with driver certification shall ~~complete the driver safety training provided and monitored by the Human Resources Department every three (3) years.~~

~~(a) Exemption. An individual who is required to~~ maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies. ~~shall be exempt from the requirement to complete the driver safety training provided by the Human Resources Department.~~

210.7. Motor Vehicle Crashes or Damage to Vehicles

210.7-2. *Internal Review.* The Fleet Management Department and Risk Management Department shall coordinate and conduct an internal review of the auto incident report for a motor vehicle crash and/or damage to a vehicle.

(a) Fleet Management and Risk Management may recommend whether an individual should be subject to disciplinary action and/or a driver safety training requirement based on the motor vehicle crash or incident resulting in damage to a vehicle.

210.8. Suspension of Driver Certification and Other Enforcement

210.8-8. *Driver Safety Training.* A supervisor may require that an individual complete a driver safety training, at his or her own expense, if the individual:

- (a) is involved in an at-fault motor vehicle crash or damage involving the fleet vehicle or personal vehicle driven on official business;
- (b) receives a moving violation while driving a fleet vehicle or personal vehicle driven on official business; and
- (c) has his or her driver's license suspended or revoked by the State or becomes invalid for any other reason.

LOC Consideration

The Legislative Operating Committee determined that the Law should be revised to include driver safety training if a certified driver is involved in an at-fault accident or receives a moving violation while on duty, in addition to the triennial mandatory training for all certified drivers that is already required by the Law.

The Legislative Operating Committee discussed at lengths the merits of requiring training for an individual to obtain and maintain driver certification with the Nation. Although the Legislative

Operating Committee values the commenter's experience as a trainer and understands the commenter's belief that mandatory training does not necessarily change behaviors, the Legislative Operating Committee determined that in order to minimize the risk and liability of the Nation while promoting safe driving it is important that the Nation require mandatory training as a qualification of obtaining and maintaining driver certification.

Additionally, the Legislative Operating Committee liked the idea of requiring an individual who is involved in an at-fault motor vehicle crash or damage involving the fleet vehicle or personal vehicle driven on official business or obtains a moving violation while driving on official business to be required to take additional training at his or her own expense. This provides an opportunity to provide additional training to a person whose actions demonstrate a need for more training. The Legislative Operating Committee hopes that there can be more than one option for the additional driver safety training so that it can be made applicable to whatever action of the certified driver resulted in the requirement to take additional driver safety training.

The Legislative Operating Committee has previously discussed training options with the Nation's Human Resources Department's Training and Development and has now determined that they will follow up with communication with Training and Development to have further discussions on ensuring that the driver safety training that is offered to certified drivers of the Nation is efficient, effective, and applicable to the drivers.

The Legislative Operating Committee directed the following revisions be made to the Law based on this comment:

210.7. Motor Vehicle Crashes or Damage to Vehicles

210.7-2. *Internal Review.* The Fleet Management Department and Risk Management Department shall coordinate and conduct an internal review of the auto incident report for a motor vehicle crash and/or damage to a vehicle.

- (a) Fleet Management and Risk Management may recommend whether an individual should be subject to disciplinary action and/or a driver safety training requirement based on the motor vehicle crash or incident resulting in damage to a vehicle.

210.8. Suspension of Driver Certification and Other Enforcement

210.8-8. Additional Driver Safety Training. A supervisor may require that an individual complete an additional applicable driver safety training, at his or her own expense, if the individual:

- (a) is involved in an at-fault motor vehicle crash or damage involving the fleet vehicle or personal vehicle driven on official business;
- (b) receives a moving violation while driving a fleet vehicle or personal vehicle driven on official business; and
- (c) has his or her driver's license suspended or revoked by the State or becomes invalid for any other reason.

Comments 5 through 6 – Administrative Difficulty of Tracking Training:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- (d) Complete all driver training requirements imposed by the Nation or any federal or state agency regulations;

210.4-3. The Nation's Human Resources Department shall be responsible for determining whether an individual meets all the qualifications before approving or denying a driver certification.

- (a) An individual shall provide his or her appropriate license, training certification, and insurance information to the Human Resources Department.
- (b) The Human Resources Department shall have the authority to check the driving record of an individual at any time.
- (c) The Human Resources Department shall maintain a current list of all certified drivers and provide the list to Fleet Management, Risk Management, and Central Accounting on a regular basis.

210.4-4. A supervisor shall ensure that an individual has received his or her driver certification from the Human Resources Department before allowing the individual to drive a fleet vehicle or a personal vehicle on official business.

210.5. Responsibilities of a Certified Driver

210.5-2. *Training Responsibilities.* An individual with driver certification shall complete the driver safety training provided and monitored by the Human Resources Department every three (3) years.

- (a) *Exemption.* An individual who is required to maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies shall be exempt from the requirement to complete the driver safety training provided by the Human Resources Department.

Barbara Kolitsch (oral): And then it's also difficult, it's a tracking, something that has to be tracked, it's a lot of administrative work to track whether somebody has been trained or not. Recently we just went through somewhat of an audit with training and we had drivers who were required to have the training who didn't. So, again it's an administrative nightmare, there is a lot of responsibility put on HR and put on supervisors to make sure that they have that training.

Barbara Kolitsch (written): Tracking training is a huge administrative burden. As former Training Director at Human Resources, every time we had required training for large groups, there are legitimate reasons people are noncompliant: leave of absence, vacation, business (customer priority), staff shortage, staff emergency, etc. In a recent self-audit in Gaming the Personnel Services staff found there were some Gaming employees who needed drivers safety training and never had taken it almost three years ago. Gaming has a very high compliance rate in training requirements from my experience as former Training Director, yet we still missed a few. Some may feel it's our job (HR or Personnel Services), but in reality it's the supervisor's job to make sure employees are in compliance with policies and procedures. There's a lot for supervisors to track, so this may be an important thing to track, but may be put on the backburner when there's a

business to run and customers/clients/and more urgent matters to deal with. Safety training is not urgent, it's purpose is meant to help prevent accidents.

Response

The commenter provides insight on the administrative burden that is placed on the Human Resources Department and supervisors with tracking compliance with driver safety training. The commenter provides this information for the Legislative Operating Committee to consider in regard to the request to remove the mandatory requirement of driver safety training for all certified drivers of the Nation.

The Law currently requires that an individual obtain driver certification from the Human Resources Department before operating a fleet vehicle or personal vehicle on official business. [2 O.C. 210.4-1]. One qualification for receiving driver certification is completing all driver training requirements imposed by the Nation or any federal or state agency regulations. [2 O.C. 210.4-2(d)]. The Nation's Human Resources Department is delegated the responsibility for determining whether an individual meets all qualifications before approving or denying a driver certification. [2 O.C. 210.4-3]. Additionally, a supervisor shall ensure that an individual has received his or her driver certification from the Human Resources Department before allowing the individual to drive a fleet vehicle or a personal vehicle on official business. [2 O.C. 210.4-4].

The Law currently places responsibilities on both the supervisor and the Human Resources Department to ensure that an individual meets the qualifications for and has obtained driver certification before being allowed to operate a fleet vehicle or a personal vehicle while conducting official business. This is for the purpose of limiting the liability of the Nation by ensuring that only certified drivers are permitted to operate a fleet vehicle or a personal vehicle on official business. If the Law is going to require that an individual obtain driver certification, then the responsibility to determine if someone meets the qualifications and has obtained driver certification needs to be delegated to an individual or entity.

Additionally, in the previous comment, the Legislative Operating Committee was specifically asked to consider the utility of imposing mandatory driver safety training on every individual who wishes to obtain and maintain driver certification. It is recommended that the Legislative Operating Committee take into consideration the administrative burden tracking driver safety training imposes on the supervisors and Human Resources Department when making that consideration.

LOC Consideration

The Legislative Operating Committee considered the administrative responsibility of requiring mandatory training for all certified drivers of the Nation, but ultimately determined that there was no revision to the Law needed based on this comment.

Comments 7 through 8 – Disqualification of Driver Certification for Moving Violations:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- (c) Have a driving record that does not reflect any of the following conditions:
 - (1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or
 - (2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

Barbara Kolitsch (oral): My next comment is regarding the driving record and moving violations. My question to the LOC or the LRO is, when someone is off duty, why do we penalize an employee? So, for example, if the State law says I can drive, why can't I drive for the job? I do think we should track on duty violations and again tie that back to training and tie that back to disciplinary action if somebody is violating their driving rules that we have in the organization or driving laws that the State or Federal regulations have. So, what was added into the new vehicle driver policy was moving violations, and again, if I have three speeding tickets in the next two years I become not certifiable and if these violations were all off duty, why is the organization punishing me for something that I did off duty? I think we all do things off duty that we wouldn't do at work, so I'm not sure what the correlation is really.

Barbara Kolitsch (written): Driving record – please remove the consideration of violations on driving record – including drug and alcohol related I challenge the Committee to assess the requirement to be certified and only consider my driving record while on duty. If the state of Wisconsin says I can drive, and in the case of a personal vehicle – I'm paying for my insurance, why can't I drive? I understand that if I cause an accident that causes more liability that I carry, the Tribe's insurance kicks in, but I'm paying for the speeding tickets with my higher insurance rates. If I have three speeding tickets in the next two years, I would lose my job? And this doesn't consider at all the fact that I had these tickets off duty. Everyone makes personal choices in their lives, and we all make some while off-duty that we may not do at work. Why does my off-duty behavior certify or not certify me to be able to drive. In most cases we look at a person's state license...example: to teach, practice medicine, social work, day care, etc. So we recognize that license. Why don't we recognize this state license to drive?

Response

The commenter asks the Legislative Operating Committee to reconsider qualifying driver certification on an individual's driving record, due to the belief that it is unfair to use what may be an individual's behavior while off duty in the consideration of whether that individual should receive driver certification from the Nation. The commenter recommends that in order to receive driver certification a person simply maintains a valid Wisconsin driver's license.

The Law provides that in order to receive driver certification a person shall have a driving record that does not reflect any of the following conditions:

1. Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or
2. An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.
[2 O.C. 210.4-2(c)].

The qualification based on the individual's driving record is in addition to qualifications that the individual:

- is at least eighteen (18) years of age or older;
- holds a valid Wisconsin driver's license;
- completes all driver training requirements imposed by the Nation or any federal or state agency regulations;
- satisfies any other requirements specific to the job description and/or vehicle that may be used by or assigned to the person; and
- maintains minimum insurance requirements for a personal vehicle if the individual will be using his or her personal vehicle to conduct official business.
[2 O.C. 210.4-2(a)-(f)].

What qualifications to use when determining if an individual qualifies for driver certification is a policy consideration for the Legislative Operating Committee. The overall policy of this law is to ensure the safety of the community and employees of the Nation; minimize the Nation's liability when physical damage to vehicles and/or property damage occurs as a result of a motor vehicle crash; and improve the efficiency and effectiveness of the use of vehicles owned by the Nation. [2 O.C. 210.1-2]. One way that this Law ensures the safety of the community and employees of the Nation, while also minimizing the liability of the Nation when damage to vehicles or property occurs as a result of a motor vehicle crash is through the driving record check of all potential certified drivers.

A review of an individual's driving record when determining if an individual is qualified for driver certification is not a new provision included in the amendments to this Law, although it is being modified. The currently effective version of the Law, as adopted through resolution BC-06-28-17-C, provides that in order to be certified, an individual shall pass a driving record check by the Human Resources Department to verify that the driver has no citation or conviction related to a traffic incident, and no driving citation or conviction involving drugs or alcohol, within the time period that would make the driver ineligible for certification under this law. [BC-06-28-17-C - 2 O.C. 210.8-1(d)]. This means that if an individual has any citation or conviction related to a traffic incident, then that person is not eligible to become a certified driver. Due to the fact that the Law lacked clarity as to what exactly a "traffic incident" included, the Nation's Human Resources Department had many issues with how to interpret this provision and determine if an individual should be certified for driving. Because of these interpretation issues, the Human Resources Department issued an interpretation in 2017 that defined a traffic incident as "any traffic incident that results in the loss of an applicant's and/or employee's valid Wisconsin driver's license."

Prior to the 2017 version of the Law, the Vehicle Driver Certification Policy, which was originally adopted by the Oneida Business Committee on October 21, 1992 and then amended through resolution BC-09-09-98-A, also prohibited a person from obtaining driver certification if he or she

had certain driving violation convictions within a three (3) year time period. [BC-09-09-98-A – I.A.4(a)-(b)].

Since at least 1992, the Nation has worked towards ensuring the safety of the community and employees while also minimizing the liability of the Nation by qualifying certification as a driver for the Nation on a review of an individual's driving record. The specifics of what citations or convictions could disqualify an individual from receiving his or her driving certification during the driving record review has changed throughout the years.

Whether or not to include a review of an individual's driving record when determining if an individual meets the qualifications to obtain driver certification, or simply base qualification off of the fact that an individual has a valid Wisconsin driver's license, is a policy determination for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted and an individual shall not obtain his or her driver certification if he or she has three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) year, and/or an operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.
2. The Law should be revised so that a review of an individual's driving record is not required to qualify for driver certification, and all that is necessary for qualification for driver certification in terms of driving record or licensure is that the individual has a valid Wisconsin driver's license. If the Legislative Operating Committee makes this determination then the following revision is recommended:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- ~~(e) Have a driving record that does not reflect any of the following conditions:~~
- ~~(1) Three (3) or more moving violations and/or at fault motor vehicle crashes in the past two (2) years; and/or~~
 - ~~(2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.~~

LOC Consideration

The Legislative Operating Committee determined that the Law should remain as currently drafted and an individual shall not obtain his or her driver certification if he or she has three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) year, and/or an operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

The qualifications for obtaining driver certification for the Nation, specifically the qualifications that relate to an individual's driving record has been a topic that has been greatly discussed throughout the development of the amendments to this Law. When considering this comment, the

Legislative Operating Committee once again discussed whether a review of an individual's driving record should occur when determining if the individual qualifies for driver certification.

Although the Legislative Operating Committee understands that not reviewing the driving record of an individual and relying solely on whether the individual has a valid driver's license may allow for more individuals to qualify for employment with the Nation, the Legislative Operating Committee ultimately determined that the driving record of an individual is checked in an effort to better protect the Nation and minimize risk since the Nation ultimately bears some responsibility for the individuals it allows to be certified drivers.

In an effort to ensure that the driver certification requirements do not hinder employment of individuals when not necessary, the Legislative Operating Committee intends to request the Nation's Human Resource Department complete a review of the Nation's job descriptions to ensure that driver certification is not included as a requirement for positions in which it may not be necessary or essential to performing the job.

Comments 9 through 10 – Drug and Alcohol Related Offenses:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- (c) Have a driving record that does not reflect any of the following conditions:
 - (1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or
 - (2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

210.8. Suspension of Driver Certification and Other Enforcement

210.8-2. *Qualifications for Suspension.* A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.

- (a) A supervisor shall, when necessary, refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

Barbara Kolitsch (oral): In addition to that the drug and alcohol violation was reduced from three years to one year, again I think if the State says I can drive with an Occupational License, why can't I drive with the organization? I don't think any of the instances where somebody comes up with a drug and alcohol violation driving, it's not been at work, it's been off work and if we correlate that to our drug and alcohol policy, our drug and alcohol policy was created in the 1990s to be a helping hand policy because Oneidas, well not specifically Oneidas, Native Americans have the highest abuse rate of drugs and alcohol. They are the highest of any ethnicity in the U.S. It's a helping hand policy. This is a cutthroat policy. If I have, if I tonight go out and celebrate a birthday with a friend, have one too many, get pulled over, get a drunk driving, I'm out of a job. Where if I come to work drunk, I drink at work, I get referred to EAP and I get help and I get

assistance, so I'm not sure, again the correlation of off duty violations and on duty violations. Okay. I can submit the rest in writing.

Barbara Kolitsch (written): Drug and alcohol related offenses. Native Americans have the highest rate of drug/alcohol addition than any other ethnicity. Our Drug and Alcohol Policy recognizes this, and was developed in the 1990's to be a helping hand policy. I can come to work drunk or drink at work and the consequence is to be referred to EAP. If I follow the requirements of the EAP agreement, I can go back to work. On the other hand - if I go out and have two drinks get pulled over and get an OWI – I will lose my job. One strike. This does not match the values of the Oneida Nation as I've known them for 30 years. How does having an OWI correlate to my on-duty driving? It will not likely correlate for most employees. If the drug/alcohol driving violation occurred during work time, I can understand a firm repercussion, but how does it relate to the job when I may have simply made a poor judgement after having a couple of drinks?

Response

The commenter asks the Legislative Operating Committee to reconsider qualifying driver certification on an individual's driving record, specifically a driving record demonstrating any citation or conviction related to a drug and/or alcohol offense. The commenter provides that other laws of the Nation, such as the Drug and Alcohol Free Workplace law, provide assistance to individuals with drug and/or alcohol issues instead of simply punishing the individual for his or her actions, and this Law should follow suit. The commenter also shares the belief that it is unfair to use what may be an individual's behavior while off duty in the consideration of whether that individual should receive driver certification from the Nation.

The Law provides that in order to receive driver certification an individual shall have a driving record that does not reflect an operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months. [2 O.C. 210.4-2(c)(2)]. The overall policy of this law is to ensure the safety of the community and employees of the Nation; minimize the Nation's liability when physical damage to vehicles and/or property damage occurs as a result of a motor vehicle crash; and improve the efficiency and effectiveness of the use of vehicles owned by the Nation. [2 O.C. 210.1-2]. One way that this Law ensures the safety of the community and employees of the Nation, while also minimizing the liability of the Nation when damage to vehicles or property occurs as a result of a motor vehicle crash is through the driving record check of all potential certified drivers to determine if the individual has a citation or conviction related to drug or alcohol offenses.

Additionally, if after an individual obtains his or her driver certification that individual's driver's license is suspended or revoked by the State, for any reason including drug and/or alcohol related offenses, the Law requires that the individual's driver certification be suspended. [2 O.C. 210.8-2]. Suspension of driver certification is the suspension of an individual's ability to drive a fleet vehicle or personal vehicle on official business and is not a suspension or leave from work. [2 O.C. 210.8-1]. The individual's driver certification is suspended until a time in which the individual has obtained a valid driver's license and meets the qualifications for reinstatement of driver certification. [2 O.C. 210.8-3].

An individual's action of obtaining an operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation, even if that action occurred while the individual was off duty, have an impact on the individual's driver certification because an OWI, DUI, or PAC citation typically results in the suspension of the individual's driver's license for some period of time. The suspension of an individual's driver's license results in the suspension of driver certification.

So although an individual obtaining a citation for an OWI, DUI, or PAC may always have an impact on the individual's driver certification if the individual's driver's licenses was suspended or revoked as a result, how far back in time to review a individual's driving record to determine if the individual meets the qualifications to obtain driver certification is a policy determination for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted and an individual shall not obtain his or her driver certification if he or she has an OWI, DUI, or PAC citation within the last twelve (12) months.
2. The Law should be revised so that a different time period for the review of an individual's driving record for an OWI, DUI, or PAC citation is included. If the Legislative Operating Committee makes this determination then the LOC would have to make a determination as to how far back in time the driving record should be reviewed, and the following revision is recommended:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- (c) Have a driving record that does not reflect any of the following conditions:
 - (1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or
 - (2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last ___(time period)___ (#)___ ~~twelve (12) months~~.

LOC Consideration

The Legislative Operating Committee determined that the Law should remain as currently drafted and an individual shall not obtain his or her driver certification if he or she has an operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

The Legislative Operating Committee made the determination to keep this provision in the Law unchanged because checking the driving record of a potential certified driver of the Nation for any citations related to a drug and/or alcohol related offense better ensures the safety of the community and employees of the Nation, while also minimizing the potential liability of the Nation.

Additionally, the currently effective Law requires that an individual pass a driving record check by the Human Resources Department to verify the driver has no driving citation or conviction involving drugs or alcohol, within the time period that would make the driver ineligible for

certification under this law, which has been interpreted to be three (3) years. [BC-06-28-17-C - 2 O.C. 210.8-1(d)]. The inclusion of the twelve (12) month time period to check for a citation for operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) in the proposed amendments is already relaxing the driving record check that is included in the currently effective Law. The Legislative Operating Committee made the driving record check less stringent in an effort to provide more people the opportunity to become a certified driver. But, the Legislative Operating Committee still believes that there needs to be some driving record check for citations involving operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC), and it is for that reason the Legislative Operating Committee determined the Law should remain as drafted.

Comment 11 – Current Challenges for Personnel Services:

Barbara Kolitsch (written): Current challenges/issues from Personnel Services. One of our first commitments to the Oneida Nation in Personnel Services is to employ Oneida members. This policy negatively impacts mainly Oneida enrolled members. We don't want to be in the business of screening out Oneida enrolled candidates because of their driving record such as OWI. We lose good candidates this way! We've lost good employees this way.

Response

The commenter provides that a current challenge the Personnel Services Department faces is screening out Oneida enrolled job applicants due to not meeting the qualifications for driver certification. The commenter expresses that this may have a negative effect on the Nation's goal to employ members of the Oneida Nation.

When amending this Law, the Legislative Operating Committee focused on balancing the employment needs of the Nation with the need to minimize the liability of the Nation and encourage safety. Because the Legislative Operating Committee determined that the amendments to the Law better accomplish this balance, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment.

Comments 12 through 13 – Insurance Requirements:

210.4. Driver Certification

210.4-2. Qualifications for Certification. In order to receive driver certification a person shall:

(f) Maintain one (1) of the following minimum insurance requirements for a personal vehicle if the individual may use his or her personal vehicle to conduct official business:

(1) the individual's insurance covers:

- (A) one hundred thousand dollars (\$100,000) per person;
- (B) three hundred thousand dollars (\$300,000) per motor vehicle crash for bodily injury; and
- (C) twenty-five thousand dollars (\$25,000) property damage; or
- (2) the individual's insurance covers two hundred and fifty thousand dollars (\$250,000) combined single limit.

210.4-3. The Nation's Human Resources Department shall be responsible for determining whether an individual meets all the qualifications before approving or denying a driver certification.

- (a) An individual shall provide his or her appropriate license, training certification, and insurance information to the Human Resources Department.

Jacque Boyle (oral): Jacque Boyle, Public Works Director. There is a few things. As far as submitting insurance, we do get notification that insurance has, needs to be renewed for each employee that has a driver's requirement, personal driver's requirement. Unfortunately, there are instances that can occur where the employee then terminates the insurance and there is really no way for us to follow-up on that. So, I'm not sure what we can do, I don't think I can call the insurance company and say is this still in effect. So, so what they are doing is getting insurance, submitting the paperwork that's good for six months, but they could actually cancel it the next day.

Barbara Kolitsch (written): Employees have lapse of insurance, and supervisors don't consistently deal with lapse. A lapse today should result in suspension of certification, and today, some are not held accountable. It's difficult to track an employee who may drop insurance between coverage periods and pick up a new company, which will not show coverage. My only recommendation is for employees to somehow show continuation of coverage when they change insurance companies. Some supervisors aren't following up to ensure their employee has the required insurance prior to the employee continuing to drive.

Response

The commenters express concern that an employee can obtain insurance to become a certified driver, but then immediately cancel the insurance and the supervisor would not know.

The Law requires that an individual maintains minimum insurance requirements for a personal vehicle if that individual may use his or her personal vehicle to conduct official business. [2 O.C. 210.4-2(f)]. An individual is required to provide his or her insurance information to the Human Resources Department. [2 O.C. 210.4-3(a)]. A supervisor is required to ensure that the individual has received his or her driver certification from the Human Resources Department before the supervisor can allow the individual to drive a fleet vehicle or a personal vehicle on official business. [2 O.C. 210.4-4]. If an individual does not maintain the minimum insurance requirements for a personal vehicle then a supervisor may take disciplinary action against that individual. [2 O.C. 210.8-7(e)]. A supervisor who fails to ensure that his or her employee has received driver certification from the Human Resources Department prior to allowing that employee to drive a fleet vehicle or a personal vehicle on official business is also subject to disciplinary action for failing to comply with a provision of this law. [2 O.C. 210.8-7(a)].

Since the Law already requires that an individual maintain the minimum insurance requirements on a personal vehicle if that individual is going to use his or her personal vehicle to conduct official business, and allows for discipline if an individual or supervisor is not complying with the provisions of the Law, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment. Although the Legislative Operating Committee understands the burden in properly tracking if insurance requirements are met, the Law already requires that an individual maintain the minimum insurance requirements on a personal vehicle if that individual is going to use his or her personal vehicle to conduct official business, and allows for discipline if an individual or supervisor is not complying with the provisions of the Law.

Comment 14 – Referral to EAP:

210.8. Suspension of Driver Certification and Other Enforcement

210.8-2. *Qualifications for Suspension.* A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.

(a) A supervisor shall, when necessary, refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

Barbara Kolitsch (written): Referral to EAP (210.8(a). I'm unsure the value of this referral. There's an EAP policy, DOT policy, DAFWP policy – all which spell out reasons/ways to do an EAP referral. This isn't value-added in the Vehicle Driver/Fleet law. Please contact me if you have any questions regarding my comments. Thank you!

Response

The commenter states that she does not think there is value in including section 210.8-2(a) of the Law because it is duplicative of provision in other laws that more clearly detail when a referral to the Employee Assistance Program should occur.

Section 210.8-2(a) of the Law provides that a supervisor shall, when necessary, refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

The commenter is correct that other laws of the Nation provide when it may be necessary to refer an employee to the Employee Assistance Program. For example, the Drug and Alcohol Free Workplace law provides that an employee that engages in prohibited behavior, such as being under the influence of prohibited drugs and/or alcohol while on duty, for the first time shall be removed from duty without pay and shall receive a mandatory referral to the Employee Assistance Program for an assessment. [2 O.C. 202.11-5(a)(1)].

Although section 210.8-2(a) may be duplicative of requirements of other laws of the Nation, it serves as a notice or reminder to a supervisor that may be reviewing this Law that other laws of

the Nation may require a referral to the Employee Assistance Program for the individual's violation in conjunction with any consequences that result from this Law.

Whether or not to include section 210.8-2(a) in the Law is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee may determine:

1. The Law should remain as currently drafted and include section 210.8-2 in the Law as a notice to supervisors of the responsibility to refer an employee to the Employee Assistance Program in accordance with other applicable laws of the Nation.
2. The Law should be revised to remove section 210.8-2(a) due to the fact that it is duplicative of other laws of the Nation that more clearly detail when a referral to the Employee Assistance Program should occur. If the Legislative Operating Committee makes this determination, then the following revision is recommended:

210.8. Suspension of Driver Certification and Other Enforcement

210.8-2. *Qualifications for Suspension.* A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.

~~(a) A supervisor shall, when necessary, refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.~~

LOC Consideration

The Legislative Operating Committee ultimately determined that although other laws of the Nation provide more details on when a supervisor can refer an employee to the Employee Assistance Program, section 210.8-2(a) should remain in the Law as it provides notification and a reminder that the supervisor can, when necessary, refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

The Legislative Operating Committee directed that the following revision should be made to the wording of section 210.8-2(a) to make the provision easier to understand:

210.8-2. *Qualifications for Suspension.* A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.

- (a) A supervisor ~~shall, when necessary,~~ **may** refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

Comment 15 – Approval of Authorized Passengers:

210.6. Fleet Vehicles

210.6-7. Authorized Passengers. In addition to the employees, elected or appointed officials, or volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized to be a passenger in a fleet vehicle:

- (a) Individuals being transported as part of a program or service of the Nation;
- (b) Individuals being transported during the normal and ordinary course of representing and/or conducting business on behalf of the Nation; and/or

(c) Any other individual who is authorized to be a passenger by the Fleet Management Department.

Jacque Boyle (oral): Another item is in the law it says that Fleet Management needs to authorize all passengers or individuals that may not be employees, that's going to be very hard for us to administer. So I think that should be approved by the supervisor and area manager of whose using the vehicle. So, especially for Recreation or different, you know, events, we would have a hard time identifying each and every individual in the vehicle.

Response

The commenter provides that it would be difficult for the Fleet Management Department to provide the necessary authorization for passengers in fleet vehicles, and this responsibility would be better handled by supervisors who would have better knowledge of the appropriateness of authorizing an individual to be a passenger.

The Law provides that in addition to the employees, elected or appointed officials, or volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized to be a passenger in a fleet vehicle:

- a person being transported as part of a program or service of the Nation;
- a person being transported during the normal and ordinary course of representing and/or conducting business on behalf of the Nation; and/or
- any other individual who is authorized to be a passenger by the Fleet Management Department.

[2 O.C. 210.6-7(a)-(c)].

Which department to delegate the authority to authorize a passenger of a fleet vehicle to is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee can make one of the following determinations:

1. The Law should remain as currently drafted and require that any additional passengers receive authorization from the Fleet Management Department.
2. The Law should be revised so that it is the supervisor of the individual, and not the Fleet Management Department, that provides authorization for additional passengers. If the Legislative Operating Committee makes this determination, then the following revision is recommended:

210.6-7. Authorized Passengers. In addition to the employees, elected or appointed officials, or volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized to be a passenger in a fleet vehicle:

- (a) Individuals being transported as part of a program or service of the Nation;
- (b) Individuals being transported during the normal and ordinary course of representing and/or conducting business on behalf of the Nation; and/or
- (c) Any other individual who is authorized to be a passenger by the employee, elected or appointed official, or volunteer's supervisor~~Fleet Management Department.~~

LOC Consideration

The Legislative Operating Committee determined that the Law should be revised so that it is the supervisor of the individual, and not the Fleet Management Department, that provides authorization for additional passengers. The Legislative Operating Committee believes that the Fleet Management Department is responsible for ensuring the fleet vehicles are properly managed and maintained, but that it is the supervisor of an individual who will have more firsthand knowledge on whether a passenger is appropriate or not.

The Legislative Operating Committee is interested in pursuing the idea of requiring passengers of fleet vehicles who receive authorization by a supervisor to sign a waiver of liability, in another effort to minimize the risk and liability of the Nation.

The Legislative Operating Committee directed the following revision be made to the Law:

210.6-7. *Authorized Passengers.* In addition to the employees, elected or appointed officials, or volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized to be a passenger in a fleet vehicle:

- (a) Individuals being transported as part of a program or service of the Nation;
- (b) Individuals being transported during the normal and ordinary course of representing and/or conducting business on behalf of the Nation; and/or
- (c) Any other individual who is authorized to be a passenger by the supervisor of the employee, elected or appointed official, or volunteer. ~~Fleet Management Department.~~

Comment 16 – Suspending Driver Certification as a Result of a Motor Vehicle Crash:

210.7. Motor Vehicle Crashes or Damage to Vehicles

210.7-2. *Internal Review.* The Fleet Management Department and Risk Management Department shall coordinate and conduct an internal review of the auto incident report for a motor vehicle crash and/or damage to a vehicle.

- (a) Fleet Management and Risk Management may recommend whether an individual should be subject to disciplinary action based on the motor vehicle crash or incident resulting in damage to a vehicle.
- (b) The internal review shall be completed as soon as possible after a motor vehicle crash has been reported.
- (c) Following an internal review, Fleet Management and Risk Management shall issue a report. Copies of the report shall be:
 - (1) provided to the driver, the driver's supervisor, and the driver's area manager; and
 - (2) provided to the Human Resources Department if the Fleet Management Department and Risk Management Department recommend disciplinary action.

Jacque Boyle (oral): And I do want to reiterate what Barb said as far as managing the training. I think that if there is an incident, that that training should be required, especially if it's repetitive. We do have a lot of specialized vehicles for snow removal and the current policy says that if there is an incident, Risk Management, the Fleet Manager, HRD investigate and make a

recommendation and typically it is to remove their driving privileges. If we did that, in order to do the job that's required, that would mean we would have to put someone untrained in that vehicle, untrained on the route to take care of that job for the five days, ten days or fifteen days, I don't think that's sending the right message either. It also encourages employees not to report, because they know there's some negative consequences, but actually if we address it through training, especially if it's, you know, multiple incidents, and I'm talking about fender benders, not very serious accidents, that the training would actually help them to drive better.

Response

The commenter expresses support for the earlier comment that mandatory training should occur when an employee has an at-fault accident or receives a moving violation while on duty, instead of requiring it for all certified drivers of the Nation on a triennial basis.

The commenter also discusses a situation that arises under the currently effective law, where when conducting an internal review of a motor vehicle crash, the Fleet Management Department and the Risk Management Department may recommend that the individual who is involved in a motor vehicle crash has his or her driver certification suspended. [BC-06-28-17-C – 2 O.C. 210.9-4(a)(2)]. The commenter provides that suspending the driver certification of an individual involved in a motor vehicle crash results in someone who may not have the proper training or familiarity being put into that vehicle for work until the original individual has completed his or her suspension, and also results in employees not reporting motor vehicle crashes or damage to a vehicle in fear of having his or her driver certification suspended.

The proposed amendments to the Law handle the suspension of driver certification in a different manner than the current Law. Under the proposed amendments to the Law, an individual's driver certification shall only be suspended when the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason. [2 O.C. 210.8-2]. For other violations of the Law, a supervisor may take disciplinary action against an individual in accordance with the Nation's laws and policies governing employment if the individual is an employee, or in accordance with the laws and policies of the Nation governing sanctions and penalties if the individual is an elected or appointed official of the Nation. [2 O.C. 210.8-7]. Disciplinary action can be taken against an individual for any of the following actions:

- Failing to comply with any provision of this law;
 - Failing to complete any applicable driver training requirements;
 - Driving a fleet vehicle without being certified under the provisions of this law;
 - Admitting to, or being determined to be, partially or entirely at fault in a motor vehicle crash involving vehicle damage, property damage, or personal injury; and
 - Not maintaining the minimum insurance requirements for a personal vehicle.
- [2 O.C. 210.8-7(a)-(e)].

The Law still requires that the Fleet Management Department and the Risk Management Department coordinate and conduct an internal review for a motor vehicle crash or damage to a vehicle involving a fleet vehicle or a personal vehicle that as driven while conducting official business. [2 O.C. 210.7-2]. But, since the suspension of driver certification only occurs when an individual has his or her driver's license suspended or revoked by the State, if an individual is

involved in a motor vehicle crash or a situation involving damage to a vehicle that did not result in the suspension or revocation of the individual's license, then the Fleet Management Department and Risk Management Department will no longer recommend suspension of driver certification as a result of the internal review, but can recommend disciplinary action be taken. [2 O.C. 210.7-2(a)].

Since the commenter's concerns of suspending the driver certification of an individual who is involved in a motor vehicle crash or damage involving a vehicle is already addressed through the proposed amendments to the Law, and the Legislative Operating Committee has already been asked to consider mandatory training requirements for those involved in an at-fault accident or moving violation while on duty, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment.

Comment 17 – Use of GPS Equipment to Monitor Drivers:

Jacque Boyle (oral): We are, in conjunction with that, we are looking at implementing a GPS system throughout the fleet vehicles, so that it will give feedback on how that driver is doing. Hard braking, speeding, where they've been and we're getting very close to implementing a contract with a vendor and starting out with some of the vehicles. So, two things, it will allow the vehicle to last longer and hopefully give us feedback on how that driver is performing. That's all I have.

Response

The commenter provides the Legislative Operating Committee with information that the Department of Public Works is currently working on implementing a GPS system throughout fleet vehicles that will help monitor the driving of employees of the Nation.

Since this is just information being provided regarding the implementation of GPS equipment in fleet vehicles, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 18 – Compliance with BIA Motor Vehicle Operation Policy:

Candice Skenandore (written): Background. The Oneida Nation (Nation) has entered into a Compact and Funding Agreement with the US Department of Interior (DOI) since 1994. In accordance with Section 20 of the Nation's current Funding Agreement, the Nation agrees to self-administer a motor vehicle operations policy that is either comparable or superior to that of the

DOI's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy issued by the Associate Deputy Secretary. In addition, the Nation agrees to comply with Executive Order 13513 pursuant to the current Funding Agreement. Below you will find the Section 20 of the Funding Agreement in verbatim. Attached is the May 3, 2006 BIA Motor Vehicle Operation Policy and Executive Order 13513 for your reference.

Response

The commenter provides that through its Compact and Funding Agreement with the U.S. Department of Interior, the Nation has agreed to self-administer a motor vehicle operations policy that is either comparable or superior to that of the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy issued by the Associate Deputy Secretary, and has agreed to comply with Executive Order 13513.

Since this information is being provided to the Legislative Operating Committee for information purposes and to serve as a reminder of the requirements of the Nation's Compact and Funding Agreement with the U.S. Department of Interior, there is no revision to the Law recommended on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 19 – Conflicts with BIA Motor Vehicle Operation Policy:

Candice Skenandore (written): Section 20 Motor Vehicle Operation Policy - The Tribe certifies that it will self-administer a motor vehicle operation policy that promotes the safe and prudent operation of motor vehicles while performing duties to implement the terms of the Agreement. The Tribe's policy is either comparable or superior to the May 3, 2006 Motor Vehicle Operation Policy for the BIA issued by the Associate Deputy Secretary. The Tribe's policy includes compliance with Executive Order 13513 prohibiting texting while driving.

There may be areas where the proposed law and BIA Motor Vehicle Operation Policy conflict. In order to avoid compromising the Nation's funding agreement, the LOC may want to consider making changes to the proposed law to align with the BIA Policy or insert language in the proposed law that states that any current and future employee whose duties with respect to implementation of the Compact include driving may be subject to the BIA Motor Vehicle Operation Policy and Executive Order 13513 when the Nation's Vehicle Driver Certification and Fleet Management law is less stringent.

It should be noted that the following programs, services, functions, and activities are currently found within the Nation's BIA funding agreement; however, this is likely to change once the Nation negotiates a new funding agreement by the end of CY 2021.

Administrative Direction

Safety Management

A good mind. A good heart. A strong fire.



Rights Protection
 Aid to Tribal Government
 Law Enforcement
 Facilities Management
 Economic Development
 Housing Improvement Program
 Road Maintenance
 Community Fire Protection
 Agriculture
 Real Estate Services
 Real Estate Appraisals
 Environmental Quality

Forestry Management
 Wildlife Management
 Indian Child Welfare
 Services to Children, Elderly, and Families
 Welfare Assistance
 Education (Scholarship, Adult Education)
 Employment Assistance
 Johnson O'Malley
 Litigation Support
 Fish Hatchery
 Water Management
 Hunting and Fishing Rights

There are some areas within the Nation that contribute to the operation of but are not identified as compacted programs, services, functions, and activities. The Nation receives contract support costs for these types of positions. It is unclear whether and under what circumstances the Department of Interior would consider driving to be part of an employee's performance of duties to implement the Compact on the basis of the Nation's receipt of contract support costs.

Please let me know if you have any questions.

[See Attached May 3, 2006 BIA Motor Vehicle Operation Policy and Executive Order 13513]

Response

The commenter provides that through its Compact and Funding Agreement with the U.S. Department of Interior, the Nation has agreed to self-administer a motor vehicle operations policy that is either comparable or superior to that of the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy issued by the Associate Deputy Secretary, and has agreed to comply with Executive Order 13513. The commenter then goes on to provide that there may be areas where the proposed Law and the Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy conflict. In an effort to avoid compromising the Nation's funding agreement, the commenter recommends that the Legislative Operating Committee consider revising the Law to be consistent with the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy, or include a provision in the Law that provides that any current and future employee whose duties with respect to implementation of the Compact include driving may be subject to the BIA Motor Vehicle Operation Policy and Executive Order 13513 when the Nation's Vehicle Driver Certification and Fleet Management law is less stringent.

When drafting the amendments to the Law the Legislative Operating Committee was not aware of the Nation's agreement to self-administer a motor vehicle operations policy that is either comparable or superior to that of the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy issued by the Associate Deputy Secretary, and comply with Executive Order 13513. Now that the Legislative Operating Committee has been made aware of this obligation and potential for conflicts, the Legislative Operating Committee will have to determine how to move forward.

An example of a conflict that may exist between the Law and the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy exists in how drug and/or alcohol related offenses are handled when determining if an individual is eligible for driver certification. The Law provides that a person shall not be eligible for driver certification if the individual has a driving record that demonstrates an operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months. [2 O.C. 210.4-2(c)(2)]. On the other hand, Section II.D. of the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy provides that in order to be authorized to drive on official business an employee must have no convictions or uncontested citations within the three (3) year period immediately preceding their submittal of GTA Form 3607, Motor Vehicle Operator's License and Driving Record, for reckless driving, driving while intoxicated (DWI), driving under the influence (DUI), or leaving the scene of an accident.

The Legislative Operating Committee has to make a decision on how to handle the potential conflicts between the Law and the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy. The Legislative Operating Committee may make one of the following determinations:

1. Direct that a comprehensive analysis of the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy is completed and includes a comparison with the Law to identify any potential conflicts, and then deter this item to a work meeting to consider revisions to the Law that would eliminate such conflicts.
2. Revise the Law so that it includes a provision that provides that any current and future employee whose duties with respect to implementation of the Compact include driving may be subject to compliance with the BIA Motor Vehicle Operation Policy and Executive Order 13513 when the Nation's Vehicle Driver Certification and Fleet Management law is less stringent. If the Legislative Operating Committee makes this determination, then it is recommended that the Legislative Operating Committee direct the Human Resources Department and the Self Governance Department to collaborate to identify the positions that would be required to comply with the BIA Motor Vehicle Operations Policy, and then the following revision is recommended:
 210.4-5. *Exemption.* An individual whose duties with respect to the implementation of a contract, agreement, or compact of the Nation include driving may be subject to compliance with a motor vehicle operation policy as provided in the contract, agreement, or compact of the Nation when this law is less stringent than the said motor vehicle operation policy.

LOC Consideration

The Legislative Operating Committee determined that the Law should be revised to include an exemption which will address all current and future employees whose duties with respect to implementation of the Compact include driving and therefore may be subject to compliance with the BIA Motor Vehicle Operation Policy and Executive Order 13513 when the Nation's Vehicle Driver Certification and Fleet Management law is less stringent.

The Legislative Operating Committee determined that it is important to identify the specific employees who may have to follow the BIA Motor Vehicle Operation Policy, so it is clear which employees are subject to the Nation's Law and which employees are required to follow a stricter policy. The Legislative Operating Committee intends to direct the Human Resources Department to work with the Self Governance Department to identify the positions that would be required to comply with the BIA Motor Vehicle Operations Policy, and to update the job descriptions so that it is clear which driving policy is applicable. The Legislative Operating Committee also intends to direct that a comprehensive analysis of Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy is completed and includes a comparison with the Law to identify where this Law is less strict.

The Legislative Operating Committee directed the following revision be made to this Law based on this comment:

210.4-5. *Exemption.* An individual whose duties with respect to the implementation of a contract, agreement, or compact of the Nation include driving may be subject to compliance with a motor vehicle operation policy as provided in the contract, agreement, or compact of the Nation when this law is less stringent than the said motor vehicle operation policy.

Title 2. Employment - Chapter 210

~~Lot's~~ ~~sles~~ ~~Kayanl^sla~~ ~~Khale> Nya>teka>sl#htake~~ ~~Lonatl\$hute>~~ ~~Kayanl^sla~~ *they're driving law and a variety of vehicles the responsibility is attached to them* **VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT**

210.1. Purpose and Policy
210.2. Adoption, Amendment, Repeal
210.3. Definitions
210.4. Driver Certification

210.5. Responsibilities of a Certified Driver
210.6. Fleet Vehicles
210.7. Motor Vehicle Crashes or Damage to Vehicles
210.8. Suspension of Driver Certification and Other Enforcement

210.1. Purpose and Policy

210.1-1. *Purpose.* The purpose of this law is to establish standards that certify employees, elected and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official business and regulate the use of all vehicles owned and leased by the Nation.

210.1-2. *Policy.* It is the policy of the Nation to ensure the safety of the community and employees of the Nation; minimize the Nation's liability when physical damage to vehicles and/or property damage occurs as a result of a motor vehicle crash; and improve the efficiency and effectiveness of the use of vehicles owned by the Nation.

210.2. Adoption, Amendment, Repeal

210.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-28-17-C, and amended by resolution BC-__-__-__-__.

210.2-2. 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.

210.2-3. 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.

210.2-4. 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.

210.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

210.3. Definitions

210.3-1. 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) "Area manager" means an employee's supervisor's supervisor; or, an individual designated to be the area manager by a General Manager position.

(b) "Business day" means Monday through Friday, from 8:00 a.m. to 4:30 p.m.; excluding the Nation's holidays.

(c) "Employee" means an individual employed by the Nation, but does not include elected or appointed officials, or employees of a chartered corporation of the Nation.

(d) "Entity" means a department, enterprise, program, board, committee or commission of the Nation.

(e) "Employee Assistance Program" means a professional counseling program staffed by clinical social workers licensed by the State of Wisconsin which offers services to the Nation's employees and family members.

(f) "Fleet vehicle" means a vehicle owned or leased by the Nation.

(g) "Moving violation" means any violation of motor vehicle or traffic law that is committed by the driver of a vehicle while the vehicle is moving. A moving violation does

not include parking violations, equipment violations, or paperwork violations relating to insurance, registration or inspection.

(h) “Nation” means the Oneida Nation.

(i) “Prohibited drug” means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

(j) “Supervisor” means the direct supervisor of an employee. For volunteers, elected or appointed officials, or employees without a direct supervisor, it means the Human Resources Department or any party who has been designated by the Human Resources Department as responsible for performing a supervisor’s responsibilities under this law.

(k) “Weapon” means a firearm, knife, electric weapon, club, or any other object intended to cause harm to oneself or others.

210.4. Driver Certification

210.4-1. An individual shall obtain driver certification from the Human Resources Department before operating a fleet vehicle or personal vehicle on official business.

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

(a) Be eighteen (18) years of age or older;

(b) Hold a valid Wisconsin driver’s license;

(1) A person who holds a valid driver’s license from a state other than Wisconsin shall have thirty (30) days after his or her first day of employment or service to obtain a Wisconsin driver’s license.

(c) Have a driving record that does not reflect any of the following conditions:

(1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or

(2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

(d) Complete all driver training requirements imposed by the Nation or any federal or state agency regulations;

(e) Satisfy any other requirements specific to the job description and/or vehicle that may be used by or assigned to the person; and

(f) Maintain one (1) of the following minimum insurance requirements for a personal vehicle if the individual may use his or her personal vehicle to conduct official business:

(1) the individual’s insurance covers:

(A) one hundred thousand dollars (\$100,000) per person;

(B) three hundred thousand dollars (\$300,000) per motor vehicle crash for bodily injury; and

(C) twenty-five thousand dollars (\$25,000) property damage; or

(2) the individual’s insurance covers two hundred and fifty thousand dollars (\$250,000) combined single limit.

210.4-3. The Nation’s Human Resources Department shall be responsible for determining whether an individual meets all the qualifications before approving or denying a driver certification.

(a) An individual shall provide his or her appropriate license, training certification, and insurance information to the Human Resources Department.

(b) The Human Resources Department shall have the authority to check the driving record of an individual at any time.

(c) The Human Resources Department shall maintain a current list of all certified drivers and provide the list to Fleet Management, Risk Management, and Central Accounting on a regular basis.

210.4-4. A supervisor shall ensure that an individual has received his or her driver certification from the Human Resources Department before allowing the individual to drive a fleet vehicle or a personal vehicle on official business.

210.4-5. *Exemption.* An individual whose duties with respect to the implementation of a contract, agreement, or compact of the Nation include driving may be subject to compliance with a motor vehicle operation policy as provided in the contract, agreement, or compact of the Nation when this law is less stringent than the said motor vehicle operation policy.

210.5. Responsibilities of a Certified Driver

210.5-1. *General Responsibilities.* While operating a fleet vehicle or a personal vehicle on official business, an individual shall:

- (a) Abide by all traffic laws;
- (b) Wear a seat belt and require any passengers to wear a seat belt at all times;
- (c) Not drive while under the influence of prohibited drugs and/or alcohol;
- (d) Not drive if impaired by a medical or physical condition or other factor that affects a driver's motor skills, reaction time, or concentration;
- (e) Not carry a weapon, whether in the open or concealed;
 - (1) *Exemption.* An individual who is carrying a weapon in the course of performing his or her official duties, or is participating in cultural activities or ceremonies is exempt from this requirement.
- (f) Not transport prohibited drugs and/or alcohol;
 - (1) *Exemption.* An employee of the Nation who is transporting prohibited drugs and/or alcohol in the course of performing his or her job duties is exempt from this requirement.
- (g) Not deliver goods or services for personal gain, or operate private pools where the riders pay the driver; and
- (h) Not use electronic devices in an unlawful manner.

210.5-2. *Training Responsibilities.* An individual with driver certification shall complete the driver safety training provided and monitored by the Human Resources Department every three (3) years.

- (a) *Exemption.* An individual who is required to maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies shall be exempt from the requirement to complete the driver safety training provided by the Human Resources Department.

210.5-3. *Fleet Vehicle Responsibilities.* When operating a fleet vehicle, an individual shall:

- (a) Complete a vehicle mileage log;
- (b) Not transport unauthorized passengers;
- (c) Notify the Fleet Management Department immediately of any problems with a fleet vehicle that may be a safety or mechanical hazard, or of any incidents that result in the inability of a fleet vehicle to complete a trip;
- (d) Be personally responsible for all traffic citation costs, parking ticket costs, or any similar expense related to vehicle use;
- (e) Use Oneida Retail locations for fueling fleet vehicles, unless the fleet vehicle needs fuel before it can be taken to an Oneida Retail location;
- (f) Not smoke or use electronic smoking devices or permit others to smoke or use electronic smoking devices in the fleet vehicle; and

(g) Ensure the interior of the vehicle is kept in good condition, clean, and free of debris.
210.5-4. *Personal Vehicle Responsibilities.* When operating a personal vehicle on official business, an individual shall:

(a) Obtain permission from his or her supervisor to operate a personal vehicle on official business; and

(b) Submit all required documents for mileage reimbursement, if seeking reimbursement for miles driven while conducting official business, within thirty (30) days of driving the miles or by the end of the current fiscal year, whichever is sooner.

(1) Not seeking mileage reimbursement does not exempt an individual from the provisions of this law.

210.5-5. *Notification Requirements.* An individual shall notify his or her supervisor if he or she:

(a) Has his or her driver's license suspended or revoked by the State, or has his or her driver's license become invalid for any other reason;

(b) Meets any of the conditions for disciplinary action as provided in section 210.8-7; and/or

(c) Has any impairment by a medical or physical condition or other factor that affects his or her motor skills, reaction time, or concentration.

210.6. Fleet Vehicles

210.6-1. *Fleet Management Department.* The Nation's Fleet Management Department shall purchase, manage, and monitor the use of the Nation's fleet vehicles. The Fleet Management Department's responsibilities shall include, but are not limited to:

(a) Maintain a list of all fleet vehicles that are available for use, including vehicles permanently assigned to specific entities of the Nation;

(b) Remove unsafe vehicles from the fleet;

(c) Obtain estimates of and schedule fleet vehicle repairs when necessary;

(d) Install or remove equipment on fleet vehicles;

(e) Ensure the Nation's logo is on all fleet vehicles; and

(f) Ensure that all fleet vehicles are equipped with a mileage log and an auto incident kit which contains forms and instructions for reporting any incident.

210.6-2. *Automotive Department.* The Automotive Department shall service and maintain fleet vehicles according to factory recommendations, or the maintenance schedule established by the Automotive Department, whichever is stricter. Any vehicle deemed unsafe by the Automotive Department shall be reported to the Fleet Management Department.

210.6-3. *Risk Management Department.* The Risk Management Department shall be responsible for securing and maintaining insurance coverage for all fleet vehicles. Additional responsibilities of the Risk Management Department shall include, but is not limited to:

(a) Providing auto insurance identification cards in every fleet vehicle;

(b) Processing all submitted vehicle claims and related information; and

(c) Submitting claims to the insurance company.

210.6-4. *Use of a Fleet Vehicle.* A fleet vehicle may be permanently assigned to an entity for use or requested for use on a temporary basis. A fleet vehicle shall be used for conducting official business of the Nation. When used for travel purposes, a fleet vehicle may also be used for incidental purposes such as travel to and from lodging and/or meal sites.

(a) *Prohibited Use of a Fleet Vehicles.* A fleet vehicle shall not be used for any of the following purposes:

(1) Personal use for non-business purposes;

(2) Towing cargo for personal reasons;

(3) Hauling loads that could structurally damage the vehicle; and/or

(4) Jump starting vehicles, other than fleet vehicles.

210.6-5. *Permanently Assigned Fleet Vehicles.* The Fleet Management Department may permanently assign a fleet vehicle to an entity if the entity meets the minimum mileage criteria as established by the Fleet Management Department.

(a) *Exception to Minimum Mileage Criteria.* The Fleet Management Department may grant an entity an exception to the minimum mileage criteria.

(b) An entity who is permanently assigned a fleet vehicle shall regularly schedule maintenance work and safety checks with the Automotive Department.

(c) An entity that is permanently assigned a fleet vehicle is responsible for ensuring that any individual who drives the vehicle has his or her driver certification.

210.6-6. *Temporary Use of a Fleet Vehicle.* An individual in an entity that is not permanently assigned a fleet vehicle may request to use a fleet vehicle for the purpose of conducting official business by submitting a request to the Fleet Management Department.

(a) Requests for the use of a fleet vehicle shall be made at least one (1) week in advance, unless urgent circumstances arise.

(b) Before determining whether a fleet vehicle is available, or approving the use of a fleet vehicle, the Fleet Management Department shall confirm that:

(1) The individual requesting the fleet vehicle has his or her driver certification;

(2) The individual has authorization to use the fleet vehicle from his or her supervisor, if an employee, or by the individual's entity, if the individual is an elected or appointed official of the Nation or volunteer; and

(3) Any passengers are authorized to travel in a fleet vehicle.

(c) The Fleet Management Department may combine vehicle use for travel to the same destination.

(d) The Fleet Management Department may cancel reservations that are not fulfilled in a timely manner.

210.6-7. *Authorized Passengers.* In addition to the employees, elected or appointed officials, or volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized to be a passenger in a fleet vehicle:

(a) Individuals being transported as part of a program or service of the Nation;

(b) Individuals being transported during the normal and ordinary course of representing and/or conducting business on behalf of the Nation; and/or

(c) Any other individual who is authorized to be a passenger by the [Fleet Management Department supervisor of the employee, elected or appointed official, or volunteer](#).

210.6-8. *Modifications to Fleet Vehicles.* Modifications to fleet vehicles for personal reasons are not permitted. Modifications to fleet vehicles for operating purposes may be allowed only with the approval of the Fleet Management Department.

(a) Radar detection devices shall not be installed or used in fleet vehicles.

210.6-9. *Rental Vehicles.* An individual shall have his or her driver certification before using a rental vehicle to conduct official business. An individual shall operate the rental vehicle with the same responsibilities and restrictions as a fleet vehicle.

(a) A vehicle shall be rented in accordance with the Nation's laws and policies governing travel. Every vehicle rented shall include the purchase of the maximum collision damage waiver offered by the rental company.

210.7. Motor Vehicle Crashes or Damage to Vehicles

210.7-1. In the event of a motor vehicle crash or damage involving the fleet vehicle or personal vehicle driven on official business, an individual shall be subject to the following reporting requirements; provided that, if an individual sustains injuries that make it impossible to meet the

reporting deadlines identified herein; the driver shall instead make the required reports as soon as he or she is able to do so:

(a) immediately report the crash or damage to local law enforcement if it results in any of the following:

- (1) death of a person;
- (2) an injury to the driver or another person that requires medical attention;
- (3) damage to property that does not belong to the driver or the Nation; or
- (4) a vehicle being disabled and/or needing to be towed.

(b) immediately report the motor vehicle crash or damage to his or her supervisor; and

(c) provide the Fleet Management Department and Risk Management Department with a completed auto incident report by the end of the next business day immediately following the motor vehicle crash or damage.

210.7-2. *Internal Review.* The Fleet Management Department and Risk Management Department shall coordinate and conduct an internal review of the auto incident report for a motor vehicle crash and/or damage to a vehicle.

(a) Fleet Management and Risk Management may recommend whether an individual should be subject to disciplinary action and/or a driver safety training requirement based on the motor vehicle crash or incident resulting in damage to a vehicle.

(b) The internal review shall be completed as soon as possible after a motor vehicle crash has been reported.

(c) Following an internal review, Fleet Management and Risk Management shall issue a report. Copies of the report shall be:

- (1) provided to the driver, the driver's supervisor, and the driver's area manager; and
- (2) provided to the Human Resources Department if the Fleet Management Department and Risk Management Department recommend disciplinary action.

210.8. Suspension of Driver Certification and Other Enforcement

210.8-1. Suspension of driver certification is the suspension of an individual's ability to drive a fleet vehicle or personal vehicle on official business and is not a leave from work. Suspension of driver certification is non-appealable.

210.8-2. *Qualifications for Suspension.* A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.

(a) A supervisor ~~shall, when necessary,~~ may refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

210.8-3. *Length of Suspension.* The individual's driver certification shall be suspended until a time in which the individual has obtained a valid driver's license and meets the qualifications for reinstatement of driver certification.

210.8-4. *Notification of Suspension.* The supervisor shall notify the Human Resources Department in writing if he or she suspends the driver certification of an individual and shall provide the basis for the suspension. Once notified of a suspension of driver certification the Human Resources Department shall remove the individual from the list of current certified drivers.

210.8-5. *Reasonable Accommodations to Suspension.* If the suspension of an individual's driver certification affects the individual's ability to perform his or her job duties, a supervisor may take one of the following actions:

- (a) Reassign the individual to a position which does not require driving;
- (b) Provide non-driving accommodation within the position;
- (c) Remove the driving requirement from the job description;

(d) Place the individual on unpaid leave until the individual obtains his or her driver certification; or

(e) Terminate the individual because a valid driver's license is an essential requirement of the position.

210.8-6. *Reinstatement of Driver Certification.* An individual may have his or her driver certification reinstated upon a review by the Human Resources Department that the individual again meets all the qualifications for driver certification provided for in section 210.4-2.

210.8-7. *Other Enforcement Actions.* A supervisor may take disciplinary action against an individual in accordance with the Nation's laws and policies governing employment if the individual is an employee, or in accordance with the laws and policies of the Nation governing sanctions and penalties if the individual is an elected or appointed official of the Nation, for any of the following actions:

(a) Failing to comply with any provision of this law;

(b) Failing to complete any applicable driver training requirements;

(c) Driving a fleet vehicle without being certified under the provisions of this law;

(d) Admitting to, or being determined to be, partially or entirely at fault in a motor vehicle crash involving vehicle damage, property damage, or personal injury; and

(e) Not maintaining the minimum insurance requirements for a personal vehicle.

210.8-8. *Additional Driver Safety Training.* A supervisor may require that an individual complete an additional applicable driver safety training, at his or her own expense, if the individual:

(a) is involved in an at-fault motor vehicle crash or damage involving the fleet vehicle or personal vehicle driven on official business;

(b) receives a moving violation while driving a fleet vehicle or personal vehicle driven on official business; and

(c) has his or her driver's license suspended or revoked by the State or becomes invalid for any other reason.

End.

Adopted BC-06-28-17-C.

Amended BC-__-__-__-__.

Title 2. Employment - Chapter 210

Lotí'sles Kayanl/sla Khale? Nya?teka?sléhtake Lonatlíhute? Kayanl/sla
they're driving law and a variety of vehicles the responsibility is attached to them
VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT

~~210.1. Purpose and Policy~~
~~210.2. Adoption, Amendment, Repeal~~
~~210.3. Definitions~~
~~210.4. Tribal Department Responsibilities~~
~~210.5. Driver Responsibilities~~
~~210.6. Tribal Vehicle Usage~~
~~210.7. Rental Vehicles~~
~~210.8. Driver Certification~~
~~210.9. Motor Vehicle Crashes, Damage Involving Tribal Vehicles~~

~~210.10. Suspension and Revocation of Certification; Disciplinary Action~~
~~210.11. Reinstatement of Certification~~
~~210.1. Purpose and Policy~~
~~210.2. Adoption, Amendment, Repeal~~
~~210.3. Definitions~~
~~210.4. Driver Certification~~
~~210.5. Responsibilities of a Certified Driver~~
~~210.6. Fleet Vehicles~~
~~210.7. Motor Vehicle Crashes or Damage to Vehicles~~
~~210.8. Suspension of Driver Certification and Other Enforcement~~

210.1. Purpose and Policy

210.1-1. *Purpose.* The ~~purposes~~purpose of this law ~~are~~is to:

(~~a~~) establish standards that certify employees, elected and appointed officials, and volunteers to drive a Tribal fleet vehicle or ~~drive a~~ personal vehicle on Tribal official business; and

(~~b~~) regulate the use of all vehicles owned and leased by the Nation.

210.1-2. *Policy.* It is the policy of the Nation to:

(~~a~~) ensure the safety of the community and employees of the ~~Oneida~~ Nation;

(~~b~~) minimize the Nation's liability when physical damage to vehicles and/or property damage occurs as a result of a motor vehicle crash; and

(~~c~~) improve the efficiency and effectiveness of the use of vehicles owned by the Nation.

210.2. Adoption, Amendment, Repeal

210.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-28-17-C, and amended by resolution BC- - - - -.

210.2-2. 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.

210.2-3. 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.

210.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. ~~Provided that, this law repeals the following:~~

(~~a~~) ~~BC-09-09-98-A (Amended Vehicle Driver Certification Policy)~~

(~~b~~) ~~BC-09-24-97-E (Oneida Vehicle Fleet Management Policy)~~

210.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

210.3. Definitions

210.3-1. 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~~)(a) "Area manager" means an employee's supervisor's supervisor; or, an individual designated to be the area manager by a General Manager position.

(b) “Business day” means Monday through Friday, from 8:00 a.m. to 4:30 p.m.; excluding the Nation’s holidays.

~~(b) “Business miles” means miles driven in a vehicle by an individual in order to conduct Tribal business.~~

~~(c) “Certification” or “certified” means that a driver meets the requirements established by this law and is authorized to operate a Tribal vehicle and/or a personal vehicle on Tribal business.~~

~~(d) “Driver” means any employee, official and/or volunteer who is certified to operate a Tribal vehicle, or to drive a personal vehicle on Tribal business.~~

~~(e) “Driver’s abstract” means a driver’s official driving record, which includes, but is not limited to, any restrictions or limitations that may be imposed on the driver’s driving privileges.~~

~~(f) “Employee” means an individual who is employed by the Nation and is subject to the direction and control, but does not include elected or appointed officials, or employees of a chartered corporation of the Nation with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. “Employee” includes, but is not limited to, an individual employed by any program or enterprise of the Nation, and political appointees.~~

~~(g)~~d “Entity” means a department, enterprise, program, board, committee or commission of the Nation.

(e) “Employee Assistance Program” means a professional counseling program staffed by clinical social workers licensed by the State of Wisconsin which offers services to the Nation’s employees and family members.

(f) “Fleet vehicle” means a vehicle owned or leased by the Nation.

(g) “Moving violation” means any violation of motor vehicle or traffic law that is committed by the driver of a vehicle while the vehicle is moving. A moving violation does not include parking violations, equipment violations, or paperwork violations relating to insurance, registration or inspection.

(h) “Nation” means the Oneida Nation.

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

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

~~(k)~~(i) “Prohibited drug” means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

(j) “Supervisor” means the direct supervisor of an employee. Provided that, for~~For~~ volunteers, elected or appointed officials ~~and, or~~ employees without a direct supervisor, it means the Human Resources Department or any party who has been designated by the Human Resources Department as responsible for performing a supervisor’s responsibilities under this law.

~~(l) “Tribal” or “Tribe” means the Oneida Nation.~~

~~(m)~~(k) “Weapon” means a firearm, knife, electric weapon, club, or any other object intended to cause harm to oneself or others.

210.4. Driver Certification

210.4-1. An individual shall obtain driver certification from the Human Resources Department before operating a fleet vehicle” means a or personal vehicle on official business.

210.4-2. ~~owned or leased~~ Qualifications for Certification. In order to receive driver certification a person shall:

(a) Be eighteen (18) years of age or older;

(b) Hold a valid Wisconsin driver’s license;

(1) A person who holds a valid driver’s license from a state other than Wisconsin shall have thirty (30) days after his or her first day of employment or service to obtain a Wisconsin driver’s license.

(c) Have a driving record that does not reflect any of the following conditions:

(1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or

(2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

(d) Complete all driver training requirements imposed by the Nation- or any federal or state agency regulations;

(e) Satisfy any other requirements specific to the job description and/or vehicle that may be used by or assigned to the person; and

(f) Maintain one (1) of the following minimum insurance requirements for a personal vehicle if the individual may use his or her personal vehicle to conduct official business:

(1) the individual’s insurance covers:

(A) one hundred thousand dollars (\$100,000) per person;

(B) three hundred thousand dollars (\$300,000) per motor vehicle crash for bodily injury; and

(C) twenty-five thousand dollars (\$25,000) property damage; or

(2) the individual’s insurance covers two hundred and fifty thousand dollars (\$250,000) combined single limit.

210.4-3. The Nation’s Human Resources Department shall be responsible for determining whether an individual meets all the qualifications before approving or denying a driver certification.

(a) An individual shall provide his or her appropriate license, training certification, and insurance information to the Human Resources Department.

(b) The Human Resources Department shall have the authority to check the driving record of an individual at any time.

(c) The Human Resources Department shall maintain a current list of all certified drivers and provide the list to Fleet Management, Risk Management, and Central Accounting on a regular basis.

210.4-4. A supervisor shall ensure that an individual has received his or her driver certification from the Human Resources Department before allowing the individual to drive a fleet vehicle or a personal vehicle on official business.

210.4-5. Exemption. An individual whose duties with respect to the implementation of a contract, agreement, or compact of the Nation include driving may be subject to compliance with a motor vehicle operation policy as provided in the contract, agreement, or compact of the Nation when this law is less stringent than the said motor vehicle operation policy.

210.5. ~~(n) “Volunteer” means a person who provides a service to the Nation without receiving pay.~~

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

210.4. Tribal Department Responsibilities of a Certified Driver

210.5-1. General Responsibilities. While operating a fleet vehicle or a personal vehicle on official business, an individual shall:

- (a) Abide by all traffic laws;
- (b) Wear a seat belt and require any passengers to wear a seat belt at all times;
- (c) Not drive while under the influence of prohibited drugs and/or alcohol;
- (d) Not drive if impaired by a medical or physical condition or other factor that affects a driver’s motor skills, reaction time, or concentration;
- (e) Not carry a weapon, whether in the open or concealed;
 - (1) *Exemption.* An individual who is carrying a weapon in the course of performing his or her official duties, or is participating in cultural activities or ceremonies is exempt from this requirement.
- (f) Not transport prohibited drugs and/or alcohol;
 - (1) *Exemption.* An employee of the Nation who is transporting prohibited drugs and/or alcohol in the course of performing his or her job duties is exempt from this requirement.
- (g) Not deliver goods or services for personal gain, or operate private pools where the riders pay the driver; and
- (h) Not use electronic devices in an unlawful manner.

210.5-2. Training Responsibilities. An individual with driver certification shall complete the driver safety training provided and monitored by the Human Resources Department every three (3) years.

- (a) *Exemption.* An individual who is required to maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies shall be exempt from the requirement to complete the driver safety training provided by the Human Resources Department.

~~**210.5-3. 210.4-1. Department of Public Works.** The Department of Public Works shall maintain Fleet Management and Automotive Departments to assist with the implementation of this law.~~

~~**210.4-2. Fleet Management.**~~ **Vehicle Responsibilities.** When operating a fleet vehicle, an individual shall:

- (a) Complete a vehicle mileage log;
- (b) Not transport unauthorized passengers;
- (c) Notify the Fleet Management ~~shall~~ Department immediately of any problems with a fleet vehicle that may be a safety or mechanical hazard, or of any incidents that result in the inability of a fleet vehicle to complete a trip;
- (d) Be personally responsible for all traffic citation costs, parking ticket costs, or any similar expense related to vehicle use;
- (e) Use Oneida Retail locations for fueling fleet vehicles, unless the fleet vehicle needs fuel before it can be taken to an Oneida Retail location;
- (f) Not smoke or use electronic smoking devices or permit others to smoke or use electronic smoking devices in the fleet vehicle; and
- (g) Ensure the interior of the vehicle is kept in good condition, clean, and free of debris.

210.5-4. Personal Vehicle Responsibilities. When operating a personal vehicle on official business, an individual shall:

- (a) Obtain permission from his or her supervisor to operate a personal vehicle on official business; and

(b) Submit all required documents for mileage reimbursement, if seeking reimbursement for miles driven while conducting official business, within thirty (30) days of driving the miles or by the end of the current fiscal year, whichever is sooner.

(1) Not seeking mileage reimbursement does not exempt an individual from the provisions of this law.

210.5-5. Notification Requirements. An individual shall notify his or her supervisor if he or she:

(a) Has his or her driver's license suspended or revoked by the State, or has his or her driver's license become invalid for any other reason;

(b) Meets any of the conditions for disciplinary action as provided in section 210.8-7; and/or

(c) Has any impairment by a medical or physical condition or other factor that affects his or her motor skills, reaction time, or concentration.

210.6(a) Purchase. Fleet Vehicles

210.6-1. Fleet Management Department. The Nation's Fleet Management Department shall purchase, manage, and monitor the use of ~~Tribal vehicles~~, the Nation's fleet vehicles. The Fleet Management Department's responsibilities shall include, but are not limited to:

(a) Maintain a list of all fleet vehicles that are available for use, including ~~the removal of vehicles permanently assigned to specific entities of the Nation;~~

(b) Remove unsafe vehicles from the fleet;

~~(b)c)~~ Obtain estimates of and schedule ~~Tribal fleet~~ vehicle repairs when necessary;

~~(c) Participate in motor vehicle crash investigations;~~

~~(d) Participate in situations requiring approval of driver certifications;~~

~~(e) (d)~~ Install or remove ~~global positioning system monitors on Tribal~~ equipment on fleet vehicles;

(e) Ensure the Nation's logo is on all fleet vehicles; and

(f) Ensure that all ~~Tribal fleet~~ vehicles are equipped with a mileage log and an auto incident kit which contains forms and instructions for reporting any incident; and.

~~(g) Maintain a list of all fleet vehicles that are available for use by drivers; including vehicles permanently assigned to specific departments.~~

210.4-3.6-2. Automotive Department. The Automotive Department shall service and maintain ~~Tribal fleet~~ vehicles according to factory recommendations, or the maintenance schedule established by the Automotive Department, whichever is stricter. Any vehicle deemed unsafe by the Automotive Department shall be reported to the Fleet Management Department.

210.4-4.6-3. Risk Management. ~~Department.~~ The Risk Management ~~shall:~~

~~(a) Secure~~ Department shall be responsible for securing and ~~maintain~~ maintaining insurance coverage for all ~~Tribal fleet~~ vehicles, ~~or may designate another party to do so;~~ Additional responsibilities of the Risk Management Department shall include, but is not limited to:

~~(b) Provide~~ (a) Providing auto insurance identification cards in every ~~Tribal fleet~~ vehicle;

~~(c) Process~~ (b) Processing all submitted vehicle claims and related information; and

~~(d) Submit~~ (c) Submitting claims to the insurance company;.

210.6-4. Use of a Fleet Vehicle. A fleet vehicle may be permanently assigned to an entity for use or requested for use on a temporary basis. A fleet vehicle shall be used for conducting official business of the Nation. When used for travel purposes, a fleet vehicle may also be used for incidental purposes such as travel to and from lodging and/or meal sites.

(a) Prohibited Use of a Fleet Vehicles. A fleet vehicle shall not be used for any of the following purposes:

(1) Personal use for non-business purposes;

(2) Towing cargo for personal reasons;

(3) Hauling loads that could structurally damage the vehicle; and/or

(4) Jump starting vehicles, other than fleet vehicles.

210.6-5. Permanently Assigned Fleet Vehicles. The Fleet Management Department may permanently assign a fleet vehicle to an entity if the entity meets the minimum mileage criteria as established by the Fleet Management Department.

(a) Exception to Minimum Mileage Criteria. The Fleet Management Department may grant an entity an exception to the minimum mileage criteria.

(b) An entity who is permanently assigned a fleet vehicle shall regularly schedule maintenance work and safety checks with the Automotive Department.

(c) An entity that is permanently assigned a fleet vehicle is responsible for ensuring that any individual who drives the vehicle has his or her driver certification.

210.6-6. (e) Participate in motor vehicle crash investigations; and

(f) Participate in situations requiring approval of certifications.

~~210.4-5. Human Resources Department.~~ Temporary Use The Human Resources Department shall:

(a) ~~Maintain a current list of drivers and provide the list to Fleet Management and the Central Accounting Department on a regular basis;~~

(b) ~~Perform driving record checks and approve or deny certification based on the review of an individual's driving record; and notify the appropriate parties immediately of ineligibility in writing;~~

(c) ~~Notify supervisors immediately of~~

(1) ~~the certification status of his or her employees or volunteers; and~~

(2) ~~of any cancellation or lapse in a personal vehicle driver's insurance coverage.~~

(d) ~~Assist supervisors with the administration of suspensions and/or revocations of certification;~~

(e) ~~Request and maintain records of proof of insurance on personal vehicles driven on Tribal business;~~

(f) ~~Participate in motor vehicle crash investigations;~~

(g) ~~Maintain documentation of all required driver training and regulatory compliance;~~

(h) ~~Perform, or delegate to another person to perform, the supervisory responsibilities identified in this law, for drivers who do not have a supervisor.~~

~~210.4-6. Environmental Health & Safety Division.~~ The Environmental Health & Safety Division shall provide driver safety training as included herein, and provide the Human Resources Department with the names of drivers who have completed training after each training session.

~~210.4-7. Supervisors.~~ For drivers who do not have a supervisor, the Human Resources Department shall either assume the supervisor's responsibilities, or shall delegate those responsibilities to another person. Fleet Vehicle. An individual in an entity. Supervisors of drivers shall:

(a) ~~Ensure those drivers who report to them are certified before allowing those employees to drive a Tribal vehicle or a personal vehicle on Tribal business.~~

(b) ~~Ensure drivers have the appropriate license, training certification(s), and insurance information on file with the Human Resources Department.~~

(c) ~~Ensure all motor vehicle crashes and damages are reported in accordance with this law.~~

(d) ~~Ensure that all Tribal vehicle mileage is recorded and submitted to Fleet Management in accordance with requirements established by Fleet Management.~~

(e) ~~Approve expense reports submitted for personal vehicle mileage reimbursement.~~

(f) ~~Promptly take appropriate action to investigate:~~

(1) ~~all infractions of this law of which they become aware, including but not limited to, allegations of alcohol or drug use while using a Tribal vehicle or personal~~ not permanently assigned a fleet vehicle for Tribal business.

- (2) ~~allegations of a history of unsafe driving, regardless of whether or not the employee has ever been charged with an offense.~~
- (g) ~~Ensure that all employees who directly report to them abide by this law.~~
- (h) ~~Implement disciplinary action against employee drivers who violate this law, in accordance with the Nation's laws governing employment.~~
- (i) ~~When necessary, refer drivers to:~~
- ~~(1) the Environmental Health & Safety Division or an appropriate agency or training source for additional driver training; and/or~~
 - ~~(2) the Employee Assistance Program, in accordance with applicable policies and procedures of the Nation.~~

~~210.5. Driver Responsibilities~~

~~210.5-1. While operating a Tribal vehicle or a personal vehicle on Tribal business, drivers shall:~~

- ~~(a) Abide by all provisions of this law.~~
- ~~(b) Follow all traffic laws, respect property, be courteous and use good judgment.~~
- ~~(c) Wear seat belts and require passengers to wear seat belts at all times.~~
- ~~(d) Not drive while:~~
 - ~~(1) under the influence of controlled substances, intoxicating beverages, prescription drugs or other medications that caution against operating a motor vehicle when taken, or~~
 - ~~(2) impaired by a medical or physical condition or other factor that affects a driver's motor skills, reaction time or concentration.~~
- ~~(e) Not transport controlled substances, intoxicating beverages, or any passenger that is in possession of controlled substance or intoxicating beverages; without prior written approval from his or her supervisor to do so.~~
 - ~~(1) Exemptions. Employees of the Nation who are transporting such substances, beverages or passengers in the course of performing their job duties are exempt from this requirement.~~
- ~~(f) Not transport unauthorized passengers.~~
- ~~(g) Not use devices such as cell phones, whether for talking or texting; notebook or laptop computers; books or book applications; newspapers or magazines; and two-way radios unless the vehicle is safely stopped.~~
 - ~~(1) Exemptions. The following are exempt from this requirement:~~
 - ~~(A) Authorized emergency vehicle communication equipment~~
 - ~~(B) Navigation devices~~
 - ~~(C) Communication equipment used while performing services for the Nation.~~

210.6. Tribal Vehicle Usage

~~210.6-1. Drivers who do not have access to a permanently assigned Tribal vehicle and who are unable to use a vehicle assigned to another department, may request to use a Tribal~~fleet ~~vehicle to conduct Tribal~~for the purpose of conducting official ~~business by submitting a request to the Fleet Management. Whenever possible, such requests shall be made at least one (1) week in advance.~~
Department.

- (a) Requests for the use of a fleet vehicle shall be made at least one (1) week in advance, unless urgent circumstances arise.
- (b) Before determining whether a fleet vehicle is available, or approving the use of a fleet vehicle, the Fleet Management Department shall confirm that:
 - (1) The individual requesting the fleet vehicle has his or her driver certification;

(2) The individual has authorization to use the fleet vehicle from his or her supervisor, if an employee, or by the individual's entity, if the individual is an elected or appointed official of the Nation or volunteer; and

(3) Any passengers are authorized to travel in a fleet vehicle.

(c) The Fleet Management Department may combine vehicle use for travel to the same destination.

(d) The Fleet Management Department may cancel reservations that are not fulfilled in a timely manner and may combine vehicle use for travel to the same destination.

(b) Before determining whether a Tribal vehicle is available or approving the use of a Tribal vehicle, Fleet Management shall confirm that:

(1) the driver is certified.

(2) the driver has written consent to use a Tribal vehicle; provided by the driver's supervisor, if the driver is an employee; or by the driver's entity, if the driver is an official or volunteer.

(3) any passengers are authorized to travel in a Tribal vehicle, in accordance with 210.6-3.

(e) Before approving the use of a permanently assigned Tribal vehicle by any driver, the department shall be responsible for confirming that the requirements of (b) are met. 7. Authorized Passengers.

210.6-2. In order to have a Tribal vehicle permanently assigned to an entity, the entity shall drive a minimum number of miles annually, as determined by Fleet Management. Exceptions to the mileage criteria may be granted upon request by an entity and with written approval from Fleet Management.

(a) Entities who have a permanently assigned vehicle shall regularly schedule service work, maintenance work and safety checks with the Automotive Department.

210.6-3. The following individuals may travel in a Tribal vehicle:

(a) Employees; addition to the employees, elected or appointed officials, or volunteers who are on Tribal business; authorized to use a fleet vehicle, the following individuals shall be authorized to be a passenger in a fleet vehicle:

(b)a) Individuals being transported as part of a program or service of the Nation;

(e)b) Individuals being transported during the normal and ordinary course of representing and/or conducting business on behalf of the Nation; and/or

(d) Individuals who are authorized, by Oneida Business Committee motion, to travel in a Tribal vehicle. The Oneida Business Committee may request input from Fleet Management before making a determination on these requests.

210.6-4. When a driver uses a Tribal vehicle, he or she shall:

(a) Complete a vehicle mileage log. Vehicle mileage logs shall be provided in each Tribal vehicle.

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

(c) Be personally responsible for all traffic citation costs, parking ticket costs or any similar expense related to vehicle use.

(d) Use Oneida One Stops for fueling Tribal vehicles, unless the Tribal vehicle needs fuel before it can be taken to an Oneida One Stop.

(e) Not smoke, and not permit others to smoke, in the Tribal vehicle.

(f) Ensure the interior of the vehicle is kept in good condition, clean and free of debris.

(c) Any other individual who is authorized to be a passenger by the supervisor of the employee, elected or appointed official, or volunteer.

~~210.6-8. 210.6-5. Tribal vehicles shall be used for business miles. When away from the work site, a Tribal vehicle may also be used for incidental purposes, such as travel to and from lodging and meal sites. Tribal vehicles shall not be used for any of the following:~~

- ~~(a) Personal use or non-business miles, except as authorized under the Business Committee Vehicle Policy.~~
- ~~(b) Vacation.~~
- ~~(c) Towing cargo for personal reasons.~~
- ~~(d) Hauling loads that could structurally damage the vehicle.~~
- ~~(e) Delivering goods or services for personal gain, or operating private pools where the riders pay the driver.~~
- ~~(f) Transporting hitchhikers.~~
- ~~(g) Jump starting vehicles, other than Tribal vehicles.~~

~~210.6-6. Tribal logos shall be placed on all Tribal vehicles.~~

~~210.6-7. Additional Equipment, Modifications:~~

~~(a) to Fleet Vehicles.~~ Modifications to Tribalfleet vehicles for personal reasons are not permitted. Modifications to Tribalfleet vehicles for operating purposes may be allowed only with the approval of the Fleet Management- Department.

~~(1) Provided that, this shall not be construed to prohibit drivers from making temporary, non permanent modifications, such as adjusting the positions of vehicle seats or mirrors.~~

~~(b) Fleet Management may equip Tribal vehicles with Global Positioning Systems (GPS) to monitor vehicle usage.~~

~~(c)(a)~~ Radar detection devices shall not be installed or used in Tribalfleet vehicles.

210.7. Rental Vehicles

~~210.7-1. Rental vehicles are considered Tribal vehicles for the purpose of this law. All provisions of this law apply to rental vehicle usage. Vehicles~~210.6-9. Rental Vehicles. An individual shall have his or her driver certification before using a rental vehicle to conduct official business. An individual shall operate the rental vehicle with the same responsibilities and restrictions as a fleet vehicle.

~~(a) A vehicle~~ shall be rented in accordance with the ~~Oneida Travel and Expense Policy~~Nation's laws and ~~drivers of rental vehicles shall be certified in accordance with this law.~~

~~210.7-2. policies governing travel.~~ Every vehicle ~~rental~~rented shall include the purchase of the maximum collision damage waiver offered by the rental ~~companies~~company.

210.8. Driver Certification

~~210.8-1. Certification. All persons shall be certified before operating a Tribal vehicle or personal vehicle on Tribal business. In order to be certified, an individual shall:~~

- ~~(a) Be eighteen (18) years of age or older.~~
- ~~(b) Satisfy any additional experience requirements established by law or by rules promulgated by the Human Resources Department, that apply for the vehicle being assigned or used.~~
- ~~(c) Hold a valid, non probationary Wisconsin driver's license and provide proof of such license, including any commercial endorsement(s), to the Human Resources Department within thirty (30) days after his or her start of employment or time of election, appointment or volunteer service.~~

~~(1) Drivers with commercial driver's licenses may be restricted to only operating Tribal vehicles within the state of Wisconsin.~~

~~(2) An occupational license is a valid, non-probationary driver's license if the driver's abstract which accompanies the occupational license allows the driver to operate vehicles for his or her job with the Nation.~~

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

~~(d) Pass a driving record check by the Human Resources Department to verify the driver has a valid, non-probationary driver's license as identified in (c); and to verify the driver has no citation or conviction related to a traffic incident, and no driving citation or conviction involving drugs or alcohol, within the time period(s) that would make the driver ineligible for certification under this law.~~

~~(1) The individual shall have his or her driving record checked by the Human Resources Department prior to his or her hire date or start date.~~

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

~~(B) An individual with a driver's license from a state other than Wisconsin shall have his or her driving record checked based on that state's license.~~

~~(2) The Nation reserves the right to check driving records of a driver at any time. All drivers shall authorize the Human Resources Department to check his or her driving record.~~

~~(3) The Nation reserves the right to allow insurance carriers or agents to check driving records at any time. This review shall be deemed to be a review by the Nation.~~

~~(e) Complete all driver training requirements imposed by the Nation, an individual entity, or by any federal or state agency regulations.~~

~~(1) Except as provided in (e)(2), drivers who are certified to operate a Tribal vehicle shall complete driver safety training every three (3) years.~~

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

~~(B) A break in employment or service of one hundred eighty (180) days or greater requires retraining.~~

~~(C) Drivers shall be paid their regular wage for all required training.~~

~~(2) Tribal vehicle drivers who are subject to specialized driver safety training requirements imposed by state or federal regulatory agencies are exempt from the driver safety training required in (e)(1), provided that, such drivers shall complete all required driver safety training according to the applicable regulations before operating a Tribal vehicle to which the regulations apply.~~

~~210.8 2. Additional Requirements for Personal Vehicle Drivers. In addition to the requirements listed in 210.8 1, the following also apply for drivers of personal vehicles on Tribal business.~~

~~(a) Insurance. Each driver shall provide the Human Resources Department with written proof that he or she carries at least the minimum insurance coverage required by this law. Drivers shall maintain updated proof of vehicle insurance and provide copies to the Human Resources Department. The Human Resources Department may request written proof of insurance from drivers at any time.~~

~~(1) The minimum insurance requirements on a personal vehicle are:~~

~~—— (A) one hundred thousand dollars (\$100,000) per person;~~

~~—— (B) three hundred thousand dollars (\$300,000) per accident for bodily injury; and~~

~~—— (C) twenty five thousand dollars (\$25,000) property damage.~~

~~(2). A driver shall immediately notify the Human Resources Department of any cancelation or lapse in his or her insurance coverage. No driver may drive a personal vehicle on Tribal business during the time he or she does not have the required minimum personal auto insurance coverage.~~

~~(3) If a personal vehicle driver's required insurance lapses, the Human Resources Department shall immediately remove the driver from the list of certified drivers, and notify the driver's supervisor once this action has been taken.~~

~~(b) Mileage Reimbursement.~~

~~(1) A driver who operates a personal vehicle on Tribal business shall be reimbursed for any business miles driven if he or she:~~

~~(A) was certified at the time and had written proof of required insurance on file with the Human Resources Department.~~

~~(B) had prior consent from his or her supervisor to travel those miles on Tribal business.~~

~~(2) While driving on Tribal business, drivers of personal vehicles shall not use their vehicle for personal gain of any kind.~~

~~(3) All provisions of this law apply to drivers of personal vehicles on Tribal business regardless of whether or not vehicle mileage reimbursement is submitted.~~

~~210.8 3. Additional Requirements~~

~~(a) Individual entities may require stricter certification procedures and standards that do not conflict with these standards; including but not limited to, specialized requirements regarding age, experience, training, and licensing. Such procedures and standards shall be submitted to Fleet Management, Risk Management and the Human Resources Department for review and approval.~~

~~(b) Drivers are subject to all specialized requirements imposed by state or federal regulatory agencies; including but not limited to, regulatory requirements pertaining to the use of drugs and alcohol.~~

~~210.8 4. Drivers shall immediately notify their supervisor; and the supervisor shall immediately notify the Human Resources Department in writing, of any of the following:~~

~~(a) An arrest, charge or conviction for any:~~

~~(1) motor vehicle operation violation involving drugs or alcohol; or~~

~~(2) criminal offense related to a traffic incident.~~

~~(b) Any restriction, suspension, revocation, cancellation or, if applicable, reinstatement of driving privileges related to his or her driver's license.~~

~~210.8 5. Drivers shall immediately notify their supervisor of any impairment by a medical or physical condition or other factor that affects his or her motor skills, reaction time or concentration. Supervisors shall notify the Human Resources Department, in writing, of such information when appropriate.~~

210.9. Motor Vehicle Crashes; or Damage Involving Tribal to Vehicles

~~210.9 7-1. This section shall apply in the event a driver is involved in a motor vehicle crash while driving a Tribal vehicle or a personal vehicle on Tribal business; and/or in the event that a Tribal vehicle is damaged during use. Provided that, if the Travel and Expense Policy has more restrictive requirements regarding accident reporting, the provisions of that policy shall apply.~~

~~210.9 2. In the event of a motor vehicle crash or damage involving the vehicle, drivers~~**fleet vehicle or personal vehicle driven on official business, an individual** ~~shall be subject to the following reporting requirements; provided that, if a driver~~**an individual** ~~sustains injuries that make it impossible to meet the reporting deadlines identified herein; the driver shall instead make the required reports as soon as he or she is able to do so:~~

(a) immediately report the crash or damage to local law enforcement if it results in any of the following:

(1) death of a person;

(2) an injury to the driver or another person that requires medical ~~intervention by law enforcement or emergency personnel, or treatment at a medical facility;~~
attention;

~~(2) death of a person; or~~

(3) damage to property that does not belong to the driver or the Nation; or

(4) ~~a Tribal~~ vehicle being disabled and/or needing to be towed.

(b) immediately report the motor vehicle crash or damage to his or her supervisor ~~;~~ and

(c) provide the Fleet Management Department and Risk Management Department with a completed auto incident report by the end of the next business day immediately following the motor vehicle crash or damage.

~~(d) comply with any applicable alcohol and drug testing requirements established in other laws of the Nation.~~

~~210.9-3. Drivers shall follow any additional, applicable motor vehicle crash reporting requirements for vehicles regulated by a state or federal agency.~~

~~210.9-4-7-2. Internal Review. Whenever necessary,~~ The Fleet Management Department and Risk Management Department shall coordinate and conduct an internal ~~reviews~~review of the auto incident report for a motor vehicle crash and/or damage to a vehicle ~~crashes involving Tribal vehicles. Internal reviews may include other personnel as deemed appropriate by.~~

(a) Fleet Management and Risk Management:

~~(a) Fleet Management and Risk Management shall have investigative authority to:~~

~~(1) determine fault, if not determined by law enforcement; and/or~~

~~(2) may recommend whether a driver's certification~~ an individual ~~should be suspended~~ subject to disciplinary action and/or a driver safety training requirement based on the motor vehicle crash or incident resulting in damage to a vehicle.

~~(b) Internal reviews~~ The internal review shall be completed as soon as practicable ~~possible~~ after a motor vehicle crash has been reported; ~~and shall be conducted in accordance with industry standards of practice.~~

(c) Following an internal review, Fleet Management and Risk Management shall issue ~~an investigation~~ a report. Copies of the ~~investigation~~ report shall be:

(1) provided to the driver, the driver's supervisor, and the driver's area manager; and

(2) provided to the Human Resources Department if the Fleet Management Department and Risk Management Department recommend disciplinary action.

210.8 supervisor; Suspension of Driver Certification and Other Enforcement

~~210.8-1. (2) retained by Fleet Management and Risk Management for a minimum of three (3) years.~~

~~210.9-5. If, while driving a Tribal vehicle, a driver is determined to be, or admitted~~ Suspension of driver certification is the suspension of an individual's ability to drive a fleet vehicle or personal vehicle on official business and is not a leave from work. Suspension of driver certification is non-appealable.

210.8-2. Qualifications for Suspension. A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.

(a) A supervisor may refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

210.8-3. *Length of Suspension.* The individual's driver certification shall be suspended until a time in which the individual has obtained a valid driver's license and meets the qualifications for reinstatement of driver certification.

210.8-4. *Notification of Suspension.* The supervisor shall notify the Human Resources Department in writing if he or she suspends the driver certification of an individual and shall provide the basis for the suspension. Once notified of a suspension of driver certification the Human Resources Department shall remove the individual from the list of current certified drivers.

210.8-5. *Reasonable Accommodations to Suspension.* If the suspension of an individual's driver certification affects the individual's ability to perform his or her job duties, a supervisor may take one of the following actions:

- (a) Reassign the individual to a position which does not require driving;
- (b) Provide non-driving accommodation within the position;
- (c) Remove the driving requirement from the job description;
- (d) Place the individual on unpaid leave until the individual obtains his or her driver certification; or
- (e) Terminate the individual because a valid driver's license is an essential requirement of the position.

210.8-6. *Reinstatement of Driver Certification.* An individual may have his or her driver certification reinstated upon a review by the Human Resources Department that the individual again meets all the qualifications for driver certification provided for in section 210.4-2.

210.8-7. *Other Enforcement Actions.* A supervisor may take disciplinary action against an individual in accordance with the Nation's laws and policies governing employment if the individual is an employee, or in accordance with the laws and policies of the Nation governing sanctions and penalties if the individual is an elected or appointed official of the Nation, for any of the following actions:

- (a) Failing to comply with any provision of this law;
- (b) Failing to complete any applicable driver training requirements;
- (c) Driving a fleet vehicle without being certified under the provisions of this law;
- (d) Admitting to, or being determined to be, partially or entirely at fault in a motor vehicle crash involving vehicle damage, property damage, or personal injury, ~~the driver may have his or her certification suspended;~~ and

210.10. Suspension and Revocation of Certification; Disciplinary Action

~~210.10-1. Any driver who violates this law may be subject to suspension of his or her vehicle driver certification, and/or driving privileges.~~

~~(a) Driving Privilege Suspensions:~~

~~(1) In certain situations, a supervisor may temporarily suspend a driver's driving privileges without suspending the driver's certification. When a driver's driving privileges are suspended, the driver shall not be permitted to drive a Tribal vehicle or to drive a personal vehicle on Tribal business.~~

~~(A) A supervisor shall temporarily suspend a driver's driving privileges:~~

~~(1) When the driver is unable to provide proof that the driver carries any insurance required by this law, or~~

~~(2) When the driver has not satisfied any driver training requirements as required by this law; but has made arrangements to complete the required driver training within a reasonable period of time.~~

~~(3) Upon request from the Human Resources Department, in conjunction with the Risk Management Department, pending an~~

investigation that appears likely to lead to a suspension of certification.

(4) In any other situation where the supervisor is unable to determine whether the driver has valid certification and is eligible to drive a Tribal vehicle or a personal vehicle on Tribal business.

(B) When a supervisor suspends a driver's driving privileges, the supervisor shall promptly notify both the driver and the Human Resources Department, in writing, of the suspension, including the effective date; as well as the conditions that the employee is required to meet before the suspension may be lifted. The supervisor shall also notify both the driver and the Human Resource Department, in writing, once the driver's driving privileges are reinstated.

(C) A driver's driving privileges shall automatically be reinstated after the driver satisfactorily fulfills the conditions identified by the supervisor when the driving privileges are suspended.

(b) *Certification Suspensions.* A driver shall have his or her certification suspended for any of the following:

(1) Refusing to allow the Nation or an insurance carrier check his or her driving record.

(2) Failing to immediately notify his or her supervisor of any information as required in 210.8-4 or elsewhere in this law.

(3) Noncompliance with motor vehicle crash reporting requirements established by this law.

(4) Failing to complete any applicable driver training requirements.

(5) Being arrested, charged or convicted of a motor vehicle operation violation involving drugs, alcohol or criminal offense related to a traffic incident.

(6) Having his or her driver's license restricted, suspended, revoked or cancelled by the state.

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

(8) For a personal vehicle certification, not (e) **Not** maintaining the minimum insurance requirements for a personal vehicle.

(c) Supervisors who fail to uphold this law may face disciplinary action, in accordance with the laws of the Nation governing employment.

(d) Regardless of whether a violation results in suspension of certification,

(1) employees who violate this law may also be subject to disciplinary action, in accordance with laws of the Nation governing employment;

(2) officials who violate this law may also be subject to sanctions and penalties in accordance with applicable laws of the Nation; including but not limited to, removal from office for elected officials and termination of appointment for appointed officials.

210.10-2. Except as provided in 210.11-2(d) and 210.10-7(b), suspension of a vehicle driver certification or of driving privileges, is not appealable.

210.10-3. *Suspensions Affecting Employment Status.* Suspension of certification is a suspension of driving privileges and is not leave from work. Individuals who have their driving privileges suspended in accordance with 210.10-1(a), or who have their certification suspended and their ability to perform their duties as an employee affected by that suspension may request, in writing, that their **8-8. Additional Driver Safety Training.** A supervisor and a Human Resources Department representative determine what, if any, options may be available to them. Options may

include, but are not limited to: non-driving accommodation within the home department; reassignment to a position which does not may require driving; a leave of absence without pay; or termination of employment.

210.10 4. The minimum length of a suspension shall be based on the number of prior suspensions that have occurred within the past three (3) years from the date of the incident that resulted in the most recent suspension:

(a) ~~The first time a driver has~~that an individual complete an additional applicable driver safety training, at his or her vehicle driver certification suspended, the suspension shall last no less than five (5) full time workdays.

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

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

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

210.10 5. Due to the seriousness of a citation for the operation of motor vehicles involving drugs or alcohol, vehicle driver certification shall be suspended upon the issuance of a driving citation involving drugs or alcohol. Certification may only be reinstated upon the dismissal of the citation or upon three (3) years passing from the date of citation.

210.10 6. A break in employment or service of one hundred eighty (180) days or greater shall clear the driver's record of any vehicle driver certification suspensions, except for three (3) year suspensions resulting from a violation that involved drugs or alcohol. However, all prior suspensions may be used in re-employment consideration.

210.10 7. Notwithstanding any other provision of this law, the Nation reserves the right to suspend an individual's certification or extend a certification suspension. Certification may be suspended; or an existing suspension may be extended, based on the best interests of the Nation and in accordance with the following:

(a) For officials and volunteers: upon unanimous agreement between the Human Resources Department, Fleet Management and Risk Management.

(b) For employees: A supervisor may suspend an employee's certification or extend an existing suspension, when the supervisor determines it is appropriate to do so. The employee may appeal this adverse employment action in accordance with the employment laws of the Nation.

210.11. Reinstatement of Certification

210.11 1. Vehicle driver certifications that are suspended for thirty (30) days or less shall be automatically reinstated upon expiration of the suspension.

210.11 2. A driver whose certification is suspended for thirty one (31) days or more, may have his or her certification reinstated in accordance with the following:

(a) The driver may request reinstatement of his or her certification after:

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

(2) Three (3) years have passed since own expense, if the individual was convicted of a motor vehicle operation citation involving drugs or alcohol; and;

(3) The state removes a (a) is involved in an at-fault motor vehicle crash or damage involving the fleet vehicle or personal vehicle driven on official business;

(b) receives a moving violation while driving a fleet vehicle or personal vehicle driven on official business; and

(c) has his or her driver's license ~~suspension; and~~ suspended or revoked by the State or becomes invalid for any other reason.

~~(4) Written proof has been submitted to the Human Resources Department that the individual has any required insurance coverage.~~

~~(b) Upon receiving a request to reinstate an individual's certification, the Human Resources Department shall:~~

~~(1) check the individual's driving record to ensure the individual has no violations on his or her driving record preventing reinstatement; and~~

~~(2) verify the written proof of insurance submitted by the individual, provided it meets the requirements of this law.~~

~~(c) If the individual passes the driving record check and his or her proof of insurance is verified, the individual's certification shall be reinstated upon approval of the Human Resources Department.~~

~~(1) *Exception.* For an individual's fourth (4th) suspension or a suspension due to a conviction of motor vehicle operation citation involving drugs or alcohol the individual's certification may only be reinstated if the following requirements are met:~~

~~(A) For officials and volunteers: certification may only be reinstated upon unanimous approval of the Human Resources Department, Fleet Management and Risk Management.~~

~~(B) For employees: The supervisor shall notify the Human Resources Department, Area Manager, and Risk Management of the request; and may reinstate the employee's certification if none of those entities object.~~

~~(d) Any official, volunteer or employee may seek review of a decision not to reinstate certification, by filing an appeal with the Judiciary.~~

End.

Adopted BC-06-28-17-C.

Amended BC- - - - .

Title 2. Employment - Chapter 210

Lotí'sles Kayanl'ásla Khale? Nya?teka?sléhtake Lonatlíhute? Kayanl'ásla
they're driving law and a variety of vehicles the responsibility is attached to them
VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT

210.1. Purpose and Policy
210.2. Adoption, Amendment, Repeal
210.3. Definitions
210.4. Driver Certification

210.5. Responsibilities of a Certified Driver
210.6. Fleet Vehicles
210.7. Motor Vehicle Crashes or Damage to Vehicles
210.8. Suspension of Driver Certification and Other Enforcement

210.1. Purpose and Policy

210.1-1. *Purpose.* The purpose of this law is to establish standards that certify employees, elected and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official business and regulate the use of all vehicles owned and leased by the Nation.

210.1-2. *Policy.* It is the policy of the Nation to ensure the safety of the community and employees of the Nation; minimize the Nation's liability when physical damage to vehicles and/or property damage occurs as a result of a motor vehicle crash; and improve the efficiency and effectiveness of the use of vehicles owned by the Nation.

210.2. Adoption, Amendment, Repeal

210.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-28-17-C, and amended by resolution BC-__-__-__.

210.2-2. 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.

210.2-3. 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.

210.2-4. 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.

210.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

210.3. Definitions

210.3-1. 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) "Area manager" means an employee's supervisor's supervisor; or, an individual designated to be the area manager by a General Manager position.

(b) "Business day" means Monday through Friday, from 8:00 a.m. to 4:30 p.m.; excluding the Nation's holidays.

(c) "Employee" means an individual employed by the Nation, but does not include elected or appointed officials, or employees of a chartered corporation of the Nation.

(d) "Entity" means a department, enterprise, program, board, committee or commission of the Nation.

(e) "Employee Assistance Program" means a professional counseling program staffed by clinical social workers licensed by the State of Wisconsin which offers services to the Nation's employees and family members.

(f) "Fleet vehicle" means a vehicle owned or leased by the Nation.

(g) "Moving violation" means any violation of motor vehicle or traffic law that is committed by the driver of a vehicle while the vehicle is moving. A moving violation does

not include parking violations, equipment violations, or paperwork violations relating to insurance, registration or inspection.

(h) “Nation” means the Oneida Nation.

(i) “Prohibited drug” means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

(j) “Supervisor” means the direct supervisor of an employee. For volunteers, elected or appointed officials, or employees without a direct supervisor, it means the Human Resources Department or any party who has been designated by the Human Resources Department as responsible for performing a supervisor’s responsibilities under this law.

(k) “Weapon” means a firearm, knife, electric weapon, club, or any other object intended to cause harm to oneself or others.

210.4. Driver Certification

210.4-1. An individual shall obtain driver certification from the Human Resources Department before operating a fleet vehicle or personal vehicle on official business.

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

(a) Be eighteen (18) years of age or older;

(b) Hold a valid Wisconsin driver’s license;

(1) A person who holds a valid driver’s license from a state other than Wisconsin shall have thirty (30) days after his or her first day of employment or service to obtain a Wisconsin driver’s license.

(c) Have a driving record that does not reflect any of the following conditions:

(1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or

(2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

(d) Complete all driver training requirements imposed by the Nation or any federal or state agency regulations;

(e) Satisfy any other requirements specific to the job description and/or vehicle that may be used by or assigned to the person; and

(f) Maintain one (1) of the following minimum insurance requirements for a personal vehicle if the individual may use his or her personal vehicle to conduct official business:

(1) the individual’s insurance covers:

(A) one hundred thousand dollars (\$100,000) per person;

(B) three hundred thousand dollars (\$300,000) per motor vehicle crash for bodily injury; and

(C) twenty-five thousand dollars (\$25,000) property damage; or

(2) the individual’s insurance covers two hundred and fifty thousand dollars (\$250,000) combined single limit.

210.4-3. The Nation’s Human Resources Department shall be responsible for determining whether an individual meets all the qualifications before approving or denying a driver certification.

(a) An individual shall provide his or her appropriate license, training certification, and insurance information to the Human Resources Department.

(b) The Human Resources Department shall have the authority to check the driving record of an individual at any time.

(c) The Human Resources Department shall maintain a current list of all certified drivers and provide the list to Fleet Management, Risk Management, and Central Accounting on a regular basis.

210.4-4. A supervisor shall ensure that an individual has received his or her driver certification from the Human Resources Department before allowing the individual to drive a fleet vehicle or a personal vehicle on official business.

210.4-5. *Exemption.* An individual whose duties with respect to the implementation of a contract, agreement, or compact of the Nation include driving may be subject to compliance with a motor vehicle operation policy as provided in the contract, agreement, or compact of the Nation when this law is less stringent than the said motor vehicle operation policy.

210.5. Responsibilities of a Certified Driver

210.5-1. *General Responsibilities.* While operating a fleet vehicle or a personal vehicle on official business, an individual shall:

- (a) Abide by all traffic laws;
- (b) Wear a seat belt and require any passengers to wear a seat belt at all times;
- (c) Not drive while under the influence of prohibited drugs and/or alcohol;
- (d) Not drive if impaired by a medical or physical condition or other factor that affects a driver's motor skills, reaction time, or concentration;
- (e) Not carry a weapon, whether in the open or concealed;
 - (1) *Exemption.* An individual who is carrying a weapon in the course of performing his or her official duties, or is participating in cultural activities or ceremonies is exempt from this requirement.
- (f) Not transport prohibited drugs and/or alcohol;
 - (1) *Exemption.* An employee of the Nation who is transporting prohibited drugs and/or alcohol in the course of performing his or her job duties is exempt from this requirement.
- (g) Not deliver goods or services for personal gain, or operate private pools where the riders pay the driver; and
- (h) Not use electronic devices in an unlawful manner.

210.5-2. *Training Responsibilities.* An individual with driver certification shall complete the driver safety training provided and monitored by the Human Resources Department every three (3) years.

- (a) *Exemption.* An individual who is required to maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies shall be exempt from the requirement to complete the driver safety training provided by the Human Resources Department.

210.5-3. *Fleet Vehicle Responsibilities.* When operating a fleet vehicle, an individual shall:

- (a) Complete a vehicle mileage log;
- (b) Not transport unauthorized passengers;
- (c) Notify the Fleet Management Department immediately of any problems with a fleet vehicle that may be a safety or mechanical hazard, or of any incidents that result in the inability of a fleet vehicle to complete a trip;
- (d) Be personally responsible for all traffic citation costs, parking ticket costs, or any similar expense related to vehicle use;
- (e) Use Oneida Retail locations for fueling fleet vehicles, unless the fleet vehicle needs fuel before it can be taken to an Oneida Retail location;
- (f) Not smoke or use electronic smoking devices or permit others to smoke or use electronic smoking devices in the fleet vehicle; and

(g) Ensure the interior of the vehicle is kept in good condition, clean, and free of debris.
210.5-4. *Personal Vehicle Responsibilities.* When operating a personal vehicle on official business, an individual shall:

(a) Obtain permission from his or her supervisor to operate a personal vehicle on official business; and

(b) Submit all required documents for mileage reimbursement, if seeking reimbursement for miles driven while conducting official business, within thirty (30) days of driving the miles or by the end of the current fiscal year, whichever is sooner.

(1) Not seeking mileage reimbursement does not exempt an individual from the provisions of this law.

210.5-5. *Notification Requirements.* An individual shall notify his or her supervisor if he or she:

(a) Has his or her driver's license suspended or revoked by the State, or has his or her driver's license become invalid for any other reason;

(b) Meets any of the conditions for disciplinary action as provided in section 210.8-7; and/or

(c) Has any impairment by a medical or physical condition or other factor that affects his or her motor skills, reaction time, or concentration.

210.6. Fleet Vehicles

210.6-1. *Fleet Management Department.* The Nation's Fleet Management Department shall purchase, manage, and monitor the use of the Nation's fleet vehicles. The Fleet Management Department's responsibilities shall include, but are not limited to:

(a) Maintain a list of all fleet vehicles that are available for use, including vehicles permanently assigned to specific entities of the Nation;

(b) Remove unsafe vehicles from the fleet;

(c) Obtain estimates of and schedule fleet vehicle repairs when necessary;

(d) Install or remove equipment on fleet vehicles;

(e) Ensure the Nation's logo is on all fleet vehicles; and

(f) Ensure that all fleet vehicles are equipped with a mileage log and an auto incident kit which contains forms and instructions for reporting any incident.

210.6-2. *Automotive Department.* The Automotive Department shall service and maintain fleet vehicles according to factory recommendations, or the maintenance schedule established by the Automotive Department, whichever is stricter. Any vehicle deemed unsafe by the Automotive Department shall be reported to the Fleet Management Department.

210.6-3. *Risk Management Department.* The Risk Management Department shall be responsible for securing and maintaining insurance coverage for all fleet vehicles. Additional responsibilities of the Risk Management Department shall include, but is not limited to:

(a) Providing auto insurance identification cards in every fleet vehicle;

(b) Processing all submitted vehicle claims and related information; and

(c) Submitting claims to the insurance company.

210.6-4. *Use of a Fleet Vehicle.* A fleet vehicle may be permanently assigned to an entity for use or requested for use on a temporary basis. A fleet vehicle shall be used for conducting official business of the Nation. When used for travel purposes, a fleet vehicle may also be used for incidental purposes such as travel to and from lodging and/or meal sites.

(a) *Prohibited Use of a Fleet Vehicles.* A fleet vehicle shall not be used for any of the following purposes:

(1) Personal use for non-business purposes;

(2) Towing cargo for personal reasons;

(3) Hauling loads that could structurally damage the vehicle; and/or

(4) Jump starting vehicles, other than fleet vehicles.

210.6-5. *Permanently Assigned Fleet Vehicles.* The Fleet Management Department may permanently assign a fleet vehicle to an entity if the entity meets the minimum mileage criteria as established by the Fleet Management Department.

(a) *Exception to Minimum Mileage Criteria.* The Fleet Management Department may grant an entity an exception to the minimum mileage criteria.

(b) An entity who is permanently assigned a fleet vehicle shall regularly schedule maintenance work and safety checks with the Automotive Department.

(c) An entity that is permanently assigned a fleet vehicle is responsible for ensuring that any individual who drives the vehicle has his or her driver certification.

210.6-6. *Temporary Use of a Fleet Vehicle.* An individual in an entity that is not permanently assigned a fleet vehicle may request to use a fleet vehicle for the purpose of conducting official business by submitting a request to the Fleet Management Department.

(a) Requests for the use of a fleet vehicle shall be made at least one (1) week in advance, unless urgent circumstances arise.

(b) Before determining whether a fleet vehicle is available, or approving the use of a fleet vehicle, the Fleet Management Department shall confirm that:

(1) The individual requesting the fleet vehicle has his or her driver certification;

(2) The individual has authorization to use the fleet vehicle from his or her supervisor, if an employee, or by the individual's entity, if the individual is an elected or appointed official of the Nation or volunteer; and

(3) Any passengers are authorized to travel in a fleet vehicle.

(c) The Fleet Management Department may combine vehicle use for travel to the same destination.

(d) The Fleet Management Department may cancel reservations that are not fulfilled in a timely manner.

210.6-7. *Authorized Passengers.* In addition to the employees, elected or appointed officials, or volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized to be a passenger in a fleet vehicle:

(a) Individuals being transported as part of a program or service of the Nation;

(b) Individuals being transported during the normal and ordinary course of representing and/or conducting business on behalf of the Nation; and/or

(c) Any other individual who is authorized to be a passenger by the supervisor of the employee, elected or appointed official, or volunteer.

210.6-8. *Modifications to Fleet Vehicles.* Modifications to fleet vehicles for personal reasons are not permitted. Modifications to fleet vehicles for operating purposes may be allowed only with the approval of the Fleet Management Department.

(a) Radar detection devices shall not be installed or used in fleet vehicles.

210.6-9. *Rental Vehicles.* An individual shall have his or her driver certification before using a rental vehicle to conduct official business. An individual shall operate the rental vehicle with the same responsibilities and restrictions as a fleet vehicle.

(a) A vehicle shall be rented in accordance with the Nation's laws and policies governing travel. Every vehicle rented shall include the purchase of the maximum collision damage waiver offered by the rental company.

210.7. Motor Vehicle Crashes or Damage to Vehicles

210.7-1. In the event of a motor vehicle crash or damage involving the fleet vehicle or personal vehicle driven on official business, an individual shall be subject to the following reporting requirements; provided that, if an individual sustains injuries that make it impossible to meet the

reporting deadlines identified herein; the driver shall instead make the required reports as soon as he or she is able to do so:

(a) immediately report the crash or damage to local law enforcement if it results in any of the following:

(1) death of a person;

(2) an injury to the driver or another person that requires medical attention;

(3) damage to property that does not belong to the driver or the Nation; or

(4) a vehicle being disabled and/or needing to be towed.

(b) immediately report the motor vehicle crash or damage to his or her supervisor; and

(c) provide the Fleet Management Department and Risk Management Department with a completed auto incident report by the end of the next business day immediately following the motor vehicle crash or damage.

210.7-2. *Internal Review.* The Fleet Management Department and Risk Management Department shall coordinate and conduct an internal review of the auto incident report for a motor vehicle crash and/or damage to a vehicle.

(a) Fleet Management and Risk Management may recommend whether an individual should be subject to disciplinary action and/or a driver safety training requirement based on the motor vehicle crash or incident resulting in damage to a vehicle.

(b) The internal review shall be completed as soon as possible after a motor vehicle crash has been reported.

(c) Following an internal review, Fleet Management and Risk Management shall issue a report. Copies of the report shall be:

(1) provided to the driver, the driver's supervisor, and the driver's area manager; and

(2) provided to the Human Resources Department if the Fleet Management Department and Risk Management Department recommend disciplinary action.

210.8. Suspension of Driver Certification and Other Enforcement

210.8-1. Suspension of driver certification is the suspension of an individual's ability to drive a fleet vehicle or personal vehicle on official business and is not a leave from work. Suspension of driver certification is non-appealable.

210.8-2. *Qualifications for Suspension.* A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.

(a) A supervisor may refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

210.8-3. *Length of Suspension.* The individual's driver certification shall be suspended until a time in which the individual has obtained a valid driver's license and meets the qualifications for reinstatement of driver certification.

210.8-4. *Notification of Suspension.* The supervisor shall notify the Human Resources Department in writing if he or she suspends the driver certification of an individual and shall provide the basis for the suspension. Once notified of a suspension of driver certification the Human Resources Department shall remove the individual from the list of current certified drivers.

210.8-5. *Reasonable Accommodations to Suspension.* If the suspension of an individual's driver certification affects the individual's ability to perform his or her job duties, a supervisor may take one of the following actions:

(a) Reassign the individual to a position which does not require driving;

(b) Provide non-driving accommodation within the position;

(c) Remove the driving requirement from the job description;

(d) Place the individual on unpaid leave until the individual obtains his or her driver certification; or

(e) Terminate the individual because a valid driver's license is an essential requirement of the position.

210.8-6. *Reinstatement of Driver Certification.* An individual may have his or her driver certification reinstated upon a review by the Human Resources Department that the individual again meets all the qualifications for driver certification provided for in section 210.4-2.

210.8-7. *Other Enforcement Actions.* A supervisor may take disciplinary action against an individual in accordance with the Nation's laws and policies governing employment if the individual is an employee, or in accordance with the laws and policies of the Nation governing sanctions and penalties if the individual is an elected or appointed official of the Nation, for any of the following actions:

(a) Failing to comply with any provision of this law;

(b) Failing to complete any applicable driver training requirements;

(c) Driving a fleet vehicle without being certified under the provisions of this law;

(d) Admitting to, or being determined to be, partially or entirely at fault in a motor vehicle crash involving vehicle damage, property damage, or personal injury; and

(e) Not maintaining the minimum insurance requirements for a personal vehicle.

210.8-8. *Additional Driver Safety Training.* A supervisor may require that an individual complete an additional applicable driver safety training, at his or her own expense, if the individual:

(a) is involved in an at-fault motor vehicle crash or damage involving the fleet vehicle or personal vehicle driven on official business;

(b) receives a moving violation while driving a fleet vehicle or personal vehicle driven on official business; and

(c) has his or her driver's license suspended or revoked by the State or becomes invalid for any other reason.

End.

Adopted BC-06-28-17-C.

Amended BC-__-__-__-__.



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AMENDMENTS TO VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Legislative Reference Office	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	<ul style="list-style-type: none"> To revise the qualifications to become a certified driver, including: <ul style="list-style-type: none"> Reduce the restriction on drug and alcohol convictions from three (3) years without an OWI to twelve (12) months without an OWI; No more than three (3) moving violations or at-fault crashes within a two (2) year period; Allow individuals with probationary licenses to become certified drivers if age 18 or older; To revise and simplify the process for suspending driver certification: <ul style="list-style-type: none"> An individual's driver certification is only suspended if his or her driver's license has been suspended or revoked by the state of Wisconsin; All other violations of this law that do not result in the suspension or revocation of driver's license will be handled by disciplinary action; To revise the restriction on driving while using prescription or over the counter medications to increase clarity; To require all certified drivers to complete driver safety training every three (3) years, regardless of whether they drive fleet or personal vehicles, with certain exceptions; To require mileage reimbursement requests to be submitted within thirty (30) days of driving the miles or by the end of the fiscal year, whichever is sooner; To ban weapons in fleet vehicles and personal vehicles while in use for official business, with certain exceptions; To ban the use of e-cigarettes in tribal fleet vehicles; To create an exception to this policy for employees who are subject to stricter driver certification and training requirements due to contracts, agreements or compacts of the Nation. Additional changes to revise and reorganize the law to increase clarity. 		
Purpose	To establish standards that certify employees, elected and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official business and regulate the use of all vehicles owned and leased by the Nation. [2 O.C. 210.1-1].		
Affected Entities	Human Resources Department (HRD), Risk Management, Fleet Management, Automotive Department, Employee Assistance Program (EAP), All employees, officials, and volunteers of the Nation who drive fleet vehicles or personal vehicles on official business. All supervisors of employees who drive fleet vehicles or personal vehicles on official business.		

Related Legislation	Personnel Policies and Procedures, Travel and Expense Policy, Drug and Alcohol Free Workplace law, Clean Air Policy.
Public Meeting	A public meeting was held on January 23, 2020, and the public comment period was held open until January 30, 2020.
Fiscal Impact	A fiscal impact statement has not yet been requested.

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Nation's Vehicle Driver Certification and Fleet Management law is an employment law that governs how employees, elected and appointed officials and volunteers may drive personal or tribally-owned ("fleet") vehicles on official business. The law does not govern how employees, elected and appointed officials, or volunteers drive personal vehicles outside of work or when not conducting official business.
- B. The Nation's Vehicle Driver Certification and Fleet Management law was most recently amended on June 28, 2017. However, since the adoption of those amendments, the Human Resources Department and other departments of the Nation encountered challenges implementing the law due to lack of clarity. In addition, members of the Legislative Operating Committee (LOC) expressed concerns regarding the impact of driving certification requirements on the Nation's ability to recruit and hire for positions.
- C. This law was added to the LOC's Active file List on February 7, 2018, by the Legislative Reference Office after consultation with the Human Resources Department and Oneida Law Office. Beginning in July 2019, a work group of representatives from relevant entities and departments have met to review the law. Several of the proposed amendments reflect the feedback and suggestions of this work group.

SECTION 3. CONSULTATION AND OUTREACH

- A. Representatives from the following departments or entities of the Nation participated in the development of this law and legislative analysis: Human Resources Department (Equal Employment Opportunity, Employment and Recruitment, Training and Development, Personnel Services), Risk Management, and Fleet Management.
- B. The following laws of the Nation were reviewed in drafting this analysis: Personnel Policies and Procedures, Travel and Expense Policy, Drug and Alcohol Free Workplace law, Clean Air Policy.
- C. In addition, the following laws or policies of other governments, tribes and organizations were reviewed:
- Ho Chunk Nation Fleet Ordinance; and
 - State of WI Fleet Driver and Management Policies and Procedures

SECTION 4. PROCESS

- A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- B. The law was added to the Active Files List on February 7, 2018.
- C. At the time this legislative analysis was developed, the following work meetings had been held regarding developments of these amendments and legislative analysis:
- July 15, 2019: Work meeting with HRD and Risk Management.
 - July 29, 2019: Work meeting with HRD and Risk Management.
 - August 13, 2019: Work meeting with HRD and Risk Management.
 - September 4, 2019: Work meeting with LOC.

- October 2, 2019: Work meeting with HRD, Risk Management and Fleet Management.
- October 16, 2019: Work meeting with LOC.
- October 24, 2019: Work meeting with LOC
- November 5, 2019: Work meeting with LOC, HRD and Risk Management.
- December 4, 2019: Work meeting with LOC.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. **Qualifications for Driver Certification.** In order to drive a tribally-owned fleet vehicle or a personal vehicle for official business, an employee, official or volunteer must obtain driver certification from the Oneida Human Resources Department. Many of the Nation's job descriptions require employees to be certified drivers as a requirement of their job. The law contains a list of requirements that an individual must meet in order to be certified. Proposed changes to these requirements include:

Chart 1. Qualifications for Driver Certification – Comparison

	Current Law	Proposed Law
<i>Age</i>	18 years or older	18 years or older
<i>License Status</i>	Possess valid, <u>non-probationary</u> Wisconsin Driver's License.	Possess valid Wisconsin Driver's License. <i>*Probationary license acceptable.</i>
<i>Driving Record Check: Drugs and Alcohol</i>	Disqualified if driving citation involving drugs or alcohol <u>within three (3) years.</u>	Disqualified if OWI, DUI or PAC citation <u>within the past twelve (12) months.</u>
<i>Driving Record Check: Other Driving Convictions</i>	No citation or conviction "related to a traffic incident." <i>*HRD interprets this to mean no "traffic incident that results in the loss of a valid WI driver's license."</i>	Disqualified if three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years. <i>*Moving violation is defined as "any violation of motor vehicle or traffic law that is committed by the driver of a vehicle while the vehicle is moving. A moving violation does not include parking violations, equipment violations, or paperwork violations relating to insurance, registration or inspection."</i>
<i>Additional Requirements</i>	Complete all training requirements; Maintain minimum insurance requirements for personal vehicle.	Complete all training requirements; Maintain minimum insurance requirements for personal vehicle.

- 52 ■ ***Change to Drug and Alcohol (OWI) Restrictions.*** Currently, if an individual has had a drug or
53 alcohol conviction within the past three (3) years, such as an OWI, that individual cannot drive for
54 the Nation. These amendments reduce this timeframe to twelve (12) months.
 - 55 ○ *Current.* An individual cannot become a certified driver if they have had a driving citation
56 related to drugs and alcohol within the past three (3) years. This includes OWI (Operating
57 While Intoxicated), DUI (Driving Under the Influence), or PAC (Prohibited Alcohol
58 Concentration) citations.
 - 59 ○ *Proposed.* These amendments reduce this timeframe from three (3) years to twelve (12)
60 months. This matches the timeframe that the WI State Government and University of
61 Wisconsin System use for their employees, volunteers and students who drive state-owned
62 vehicles.
 - 63 ○ *Effect.* Individuals who have an OWI, DUI or PAC citation more than twelve (12) months
64 ago may now become certified drivers for the Nation, provided they meet all other
65 requirements of this law. The intent is to increase employment opportunities for individuals
66 who may have had an OWI more than twelve (12) months ago and have complied with
67 their sentencing and had their driver's license reinstated by the State of Wisconsin.
- 68 ■ ***Change to Driving Record Restriction:*** Currently, if an individual has had "a citation or conviction
69 related to a traffic incident," the law states that they cannot become a certified driver. However, the
70 law provides no definition for what a "traffic incident" means. Therefore, based on the lack of
71 clarity, HRD issued an interpretation in 2017 defining traffic incident as "any traffic incident that
72 results in the loss of an applicant's and/or employee's valid Wisconsin driver's license."
 - 73 ○ *Current.* Under HRD's interpretation of the current law, HRD only checks driving records
74 to verify valid driver's license and to check for drug and alcohol convictions.
 - 75 ○ *Proposed.* These amendments now state that an individual cannot have "three or more
76 moving violations and/or at-fault motor vehicle crashes in the past two (2) years." The
77 amendments define a "moving violation" as "any violation of motor vehicle or traffic law
78 that is committed by the driver of a vehicle while the vehicle is moving. A moving violation
79 does not include parking violations, equipment violations, or paperwork violations relating
80 to insurance, registration or inspection."

81

Moving Violations

Examples of Wisconsin motor vehicle/traffic citations that would count as “moving violations” under this law:

- Speeding (1 to 10 mph over limit)
- Speeding (11 to 19 mph over limit)
- Speeding (20 mph over limit)
- Failure to obey traffic sign or signal
- Illegal turn
- Obstructing traffic
- Failure to give proper signal
- Driving wrong way on one way street
- Inattentive driving
- Failure to yield right of way
- Driving on wrong side of highway
- Driving too fast for conditions
- Failure to stop for school bus with lights flashing
- Attempt to elude an officer
- Reckless driving
- Following Too Closely
- Texting while driving

82 ○ *Effect.* Due to the lack of clarity in the current law, HRD does not currently check for any
83 traffic violations other than drug and alcohol related offenses. Upon adoption of this law,
84 HRD will now check driving records and will not certify any individuals with three (3) or
85 more moving violations in the past two (2) years.

- 86 ▪ ***Change to Probationary License.*** Under the current law, probationary licenses are not acceptable
87 as valid driver’s licenses. Under the proposed amendments, probationary licenses will now be
88 accepted as valid driver’s licenses so long as the individual is eighteen (18) years or older.

89 ○ *What is a Probationary License?* In Wisconsin, a probationary license is a driver’s license
90 issued to a new driver, regardless of age. According to WI DMV, “the main difference
91 between a probationary license and regular license consists of the restrictions listed on the
92 back of the license. A probationary license is not an instruction permit or learner’s permit.
93 It is a valid driver’s license for operation within and outside of Wisconsin.” New drivers
94 hold a probationary license for at least two (2) years after passing their driving test,
95 regardless of age.

96 ○ *Effect.* Individuals age eighteen (18) or older who hold a probationary license may now
97 become certified drivers so long as they meet all other requirements of this law.

- 98 ▪ ***Change to Occupational License.*** Previously, the law stated that an occupational license “is a valid,
99 non-probationary license if the driver’s abstract which accompanies the occupational license allows
100 the driver to operate vehicles for his or her job with the Nation.” These amendments delete this
101 provision and state only that an individual must hold a “valid Wisconsin driver’s license” [2 O.C.
102 210.4-2(b)]. The term “valid Wisconsin driver’s license” is not defined.

103 ○ *What is an Occupational License?* An occupational license is a restricted driver’s license.

- 104 According to WI DMV, “unlike a regular license, the driver is limited in where and when
105 they can drive. Individuals may only drive to and from work or other places indicated on
106 the license and only during specific times of the day.” An example is an individual who
107 has their license suspended due to an OWI conviction. Such individuals may be eligible to
108 apply for an occupational license to drive to and from work to maintain their employment.
- 109 ○ *Required Waiting Periods for Occupational License.* The required waiting period for an
110 individual to apply for an occupational license after their driver’s license has been
111 suspended varies depending on previous driving history and the reason for the current
112 revocation suspension. A loss of license for demerit points (for example, speeding tickets)
113 or first OWI has no waiting period. A second or subsequent OWI requires a 45-day waiting
114 period or longer depending on the circumstances of the OWI.
 - 115 ○ *Effect.* The current law clearly states that an occupational license qualifies as a “valid
116 license” under this law, and that individuals with occupational licenses may be certified as
117 drivers so long as the occupational license allows them to operate vehicles for his or her
118 job with the Nation. The proposed amendments lack clarity on this subject and may require
119 interpretation by HRD as to whether an occupational license can be considered a valid
120 license. Other provisions of this law, such as the 12-month restriction on OWIs, will also
121 impact when an individual can be recertified.
 - 122 ■ ***Stricter Certification Procedures for Certain Entities.*** Previously, entities had the option to
123 develop stricter driver certification standards and submit to Fleet Management, Risk Management
124 and HRD for review and approval. This included specialized requirements regarding age,
125 experience, training and licensing. This process has been eliminated. However, employees will be
126 required to satisfy “any other requirements specific to the job description and/or vehicle that may
127 be used by or assigned to the person” as well as “all driver training requirements imposed by the
128 Nation or any federal or state agency regulations” [2 O.C. 210.4-2(d) and (e)].
 - 129 ○ *Effect.* Entities may include stricter driving requirements in job descriptions, department
130 standard operating procedures (SOPs), and require employees to follow all tribal, state and
131 federal requirements regarding specific vehicles (such as CDL certifications and required
132 training for certain vehicles like buses.) However, entities will no longer submit stricter
133 standards for approval by Fleet Management, Risk Management, and HRD.
- 134 **B. *Employee Vehicle Insurance Requirement.*** The Nation requires employees to maintain minimum
135 insurance on their personal vehicle in order to use their vehicle to conduct official business [2 O.C.
136 210.4-2(f)].
- 137 ■ *Current Requirement.* The current vehicle insurance requirement is one hundred thousand dollars
138 (\$100,000) per person, three hundred thousand dollars (\$300,000) per motor vehicle crash for
139 bodily injury, and (\$25,000) for property damage. These amounts remain unchanged in the
140 amendments.
 - 141 ■ *New Option for Combined Single Limit:* As an alternative, employees of the Nation may instead
142 opt to carry a “combined single limit” of two hundred and fifty thousand dollars (\$250,000). A
143 combined single limit is a type of insurance policy with a maximum dollar amount that covers any
144 combination of injuries or property damage, rather than split limits for each type of coverage as in
145 a typical policy. This option was added at the recommendation of Risk Management.
 - 146 ■ *Effect.* Employees are still required to carry minimum vehicle insurance but may now opt to carry
147 either split coverage (\$100k/\$300k/\$25k) or a combined single limit coverage (\$250k).

- 148 **C. *Access to List of Certified Drivers.*** The Human Resources Department (HRD) is required to maintain
149 a list of certified drivers. This list is currently provided by HRD to both Fleet Management and
150 Accounting. Now, HRD will also be required to provide this list to the Risk Management Department
151 [2 O.C. 210.4-3(c)].
- 152 **D. *Exemption for Drivers Subject to Stricter Contracts, Agreements or Compacts.*** The amendments add
153 an exception to the law for employees who may be subject to stricter driver certification requirements
154 as a result of contracts, agreements or compacts entered into by the Nation.
- 155 ■ *Department of Interior Compact and Funding Agreement.* The Nation has entered into a Compact
156 and Funding Agreement with the U.S. Department of Interior since 1994. In the current funding
157 agreement, the Nation agrees to self-administer a motor vehicle operations policy that is either
158 comparable or superior to the DOI's 2006 Motor Vehicle Operation Policy. The DOI's policy is
159 more stringent than the amendments proposed by the LOC.
 - 160 ■ *Effect.* As a result, any employee of the Nation whose duties involve driving with respect to
161 implementation of the Compact must follow the stricter DOI motor vehicle operation policy to
162 maintain compliance with this federal funding agreement. For a more detailed review, see Section
163 8 "Other Considerations."
- 164 **E. *Driving While on Prescription Drugs or Medication.*** The current law states that while operating a
165 vehicle on official business, drivers of the Nation shall not drive "while under the influence of
166 controlled substances, intoxicating beverages, prescription drugs or other medications that caution
167 against operating a motor vehicle when taken."
- 168 ■ *Problem with Wording of Medication Restriction.* The wording of the prescription drug and
169 medication restriction is unclear and has created challenges for HRD to implement. As HRD
170 explains, many common medications may instruct individuals to "use caution" if driving, such as
171 medication for seasonal allergies. "Alternatively, some medications have no driving warning yet
172 create impairment in some people." This has led to confusion as to whether employees can drive
173 while using their medications. HRD issued an interpretation in 2017 to clarify this restriction and
174 presented this concern to the LOC.
 - 175 ■ *Proposed Change.* The amendments now state that an individual may not drive while "while under
176 the influence of prohibited drugs or alcohol." In addition, drivers may not drive if "impaired by a
177 medical or physical condition or other factor that affects a driver's motor skills, reaction time or
178 concentration" [2 O.C. 210.5-1(d)].
 - 179 ○ *Definition of Prohibited Drug.* The amendments define prohibited drug as "marijuana,
180 cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone,
181 barbiturates, narcotics, and any other substances included in Schedules I through V, as
182 defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also
183 includes prescription medication or over-the-counter medicine when used in an
184 unauthorized or unlawful manner" [2 O.C. 210.3-1(i)].
 - 185 ○ *Effect.* The amendments clarify that employees may drive while using their prescription
186 or over-the-counter medications as long as they are using the medication in a lawful
187 manner and are not impaired while using the medication. Rather than restricting driving
188 based on the "use caution" label that appears on many medications, the restriction is now
189 based on the actual effects of that medication on the driver's motor skills, reaction time or
190 concentration.

- 191 **F. *Ban on Weapons in Vehicles While on Official Business.*** A new restriction has been added to the
192 law stating that an individual cannot carry a weapon while operating a fleet or personal vehicle while
193 on official business, regardless of whether the weapon is in the open or concealed [2 O.C. 210.5-
194 1(e)].
- 195 ■ *Exception.* An individual who is carrying a weapon in the course of their official duties (such as a
196 police officer) or participating in cultural activities or ceremonies (such as Oneida Rites of
197 Passage) are exempt from this restriction.
 - 198 ■ *Definition of Weapon:* A weapon is defined as “a firearm, knife, electric weapon, club, or any
199 other object intended to cause harm to oneself or others” [2 O.C. 210.3-1(k)].
 - 200 ■ *Current Policies and Laws Governing Weapons.*
 - 201 ○ The Nation’s current prohibited weapons policy, adopted by the BC resolution in 2011
202 (BC-10-26-11-C), states that other than those required to carry weapons for their job, “no
203 person shall carry a weapon, whether in the open or concealed, on Tribal public property,
204 including any tribal building, gaming or retail business, facility, construction site, vehicle
205 or at any Tribally sponsored event.”
 - 206 ○ In addition, the Workplace Violence Policy states that the possession or use of weapons
207 on any kind of property of the Nation, including parking lots, other exterior premises or
208 while engaged in activities for the Nation,” is a “prohibited behavior” [2 O.C. 223.5(g)].
 - 209 ○ Finally, the Nation’s Hunting, Fishing and Trapping law prohibits individuals from
210 transporting a loaded firearm, air rifle or cocked bow or crossbow in a vehicle [4 O.C.
211 409.9-1(c)].
 - 212 ○ *Conclusion:* Taken together, the Nation’s current laws and policies already restrict
213 drivers from carrying weapons in their personal vehicles while on tribal property or in
214 tribal parking lots or from carrying weapons in fleet vehicles under any circumstance.
 - 215 ■ *Effect.* These amendments clarify that drivers may not carry weapons in either personal or fleet
216 vehicles while on official business of the Nation unless required to do so for their job or cultural
217 activities.
- 218 **G. *E-Cigarettes in Fleet Vehicles.*** The current law already states that individuals may not smoke or permit
219 others to smoke in the Nation’s fleet vehicles. Under these amendments, the use of electronic smoking
220 devices, or “e-cigarettes,” will also be prohibited in the Nation’s fleet vehicles [210.5-3(f)].
- 221 **H. *Driver Safety Training.*** The current law requires all drivers certified to drive a fleet vehicle to complete
222 driver safety training every three (3) years. These amendments will now require all certified drivers to
223 complete this safety training, regardless of whether they drive a fleet vehicle or a personal vehicle on
224 official business.
- 225 ■ *Training Responsibility Moved to HRD.* In addition, rather than Environmental Health and Safety
226 Division, it will now be HRD’s responsibility to provide and monitor this training [2 O.C. 210.5-
227 2]. During an LOC meeting, HRD Training and Development noted that there may be an expense
228 related to purchasing or developing a driver safety training program.
 - 229 ■ *Training Exemptions.* Finally, individuals who are already required to comply with state or federal
230 driver safety requirements (such as police officers) are exempt from the safety training offered by
231 Oneida HRD.
- 232
233
234

Chart 2. Driver Safety Training Requirements

	Current Law	Proposed Law
<i>Who is required to attend Driver Safety Training?</i>	Drivers certified to drive a <u>tribal</u> vehicle.	All individuals with driver certification, whether they drive personal or fleet vehicles.
<i>How often attend Driver Safety Training?</i>	Every three (3) years	Every three (3) years.
<i>Who is required to provide the training?</i>	Environmental Health and Safety Division.	Human Resources Department.
<i>Exemption if employee already completed specialized driver training?</i>	Yes.	Yes.

- I. New 30-Day Deadline to Submit Mileage.** Employees and officials of the Nation seeking mileage reimbursement for miles driven while conducting official business will now be required to submit their mileage forms within thirty (30) days of driving the miles or by the end of the fiscal year, whichever is sooner [2 O.C. 210.5-4(b)].
- J. Approval of Passengers in Fleet Vehicles.** Previously, the Oneida Business Committee was responsible for authorizing passengers in a fleet vehicle who were not employees, officials, volunteers, or individuals being transported as part of a program, service or to conduct business. In order to increase efficiency, the supervisor of the employee, official, or volunteer will now be responsible for authorizing these types passengers [2 O.C. 210.6-7(c)].
- K. Drug Testing Requirement for Motor Vehicle Crashes.** When a certified driver is involved in a motor vehicle crash or damage involving a fleet vehicle or personal vehicle driven on official business, the driver must immediately report the crash and complete an incident report. The current law also states that the driver must comply with “any applicable alcohol and drug testing requirements established in other laws of the Nation.” This reference to drug testing requirements in other laws has been deleted.
- *Drug and Alcohol Free Workplace law.* Although this reference has been deleted, employees of the Nation are still required to follow the Drug and Alcohol Free Workplace law. This policy states that if an employee is involved in a work-related accident, he or she must immediately inform their supervisor and, as a condition of employment, participate in pre-employment, reasonable suspicion, and follow-up testing upon the request of an appropriate authority [2 O.C. 202.8-3 and 8-4].
 - *Effect.* Although the reference to alcohol and drug testing is deleted in this particular law, employees of the Nation may still be required to participate in alcohol and drug testing in accordance with the Drug and Alcohol Free Workplace law as a condition of their employment.
- L. Copy of Internal Reviews.** When there is a motor vehicle crash or damage involving a fleet vehicle or personal vehicle on official business, the Fleet Management Department and Risk Management Department coordinate and conduct an internal review of the incident. These departments may recommend that an individual receive disciplinary action based on the incident. For example, discipline can be recommended if an employee recklessly damages a fleet vehicle.
- *Reports Required for Both Fleet Vehicles and Personal Vehicle Crashes.* The current law states that internal reviews are to be conducted “whenever necessary” for motor vehicle crashes involving fleet vehicles, specifically. Now, internal reviews will be required for both fleet vehicles and personal vehicles driven on official business in the event of a motor vehicle crash or damage [2 O.C. 210.7-1].

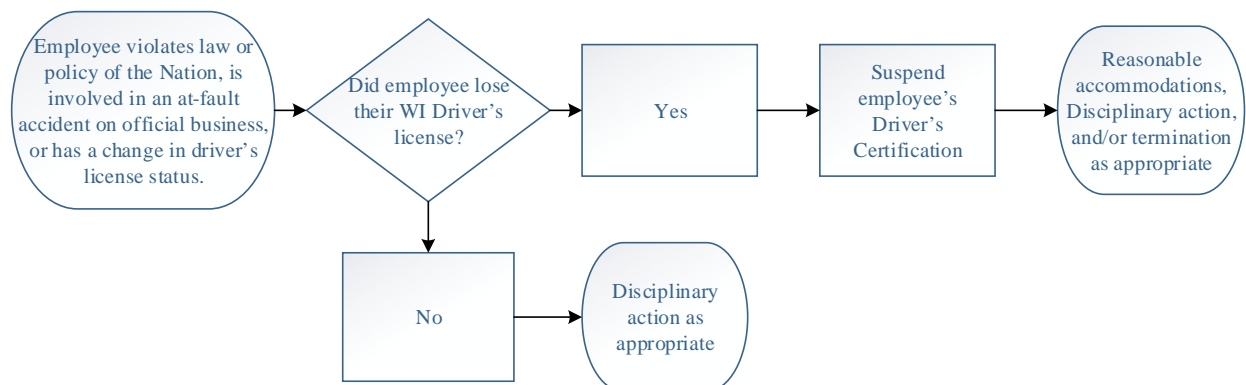
- *Copies of Reports to Area Managers.* Previously, these reports were provided to the driver and driver's supervisor. Now these reports will also be provided to the driver's area manager. The intent is to ensure that the driver's area manager is kept informed of incidents and can ensure that issues are addressed with employees [2 O.C. 210.7-2].

M. Driving Privileges. The current law allows for supervisors to "temporarily suspend" an individual's driving privileges without actually suspending their driver certification. In the other words, the individual is still certified as a driver by HRD, but his or her supervisor temporarily does not give them permission to drive on official business. This section has been deleted from the law. However, the amendments state that employees cannot drive fleet vehicles or their personal vehicles on official business "without obtaining permission from their supervisor" [2 O.C. 210.5-4(a) and 6-6(b)]. Therefore, supervisors will still have the authority to deny permission for an employee to drive on official business on an individual basis without suspending their driver certification.

N. Suspension of Driver Certification. The process for a supervisor to officially suspend an employee's driver certification has been substantially changed and simplified.

- *Proposed.* Under the proposed amendments, an individual's driver certification is suspended only when the individual's valid drivers license has been suspended or revoked by the state of Wisconsin or has otherwise become invalid. The length of the suspension lasts until the individual's driver's license is reinstated. In other words, if a person holds a valid Wisconsin driver's license, that person can drive for the Oneida Nation assuming he or she meets all other requirements of this law. All other violations of this law, such as failure to submit insurance or inappropriate use of a fleet vehicle, will now be handled by disciplinary action in accordance with the Nation's Personnel Policies and Procedures.

Chart 3. Proposed Driver Certification Suspension Process.



303 **Chart 4. Suspension of Driver Certification – Comparison.**

	Current Law	Proposed Law
<i>Reason(s) to Suspend Driver Certification</i>	Various violations of the law, including: <ul style="list-style-type: none"> ▪ having WI driver's license suspended or revoked, ▪ being arrested or charged or convicted of motor vehicle operation violation involving drugs or alcohol; ▪ Not reporting motor vehicle crash while on official business, ▪ Not maintaining minimum insurance on personal vehicle 	Suspend driver certification only if Wisconsin Driver's License has been suspended, revoked or otherwise invalid.
<i>Length of Driver Certification Suspension</i>	<ul style="list-style-type: none"> ▪ Minimum length of suspension between five (5) and fifteen (15) days for the first three (3) suspensions. ▪ More than three (3) suspensions in a three (3) year period results in a three (3) year suspension. ▪ Citation for motor vehicle violation involving drugs or alcohol results in automatic three (3) year suspension. 	Suspended until the individual's WI Driver's license is reinstated by the WI Department of Motor Vehicles and the individual meets qualifications for reinstatement under this law.
<i>Supervisor Discretion to Suspend or Extend Driver Certification for any other reason not listed in this law?</i>	Yes, "based on the best interests of the Nation...if the supervisor determines it is appropriate to do so"	No.
<i>Is Driver Certification Suspension Appealable?</i>	No.	No.
<i>Can the supervisor offer reasonable accommodations if driver certification suspension affects an employee's ability to perform their job?</i>	Yes, the supervisor may: Provide non-driving accommodation within the home department; Reassign to a position that does not involve driving Leave of absence without pay.	Yes, the supervisor may: Reassign the individual to a position that does not require driving; Provide non-driving accommodation within the position; Remove the driving requirement from the job description Place the individual on unpaid leave until the individual obtains his or her driving certification.
<i>Can the Supervisor terminate employment individual's driver certification is suspended?</i>	Yes.	Yes, if a valid driver's license "is an essential requirement of the position."

304 **Chart 5. Reinstating Driver Certification – Comparison.**

	Current Law	Proposed Law
<i>Reinstatement of Driver Certification</i>	<ul style="list-style-type: none"> Automatically reinstated if the suspension was thirty (30) days or less; If the suspension was thirty-one (31) days or more; HRD shall verify insurance and check the driving record to ensure that driver meets eligibility requirements, including no drug or alcohol convictions within three (3) years. 	<p>Upon review of HRD that individual's Driver's license has been reinstated and that the driver meets original qualifications for certification, including:</p> <ul style="list-style-type: none"> No OWI, DUI or PAC violation within past 12 months; Less than three (3) moving violations or at fault accidents within the past two (2) years All other training and insurance requirements.
<i>Failure to Reinstate Driver Certification Appealable?</i>	Yes, any official, volunteer or employee may seek review of a decision not to reinstate certification by filing an appeal with the Judiciary.	No, failure to reinstate driver certification is not appealable.

305 **O. Additional Safety Training After an Accident.** Supervisors may now require an individual to complete
306 additional driver safety training, at their own expense, if the individual is involved in an at-fault motor
307 vehicle crash or damage while driving on official business, receives a moving violation while driving
308 on official business, or has his or her driver's license suspended or revoked by the State of Wisconsin
309 [2 O.C. 210.8-8].

- 310 ■ *Example.* NWTC offers an in-person "traffic school safety program", while other organizations
311 offer certified online courses on topics such as "Failure to Yield Right of Way." Some Wisconsin
312 drivers may already take such courses in order to reduce the number of points on their record.

313 **P. Minor Drafting Changes.** Additional minor drafting changes have been made throughout the law for
314 clarity.

316 SECTION 6. EFFECT ON EXISTING LEGISLATION

317 **A. References to the Other Laws of the Nation:** The following laws of the Nation are referenced in this
318 law.

- 319 ■ *Personnel Policies and Procedures.* "In addition to the suspension of driver certification, a
320 supervisor may take disciplinary action against an individual in accordance with the Nation's laws
321 and policies governing employment if an employee..." [2 O.C. 210.8-7].
- 322 ■ *Travel and Expense Policy.* "A vehicle shall be rented in accordance with the Nation's laws and
323 policies governing travel. Every vehicle rented shall include the purchase of the maximum
324 collision damage waiver offered by the rental company" [2 O.C. 210.6-9(a)].
 - 325 ○ *Conflict.* The Travel and Expense Policy states that "insurance on all car rentals is
326 covered by the Oneida Tribe's insurance policy." However, this does not reflect current
327 practice. In addition, the Travel and Expense Policy conflicts with both the current
328 Vehicle Driver Certification law and the proposed amendments, which both require the

purchase of maximum collision damage waiver from the rental company, as this is more cost effective for the Nation.

- *Recommendation:* The LOC and LRO should note the discrepancy in the Travel and Expense Policy and identify that section of the Travel and Expense Policy as an area for future amendments.

B. *Other Laws that Reference Vehicle Driver Certification:* The following laws of the Nation reference Vehicle Driver Certification and Fleet Management. These amendments do not conflict with any of the referenced laws.

- *Drug and Alcohol Free Workplace.* This law applies to all applicants for employment, whether external or internal, and all employees during working hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation. An employee is prohibited from the use of prohibited drugs and alcohol during working hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation [2 O.C. 202.4-1 and 4-2].
- *Clean Air Policy.* “Except as provided in 411.4-1(b)(1) and 411.4-2, no person may smoke... in any vehicle owned or operated by the Tribe” [4 O.C. 411.4-1(c)].

SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

A. *Enforcement.* This law is enforced in the following ways:

- *Suspension of Driver Certification.* A supervisor shall suspend an individual’s driver certification if the individual’s driver’s license is suspended or revoked by the State or becomes invalid for any other reason [2 O.C. 210.8-2].
- *Disciplinary Action.* In addition to the suspension of a driver certification, a supervisor may take disciplinary action against an individual in accordance with the Personnel Policies and Procedures [2 O.C. 210.8-7].

SECTION 8. OTHER CONSIDERATIONS

A. *Vehicle Driver & Fleet Management Data.* The following data is provided for information:

- ***Number of Driver Certification Suspensions:***
 - 2017: 3
 - 2018: 13
 - 2019: 6
- ***Number of Employees Separated from Employment Due to Loss of Driver Certification:***
 - 2019: 2
- ***Number of Job Applicants Screened Out Due to OWI or Driving Convictions:***
 - HRD does not currently track this information. However, between July and November of 2019, at least five (5) applicants were screened out for not meeting driver certification requirements.
Source: Email communications with HRD, 11/5/19.
- ***Number of Fleet Vehicles***
 - The Nation currently owns 209 fleet vehicles. 200 of these vehicles are permanently assigned to a department of the Nation.
Source: Email communication with Fleet Management, 10/29/19.

Chart 6. Vehicle Incidents Involving Nation-owned Vehicles

<i>Fiscal Year</i>	<i># of Incidents</i>	<i># of Incidents At Fault</i>
2009	11	8
2010	21	13
2011	25	16
2012	7	5
2013	19	13
2014	19	12
2015	12	10
2016	16	15
2017	10	8
2018	20	15

Source: Email communication w/Risk Management, 10/29/19.

B. Grandfather Clause for Drivers with Three or More Moving Violations or At-Fault Accidents within Past Two Years. Under the current law and HRD's present interpretation, HRD only checks vehicle driver records for drug and alcohol related citations and to ensure valid driver's license. Once these amendments are passed, HRD will now check whether drivers had three (3) or more moving violations or at-fault accidents within the past two (2) years.

- *Need for Grandfather Clause.* Because HRD has not previously checked for moving violations, there may employees who are currently certified with three (3) or more accidents on their record in the past two (2) years. Since these employees were certified under the previous law, the LOC should consider adding a grandfather clause in the adopting resolution to ensure that these employees do not lose their driver certification upon adoption of this law.
- *Conclusion.* The LOC intends to add a grandfather clause for current certified drivers that have had three (3) or more moving violations or at-fault accidents within the past two (2) years. It is expected that this grandfather clause will state that new restrictions on moving violations shall apply only to new applicants, new hires, or job transfers that occur after the adoption date of this law.

C. Certification of Drivers Previously Disqualified for OWI in the Last Three (3) Years. Under the current law, applicants or employees who have had a drug or alcohol citation within the past three (3) years, such as an OWI, cannot become certified drivers for the Nation. Upon passage of this law, this restriction will be lowered to twelve (12) months. Therefore, there may be current employees of the Nation who will become eligible for driver certification upon adoption of this law. For example, an employee who had an OWI two years ago who is now working under a reasonable accommodation that doesn't involve driving.

- *Recommendation.* Upon adoption of this law, HRD may want to communicate this information to supervisors and/or impacted employees so that they are aware that they may now be eligible for driver certification.

D. Training Upon Adoption of Amendments. Upon the adoption of these amendments, HRD should offer updated training to supervisors and employees of the Nation on the new provisions of this law.

- *Conclusion.* The LOC intends to direct HRD to offer an updated training to employees of the Nation on the new provisions of this law. This directive will be included in the adopting resolution of these amendments. The LOC will consult with HRD to determine a reasonable timeframe for HRD to develop and offer this training. During the LOC meeting on December 4, 2019, a representative of HRD Training and Development recommended allowing at least

- 180 days for HRD to develop the training on the new amendments.
- E. Impact of Driving Record Check on Currently Certified Drivers.** In order to become a newly certified driver, a driver must not have had an OWI within the past twelve (12) months and not had three (3) or more moving violations or at-fault accidents within the past two (2) years. However, an individual who has become certified can only have their driver certification suspended if they lose their valid Wisconsin driver's license.
- Example Scenario.** In other words, an individual can be hired with a clean driving record, receive driver certification from the Nation, then have three (3) or more moving violations within a 2-year period during their employment, but still keep their driver certification because they never lost their valid driver's license as a result of the moving violations. However, if that same individual were to leave their employment with the Nation and later apply for another position in the organization, that individual could not become a certified driver, because they are now applying as a new driver and must pass the driving record check.

Chart 7. Driving Record Requirement Comparison

Scenario	Driving Record Requirements	Outcome
<i>New employee or transfer (New Certification)</i>	Valid Driver's license; No OWIs in the past 12 months, Not have three or more moving violations within the past 2 years	Three moving violations in 2 year period or an OWI in the past 12 months results in denial of driver certification.
<i>Current employee who is already a certified driver for the Nation (Maintain Certification)</i>	Valid Driver's license. <i>*Only lose certification if driver's license suspended or revoked by state of WI.</i>	Three moving violations in a 2 year period <u>does not</u> result in loss of driver certification unless the employee's driver's license was revoked or suspended.
<i>Employee who lost certification due to suspended driver's license and applies to be recertified after getting their license back (Re-Certification)</i>	Valid Driver's license; No OWIs in the past 12 months; Not have 3 or more moving violations in the past 2 years	Three moving violations in 2 year period or an OWI in the past 12 months results in denial of driver certification.

- Recommendation.** While this discrepancy is not necessarily problematic, it may cause confusion for current employees and supervisors who receive three (3) or more traffic citations after they have become a certified driver for the nation. HRD and supervisors should be aware that a current employee can only lose their driver certification if they lose their WI driver's license – regardless of the number of moving violations on their record since becoming certified.
- F. Number of Job Descriptions Requiring Drivers License.** During the development of these amendments, the LOC expressed interest in learning how many of the Nation's job descriptions require employees to hold a valid driver's license as a condition of their employment. The LOC was interested to know if there may be positions where an employee rarely drives on official business, but their job

description still requires a valid driver's license to maintain employment.

- *Data:* HRD estimated that roughly 700 out of 950 program/non-divisional positions require a driver's license. Data for gaming positions was not available at the time this analysis was drafted.
- *Conclusion:* During a work meeting, the LOC encouraged HRD to review the Nation's job descriptions and determine whether it is necessary for certain jobs to require a driver's license. If the LOC intends to formalize this directive to HRD in the adopting resolution for this law.

G. *Employees Subject to Department of Interior Compact & Funding Agreement.* The Nation has entered into a Compact and Funding Agreement with the U.S. Department of Interior since 1994. In the current funding agreement, the Nation agrees to self-administer a motor vehicle operations policy that is either comparable or superior to the DOI's 2006 Motor Vehicle Operation Policy. The DOI's policy is more stringent than the amendments proposed by the LOC. Therefore, any employees whose positions are funded by these The following programs, services, functions, and activities are currently found within the Nation's BIA Funding Agreement:


Administrative Direction	Safety Management
Rights Protection	Forestry Management
Aid to Tribal Government	Wildlife Management
Law Enforcement	Indian Child Welfare
Facilities Management	Services to Children, Elderly, and Families
Economic Development	Welfare Assistance
Housing Improvement Program	Education (Scholarship, Adult Education)
Road Maintenance	Employment Assistance
Community Fire Protection	Johnson O'Malley
Agriculture	Litigation Support
Real Estate Services	Fish Hatchery
Real Estate Appraisals	Water Management
Environmental Quality	Hunting and Fishing Rights

- *Conclusion.* The LOC determined that it is important to identify the specific employees who may have to follow the BIA Motor Vehicle Operation Policy, so it is clear which employees are subject to the Nation's Law and which employees are required to follow a stricter policy. The Legislative Operating Committee intends to direct the Human Resources Department to work with the Self Governance Department to identify the positions that would be required to comply with the BIA Motor Vehicle Operations Policy, and to update the job descriptions so that it is clear which driving policy is applicable.

H. *Fiscal Impact.* A fiscal impact statement has not yet been requested.

- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].
- A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee [1 O.C. 109.6-1(a and b)].



TO: Lawrence E. Barton, Chief Financial Officer
Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer
FROM: David P. Jordan, Legislative Operating Committee Chairman 
DATE: March 4, 2020
RE: Vehicle Driver Certification and Fleet Management Law Amendments Fiscal Impact Statement

The Legislative Operating Committee (LOC) is currently developing amendments to the Vehicle Driver Certification and Fleet Management law. The Legislative Procedures Act requires that a fiscal impact statement be provided for all proposed legislation of the Nation. [1 O.C. 109.6-1]. The fiscal impact statement is an estimate of the total fiscal year financial effects associated with the proposed legislation, and should include:

- startup costs;
- personnel;
- office costs;
- documentation costs; and
- an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation. [1 O.C. 109.3-1(c)].

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed legislation being forwarded to the Oneida Business Committee for consideration. [1 O.C. 109.6-2]. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct the Finance Department or any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. [1 O.C. 109.6-1].

Oneida Business Committee resolution BC-09-25-19-A titled, “*Interpreting ‘Fiscal Impact Statement’ in the Legislative Procedures Act*” provides further clarification on the process for directing a fiscal impact statement be completed. This resolution provides that when developing a fiscal impact statement for proposed legislation to be used for presentation to and consideration of adoption by the Oneida Business Committee, the Finance Department shall, within ten (10) business days of final approval of draft legislation by the LOC, provide a fiscal impact statement to the LOC.

On March 4, 2020, the Legislative Operating Committee approved the final draft of the proposed amendments to the Vehicle Driver Certification and Fleet Management law. Therefore, the LOC

is directing the Finance Department to provide a fiscal impact statement on the proposed amendments to the Vehicle Driver Certification and Fleet Management law by March 18, 2020.

A copy of the proposed amendments to the Vehicle Driver Certification and Fleet Management law, as well as the legislative analysis, have been attached to this memorandum for your convenience.

Requested Action

Provide the LOC a fiscal impact statement of the proposed amendments to the Vehicle Driver Certification and Fleet Management law by March 18, 2020.



Legislative Operating Committee
March 4, 2020

Children's Burial Fund Policy Amendments

Submission Date: 8/7/19	Public Meeting: 2/13/20
LOC Sponsor: Kirby Metoxen	Emergency Enacted: n/a

Summary: *This item was submitted on behalf of the Oneida Trust Enrollment Committee for the purpose of making general updates to the Law which would remove outdated restrictions for membership using benefit.*

8/7/19 LOC: Motion by Kirby Metoxen to add the Children's Burial Fund Policy Amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Ernest Stevens III. Motion carried unanimously.

11/14/19: *Work Meeting.* Present: Jennifer Falck, Clorissa N. Santiago, Maureen Perkins. The purpose of this work meeting was the development of a legislative plan. LRO will schedule work meeting with representatives of OTEC and Trust Enrollment Department to discuss first draft of proposed amendments.

12/2/19: *Work Meeting.* Present: Clorissa N. Santiago, Jennifer Falck, Maureen Perkins, Bonnie Pigman. The purpose of this work meeting was to review the proposed amendments and discuss if there are any other revisions needed before the draft is presented to the LOC.

12/4/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Clorissa N. Santiago, Jennifer Falck, Maureen Perkins. The purpose of this work meeting was for the LOC to review the proposed amendments and discuss if there are any other revisions needed before the draft is presented to the LOC. The LOC discussed a couple minor revisions. The LRO will update the draft and develop a legislative analysis and bring those items to an upcoming LOC meeting.

12/18/19 LOC: Motion by Jennifer Webster to accept the draft of the Children's Burial Fund amendments and direct that a legislative analysis be completed and brought back to the January 15, 2020, Legislative Operating Committee meeting; seconded by Kirby Metoxen. Motion carried unanimously.

1/6/20: *Work Meeting.* Present: Jennifer Falck, Clorissa N. Santiago, Maureen Perkins. The purpose of this work meeting was to review and discuss the legislative analysis.

1/15/20 LOC: Motion by Kirby Metoxen to accept legislative analysis; seconded by Ernest Stevens III. Motion carried unanimously.

Motion by Kirby Metoxen to approve the public meeting packet and forward the Children's Burial Fund Policy Amendments to a public meeting to be held on February 13, 2020; seconded by Ernest Stevens III. Motion carried unanimously.

2/13/20: *Public Meeting Held.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Maureen Perkins, Lee Cornelius, Brooke Doxtator, Keith Doxtator, Julie Denny, Ralinda Ninham-Lamberies. Three (3) individuals provided oral comments during this public meeting.

2/20/20: *Public Comment Period Closed.* Two (2) people submitted written comments during the public comment period.

Next Steps:

- Accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54115-0365
 Oneida-nsn.gov



TO: Legislative Operating Committee (LOC)
 FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney *CNS*
 DATE: March 4, 2020
 RE: Children's Burial Fund Amendments: Public Meeting Comment Review

On February 13, 2020, a public meeting was held regarding the proposed amendments to the Children's Burial Fund Policy ("the Law"). The public comment period was then held open until February 20, 2020. This memorandum is submitted as a review of the oral and written comments received during the public meeting and public comment period.

The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

Comment 1 – Qualifications for Financial Assistance from the Fund:

129.4. Qualifications for Financial Assistance

129.4-1. In order to be eligible for financial assistance from the Children's Burial Fund the deceased child shall be:

- (a) six (6) years of age or younger;
- (b) not enrolled with the Nation; and
- (c) eligible for enrollment with the Nation.

Ralinda Ninham-Lamberies (oral): Also, I didn't notice anything in the law that would prohibit an individual from collecting funds from multiple tribes if they're eligible to be enrolled in more than one tribe. And I am not sure that would be something that would be intended in the law. Thank you.

Response

The commenter provides that she did not see anything in the Law that would prevent an individual from collecting burial funds from more than one tribe if the deceased child is eligible to be enrolled in more than one tribe and questioned whether the Law should address this issue.

The Law determines qualification for financial assistance from the Children's Burial Fund based on the deceased child meeting the following criteria:

- The deceased child is six (6) years of age or younger;
- The deceased child is not enrolled with the Nation; and
- The deceased child is eligible for enrollment with the Nation.

[1 O.C. 129.4-1].

The Law does not base qualifying for assistance from the Children's Burial Fund on whether the deceased child is eligible to receive, or has received, burial assistance from another tribe. This Law

aims to assure a dignified approach to the final needs of members of the Nation and their families by providing financial assistance towards the funeral costs of children of a certain age who are not enrolled but are eligible for enrollment in the Nation. [1 O.C. 129.1-1, 129.1-2]. This is accomplished through the qualification measures of section 129.4-1.

Additionally, if the Law required that the family of a deceased child not receive financial assistance from the Nation's Children's Burial Fund if the deceased child was eligible for enrollment in a tribe which offered financial assistance for the burial of a child, and the family then accepted financial assistance from the other tribe, then this would increase the administrative efforts of the Oneida Trust Enrollment Department. The Oneida Trust Enrollment Department would then have to verify if the deceased child is eligible for enrollment in a different tribe and if that tribe provided the family financial assistance for the burial of the child before determining the eligibility of the child to receive financial assistance from the Nation's Children's Burial Fund. Many of the amendments that were sought to the Law were an effort to make the administration of the Children's Burial Fund efficient for all those involved.

Since the Law does not intend to qualify assistance from the Children's Burial Fund on whether the deceased child is eligible to receive, or has received, burial assistance from another tribe, there is no revision recommended based on this comment.

LOC Consideration

Comments 2 through 3 – Required Documentation:

129.5. Requesting Financial Assistance

129.5-3. Upon making a request for financial assistance from the Children's Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:

- (a) all original invoices;
- (b) birth certificate, death certificate, or fetal death report; and
- (c) voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined.

Keith Doxtator (written): The Oneida Trust Enrollment Committee (OTEC) motioned at their January 28, 2020 Regular meeting to have the following amendments submitted for the Children's Burial Fund amendments public meeting February 13, 2020.

Section 129.5-3 : Add sub-section (d) Other relevant documentation to support eligibility of enrollment. (For example: the Trust Enrollment Department generally requests for a parent Birth Certificate in order to establish the link of Oneida descent, when the parent(s) are not enrolled with the Nation).

Keith Doxtator (oral): Good morning. The Trust Enrollment Committee discussed this at the last monthly meeting. I have a memo here summarizing the four amendments they would like to propose. May I simply hand this over?

[Jennifer Webster: Do you want to read it into the record?]

Their four proposed amendments would be Section 129.5-3, to add a subsection (d) Other relevant documentation to support eligibility of enrollment. For example: if a parent is not enrolled for them to also provide their birth certificate to help establish that link in the enrollment record.

Response

The commenter requests that another subsection be added to section 129.5-3 of the Law that addresses other documentation that may be needed by the Oneida Trust Enrollment Department to make a determination as to if the deceased child is eligible for the Children's Burial Fund.

The Law provides that upon making a request for financial assistance from the Children's Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:

- All original invoices;
- Birth certificate, death certificate, or fetal death report; and
- voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined. *[1 O.C. 129.5-3(a)-(c)].*

There may be situations that arise where the Oneida Trust Enrollment Department needs to request more documentation to support the eligibility of enrollment of the deceased child. In an effort to provide the greatest flexibility, the following recommendation is made based on this comment:

129.5. Requesting Financial Assistance

129.5-3. Upon making a request for financial assistance from the Children's Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:

- (a) all original invoices;
- (b) birth certificate, death certificate, or fetal death report; ~~and~~
- (c) voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined-; ~~and~~
- (d) any other relevant documentation as requested by the Oneida Trust Enrollment Department to support the eligibility of enrollment of the deceased child.

LOC Consideration

Comment 4 – Clarification on Fetal Death Reports and Stillborn Information:

129.3. Definitions

129.3-1. 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) “Fetal death report” means the form prescribed and supplied by a State used to report non-abortion related fetal deaths, which may also be referred to as stillbirths.
- (c) “Stillbirth” means a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

129.5. Requesting Financial Assistance

129.5-3. Upon making a request for financial assistance from the Children’s Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:

- (a) all original invoices;
- (b) birth certificate, death certificate, or fetal death report; and
- (c) voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined.

Lori Elm (written): Clarification on Fetal death report and stillbirths information. I found this in Wisconsin State Legislature Chapter 69 Collection of statistic, Subchapter 1, Vital Statistics. I work with the Cemetery for Oneida and we request a Final Disposition for burials. We have run into a few that do not have them because they are stillbirths. According to the wording below it gives more specific information as a guideline.

(e)

a death is a miscarriage and 20 weeks or more have elapsed between the mother's last normal menstrual period and delivery or the stillbirth weighs 350 grams or more, one of the following shall submit, within 5 days after delivery, a fetal death report to the state registrar:

the miscarriage occurs at or on route to a hospital, the individual who manages the hospital or the hospital's medical records.

the miscarriage does not occur at or on route to a hospital, the funeral director or other person authorized by at least one parent of the stillbirth.

18(1)(e)2.2. Except as provided under subd. 1., no fetal death report is required.

Response

The commenter provides an excerpt of Wisconsin law, and states that she is providing this information as clarification on fetal death reports and stillbirth information. Additionally, the commenter states that while working for the cemetery for the Nation there have been issues with individuals not having a Final Disposition due to stillbirths.

The Law provides that when making a request for financial assistance from the Children’s Burial Fund an individual shall provide the following documentation to the Oneida Trust Enrollment Department:

- all original invoices;
- birth certificate, death certificate, or fetal death report; and

- voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined.
[1 O.C. 129.5-3(a)-(c)].

The Law defines a “fetal death report” as the form prescribed and supplied by a State used to report non-abortion related fetal deaths, which may also be referred to as stillbirths. [1 O.C. 129.3-1(a)]. The Law further defines a “stillbirth” as a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles. [1 O.C. 129.3-1(c)].

The excerpt from Wisconsin law provides who is responsible for registering the death of the stillbirth, and states that in some circumstances no fetal death report is required. [Wis. Stat. §69.18(1)(e)]. The Wisconsin requirements for registering a death do not necessarily have to be the same as the Nation’s requirements for requesting financial assistance from the Children’s Burial Fund. An individual will have to provide a birth certificate, death certificate, or fetal death report in order to request financial assistance from the Children’s Burial Fund. [1 O.C. 129.5-3(b)].

There is no revision to the Law recommended based on this comment.

LOC Consideration

Comments 5 through 7 – Funeral Related Expenses:

129.6. Use of Funds

129.6-2. The following funeral related expenses are payable if identified on an invoice:

- (a) monument and/or headstone costs;
- (b) casket or coffin costs;
- (c) cemetery costs;
- (d) church costs; and/or
- (e) food costs.

Keith Doxtator (written): Section 129.6-2: This section lists specific “funeral related expenses”. Not listed is funeral home costs. Funeral home costs should be added as subsection (f) or the first in the list. Maybe it’s being assumed, but since expenses are being listed, funeral homes should be included with all the others.

Keith Doxtator (oral): Number two is Section 129.6-2 and this would be to add funeral related expenses, I’m sorry. Under the funeral related expenses to add the funeral home costs itself. You

did a good job detailing out some other sub-costs, I thought that was the one, big one, that should get noticed.

Julie Denny (oral): I kind of concur with what Keith said in reviewing his memo. Okay, I recommend leaving 129-6-1, leaving it for the use of funds after thirty-five thousand (\$35,000) but I would like to see 129-6-2 just totally eliminated and that might cover what Keith just said as leaving it as funeral expenses, because in reviewing a bill from a two (2) year old that was enrolled, which obviously was covered by the OLIPP, that billing of a two (2) year old and if we have somebody that falls under the Children's Burial Fund that's not enrolled or not covered by the OLIPP now has to go with the thirty-five hundred (\$3,500). We're limiting what we can, they can do for funeral expenses with a lot of the incidentals such as people want to pay out clergy, they want to give something, honorariums to a drum group, the Oneida Singers, you know that doesn't, we're limiting what we could, so if we could just leave it at whatever is on that funeral bill and funeral related, so we can include those incidentals that normally would come with, like I said, with a two (2) year old here that was enrolled and all her expenses were covered and we should do the same for those that fall under the thirty-five hundred (\$3,500) Children's Burial Fund. So right now we're limiting what families can get. So, if you just open it up to funeral regulated expenses.

Response

The first commenter provides that although section 129.6-2 lists the specific funeral home related expenses that are eligible to be paid for by the Fund if identified on the invoice, it does not include general funeral home costs.

The second commenter provides we should not identify specific related expenses that the Fund can be used for, and instead just generally state that the Fund should be used for funeral related expenses in an effort to allow for more flexibility in how the families use the Fund.

The Law provides that costs for monuments and/or headstones, caskets or coffins, the cemetery or church, and food are payable if identified on an invoice. [1 O.C. 129.6-2(a)-(e)].

What funeral related expenses to allow to be paid by the Fund if identified on an invoice is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee will have to balance the need to provide families necessary flexibility in the utilization of the Fund with the need to provide specific direction as to what expenditures the Fund is authorized to be used on. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted and identify that costs for monuments and/or headstones, caskets or coffins, the cemetery or church, and food are payable if identified on an invoice.
2. The Law should be amended so that general costs associated with a funeral home are payable if identified on an invoice in addition to the other costs identified in section 129.6-2. If the Legislative Operating Committee makes this determination then the following revision is recommended:

129.6. Use of Funds

129.6-2. The following funeral related expenses are payable if identified on an invoice:

- (a) monument and/or headstone costs;

- (b) casket or coffin costs;
 - (c) cemetery costs;
 - (d) church costs; ~~and/or~~
 - (e) food costs; ~~and/or~~
 - (f) funeral home costs.
3. The Law should be amended so that it just provides that funeral related costs shall be payable if identified on an invoice, and not provide specific costs that are allowed in an effort to provide the most flexibility to the families in how they use the fund. If the Legislative Operating Committee makes this determination then the following revision is recommended:

129.6. Use of Funds

129.6-2. ~~The following funeral related expenses are payable if identified on an invoice:~~
Funeral related expenses may include, but are not limited to:

- (a) monument and/or headstone costs;
- (b) casket or coffin costs;
- (c) cemetery costs;
- (d) church costs; and/or
- (e) food costs.

LOC Consideration

Comment 8 – Funeral Related Expenses:

129.6. Use of Funds

129.6-2. The following funeral related expenses are payable if identified on an invoice:

- (a) **monument and/or headstone costs;**
- (b) **casket or coffin costs;**
- (c) **cemetery costs;**
- (d) **church costs; and/or**
- (e) **food costs.**

Lori Elm (written): Also, the section about food and vendors, majority of the time, I helped with funerals, the funeral home does all of this, and it is locked into their pricing.

Response

The commenter provides that she is familiar with funerals and often times the funeral home includes the costs of other aspects of a funeral like food costs into their pricing.

The Law provides that costs for monuments and/or headstones, caskets or coffins, the cemetery or church, and food are payable if identified on an invoice. [1 O.C. 129.6-2(a)-(e)]. Although some

of the costs identified in section 129.6-2(a)-(e) may be included on the invoice for the general cost of utilizing a funeral home, the Law provides a family with the flexibility of utilizing a vendor for those goods and/or services outside of a funeral home if desired.

There is no revision to the Law recommended based on this comment.

LOC Consideration

Comments 9 through 10 – Drafting of Section 129.6-4:

129.6. Use of Funds

129.6-4. Any unexpended monies after payment(s) have been made shall remain in the Children’s Burial Fund for other burials.

Keith Doxtator (written): Section 129.6-4: The line reads "Any unexpended monies after payments(s) have been made shall remain in the Children's Burial Fund for other burials. It's recommended the sentence should end after the word "Fund".

Keith Doxtator (oral): Number three, Section 129.6-4, the line reads “Any unexpended monies after payment(s) have been made shall remain in the Children’s Burial Fund for other burials.” The Committee wants to recommend the sentence should end after the word “Fund.”

Response

The commenter requests that section 129.6-4 be revised to remove “for other burials” from the end of the sentence.

The Legislative Operating Committee may determine whether section 129.6-4 should be revised to eliminate “for other burials” from the end of the sentence. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted and provide that “*Any unexpended monies after payments(s) have been made shall remain in the Children's Burial Fund for other burials.*”
2. The Law should be revised to remove “for other burials” from the end of the sentence in section 129.6-4. If the Legislative Operating Committee makes this determination then the following revision is recommended:

129.6. Use of Funds

129.6-4. Any unexpended monies after payment(s) have been made shall remain in the Children’s Burial Fund ~~for other burials~~.

LOC Consideration

Comment 11 – Unexpended Monies from the Fund:

129.6. Use of Funds

129.6-4. Any unexpended monies after payment(s) have been made shall remain in the Children’s Burial Fund for other burials.

Ralinda Ninham-Lamberies (oral): Good afternoon, Ralinda Ninham-Lamberies. I am not sure that 129 point, I’m sorry, wait, 129.6-4 is necessary in the law. I believe it maybe was necessary prior to OLIPP, but there isn’t a budget allocation for these types of funeral costs, so there, because there is no allocation, there would be nothing to remain, so I am not, I’m not sure that that is necessary.

Response

The commenter provides that section 129.6-4 of the Law may not be necessary since there isn’t a budget allocation for these types of funeral costs so nothing would remain.

The Law provides that any unexpended monies after payments have been made shall remain in the Children’s Burial Fund for the use of other burials. [1 O.C. 129.6-4]. Without more information provided by the commenter on how the Children’s Burial Fund is budgeted and maintained, a response as to whether this section is necessary based on budget allocation is unavailable. This section is still useful for the reader of the Law because it provides that if the full three thousand five hundred dollars (\$3,500) is not utilized by a family for the funeral costs, then the unexpended monies are placed back into the Children’s Burial Fund to be used for the burials of other children, meaning that the unexpended monies are not refunded to the families who sought financial assistance for the burial. This provides notice to the families that request financial assistance from the Children’s Burial Fund so they have a better understanding of how its used.

There is no revision to the Law recommended based on this comment.

LOC Consideration

Comments 12 through 13 – Appeals to the Oneida Trust Enrollment Committee:

Keith Doxtator (written): Add an Appeal Section (129.6-6) : It should identify the OTEC as the body which appeals shall be submitted to. The OTEC is the final hearing body which hears all appeals relating to enrollment matters (including denials). The OTEC already has an approved Appeals Standard Operating Procedure

Keith Doxtator (oral): And finally, number four, to add a sixth dash to that 129.6 section which identifies the Trust Enrollment Committee as the body which appeals shall be submitted to.

Response

The commenter requests that an additional section be added to the Law that identifies that appeals under this Law shall be submitted to the Oneida Trust Enrollment Committee. The commenter provides that the Oneida Trust Enrollment Committee is the final hearing body for all matters related to enrollment.

Currently, the Law does not address whether appeals are allowed, and whom the appeals would be made to. The Legislative Operating Committee will have to determine if the Law should allow for appeals of decisions of the Oneida Trust Enrollment Department to be made to the Oneida Trust Enrollment Committee. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as drafted and not address appeals of the Oneida Trust Enrollment Department's decision.
2. The Law should be revised to provide that appeals of the Oneida Trust Enrollment Department's decision should be made to the Oneida Trust Enrollment Committee. If the Legislative Operating Committee makes this determination then the following revision is recommended:

129.7. Appeals

129.7-1. An appeal of a decision of the Oneida Trust Enrollment Department's decision as to the eligibility of a deceased child for financial assistance from the Children's Burial Fund may be made to the Oneida Trust Enrollment Committee within fourteen (14) calendar days of receipt of the decision.

LOC Consideration

Title 1. Government and Finances – Chapter 129
CHILDREN'S BURIAL FUND POLICY
Kaya>takenh@sla ashakotiya>t@tane> latiksa>sh&ha
It is helpful for them to bury them the children
CHILDREN'S BURIAL FUND

129.1. Purpose and Policy
129.2. Adoption, Amendment, ~~Conflicts~~ Repeal
129.3. Definitions

129.4. Qualifications for Financial Assistance
129.5. ~~Procedures~~ Requesting Financial Assistance
129.6. Use of Funds

129.1. Purpose and Policy

129.1-1. *Purpose.* It is the purpose of this ~~policy~~law to provide financial assistance towards the funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in the ~~Oneida Tribe of Indians of Wisconsin~~Nation.

129.1-2. *Policy.* ~~The Oneida Tribe~~It is ~~committed~~the policy of the Nation to ~~providing~~provide services to the membership from birth to death. As a part of this commitment, we wish to assure a dignified approach to the final needs of our ~~Tribal~~members and their families.

~~129.1-3. This fund is established to provide an individual allotment, not to exceed \$3,500 per qualified individual, to defray the cost of funeral expenses.~~

129.2. Adoption, Amendment, ~~Conflicts~~ Repeal

129.2-1. This ~~policy~~law was adopted by the Oneida Business Committee ~~by~~ resolution BC-02-10-10-B; ~~and amended by BC- - - -~~.

129.2-2. This ~~policy~~law may be amended ~~or repealed by the Oneida Business Committee and/or General Tribal Council~~ pursuant to the procedures set out in ~~Tribal law~~the Legislatives Procedures Act.

129.2-3. Should a provision of this ~~policy~~law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this ~~policy~~law which are considered to have legal force without the invalid portions.

129.2-4. In the event of a conflict between a provision of this ~~policy~~law and a provision of another law, ~~ordinance, policy, regulation, rule, resolution, or motion~~, the provisions of this ~~policy~~law shall control. ~~Provided that, nothing in this policy is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.~~

129.2-5. This ~~policy~~law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

129.3. Definitions

129.3-1. This section shall govern the definitions of words and phrases used within this ~~policy~~law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Fetal death report" means the form prescribed and supplied by a State used to report non-abortion related fetal deaths, which may also be referred to as stillbirths.

~~(b)~~(b) "Nation" means the Oneida Nation.

(c) "Stillbirth" means a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

(ed) “Voluntary paternity/and/or maternity statement” means the document created by the Oneida Trust Enrollment Department which requires the notarized signature(s) of Oneida parent(s) acknowledging paternity and/or maternity of a fetus, which is used to determine eligibility for enrollment.

129.4. Qualifications for Financial Assistance

129.4-1. ~~Except as provided in 129.4-2, In order~~ to be eligible for financial assistance from the Children’s Burial Fund the deceased child shall be ~~five (5);~~

(a) six (6) years of age or younger;

(b) not enrolled, but eligible for enrollment, with the Nation; and

~~129.4-2. In the event the deceased is six (6) years of age, not enrolled, but eligible for enrollment, the deceased shall be eligible for assistance if the Oneida Trust/Enrollment Committee had approved the enrollment of the deceased prior to his or her death.~~

(c) eligible for enrollment with the Nation.

129.5. Procedures Requesting Financial Assistance

129.5-1. ~~The Oneida Trust Enrollment Department is designated to~~ shall process all requests for financial assistance from the Children’s Burial Fund.

129.5-2. Requests for ~~payment~~ financial assistance from the Children’s Burial Fund shall be made to the Oneida Trust Enrollment Department within three hundred and sixty-five (365) days from the date of death.

129.5-3. ~~Original invoices~~ Upon making a request for financial assistance from the Children’s Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department ~~for payment.~~

(a) all original invoices;

(b) birth certificate, death certificate, or fetal death report; and

(c) voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined.

129.5-4. Upon receipt and verification of invoices and ~~the other~~ relevant ~~document(s) as required under 129.5-5~~ documentation, the Oneida Trust Enrollment Department shall be responsible for processing the appropriate paper work for the payment to be made to the funeral home, monument company, casket or coffin company, cemetery, crematorium, churches, and/or catering/ or food vendors.

~~129.5-5. A birth certificate, death certificate, or fetal death report shall be submitted to the Enrollment Department prior to payment. A voluntary paternity/maternity statement shall also be submitted to the Enrollment Department prior to payment where paternity and/or maternity needs to be determined.~~

~~129.5-6. Food expenses are payable through a food voucher, added to the funeral home invoice, or paid directly to the caterer/food vendor/restaurant, amount not to exceed \$200.00, which is included under the \$3,500.00.~~

~~129.5-7. Monument/headstone costs are payable directly to the vendor or may be added to the funeral home invoice, amount not to exceed \$1,000.00, which is included under the \$3,500.00.~~

~~129.5-8. Cemetery costs are payable directly to the vendor or may be added to the funeral home invoice, amount to be included under the \$3,500.00.~~

~~129.5-9. Church costs are payable directly to the vendor or may be added to the funeral home invoice, amount to be included under the \$3,500.00.~~

~~129.5-10.~~

129.6. Use of Funds

129.6-1. Financial assistance from the Children's Burial Fund for funeral costs of a deceased child shall not exceed three thousand five hundred dollars (\$3,500).

129.6-2. The following funeral related expenses are payable if identified on an invoice:

(a) monument and/or headstone costs;

(b) casket or coffin costs;

(c) cemetery costs;

(d) church costs; and/or

(e) food costs.

129.6-3. Under no circumstances ~~will~~shall there be any payments from the Children's Burial Fund for reimbursements ~~for~~of:

(a) funeral costs to individuals~~;~~ and/or

(b) travel and/or lodging for attending a funeral.

129.5-116-4. Any unexpended monies after payment(s) have been made ~~will~~shall remain in the ~~fund~~Children's Burial Fund for other burials.

~~129.5-12. Under no circumstances will funding exceed \$3,500.00.~~

~~129.5-13. Total~~129.6-5. Any expenses over \$3,500.00 ~~or expenses over the designated amounts payable are~~three thousand five hundred dollars (\$3,500) shall be the responsibility of the family or responsible party.

End.

Emergency Adopted – BC-09-23-09-F

Permanently Adopted – BC-02-10-10-B

Amended – BC- - - -

Title 1. Government and Finances – Chapter 129
Kaya>takenh@sla ashakotiya>t@tane> latiksa>sh&ha
It is helpful for them to bury them the children
CHILDREN’S BURIAL FUND

129.1. Purpose and Policy
129.2. Adoption, Amendment, Repeal
129.3. Definitions

129.4. Qualifications for Financial Assistance
129.5. Requesting Financial Assistance
129.6. Use of Funds

129.1. Purpose and Policy

129.1-1. *Purpose.* It is the purpose of this law to provide financial assistance towards the funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in the Nation.

129.1-2. *Policy.* It is the policy of the Nation to provide services to the membership from birth to death. As a part of this commitment, we wish to assure a dignified approach to the final needs of our members and their families.

129.2. Adoption, Amendment, Repeal

129.2-1. This law was adopted by the Oneida Business Committee by resolution BC-02-10-10-B and amended by BC-__-__-__-__.

129.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislatives Procedures Act.

129.2-3. 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.

129.2-4. 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.

129.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

129.3. Definitions

129.3-1. 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) “Fetal death report” means the form prescribed and supplied by a State used to report non-abortion related fetal deaths, which may also be referred to as stillbirths.

(b) “Nation” means the Oneida Nation.

(c) “Stillbirth” means a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

(d) “Voluntary paternity and/or maternity statement” means the document created by the Oneida Trust Enrollment Department which requires the notarized signature(s) of Oneida parent(s) acknowledging paternity and/or maternity of a fetus, which is used to determine eligibility for enrollment.

129.4. Qualifications for Financial Assistance

129.4-1. In order to be eligible for financial assistance from the Children’s Burial Fund the deceased child shall be:

(a) six (6) years of age or younger;

- (b) not enrolled with the Nation; and
- (c) eligible for enrollment with the Nation.

129.5. Requesting Financial Assistance

129.5-1. The Oneida Trust Enrollment Department shall process all requests for financial assistance from the Children's Burial Fund.

129.5-2. Requests for financial assistance from the Children's Burial Fund shall be made to the Oneida Trust Enrollment Department within three hundred and sixty-five (365) days from the date of death.

129.5-3. Upon making a request for financial assistance from the Children's Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:

- (a) all original invoices;
- (b) birth certificate, death certificate, or fetal death report; and
- (c) voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined.

129.5-4. Upon receipt and verification of invoices and other relevant documentation, the Oneida Trust Enrollment Department shall be responsible for processing the appropriate paper work for the payment to be made to the funeral home, monument company, casket or coffin company, cemetery, crematorium, churches, and/or catering or food vendors.

129.6. Use of Funds

129.6-1. Financial assistance from the Children's Burial Fund for funeral costs of a deceased child shall not exceed three thousand five hundred dollars (\$3,500).

129.6-2. The following funeral related expenses are payable if identified on an invoice:

- (a) monument and/or headstone costs;
- (b) casket or coffin costs;
- (c) cemetery costs;
- (d) church costs; and/or
- (e) food costs.

129.6-3. Under no circumstances shall there be any payments from the Children's Burial Fund for reimbursements of:

- (a) funeral costs to individuals; and/or
- (b) travel and/or lodging for attending a funeral.

129.6-4. Any unexpended monies after payment(s) have been made shall remain in the Children's Burial Fund for other burials.

129.6-5. Any expenses over three thousand five hundred dollars (\$3,500) shall be the responsibility of the family or responsible party.

End.

Emergency Adopted – BC-09-23-09-F
Permanently Adopted – BC-02-10-10-B
Amended – BC-__-__-__-__



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING
Children's Burial Fund Policy Amendments**
Business Committee Conference Room-2nd Floor Norbert Hill Center
February 13, 2020 12:15 p.m.

Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Jennifer Falek, Clorissa N. Santiago, Maureen Perkins, Brooke Doxtator, Lee Cornelius, Keith Doxtator, Julie Denny, Ralinda Ninham-Lamberies.

Jennifer Webster: Good Afternoon. The time is 12:15 p.m. and today's date is Thursday, February 13, 2020. I will now call to order the public meeting for the proposed amendments to the Children's Burial Fund Policy.

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community. The public meeting is not a question and answer period. The LOC will review and consider all comments received during the public comment period. The LOC will respond to all comments received in a memorandum, which will be submitted in the meeting materials of a future LOC meeting.

All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. If you leave an email address on the sign in sheet, we can ensure you receive a copy of the memorandum.

Additionally, written comments may be submitted to the Nation's Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Thursday, February 20, 2020.

In attendance from the LOC today, the LOC members are myself, Jenny Webster; David Jordan; Daniel Guzman King.

The LOC may impose a time limit for all speakers pursuant to section 109.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of five (5) minutes. This time limit shall apply equally to all persons.

We will now begin today's public meeting for the proposed amendments to the Children's Burial Fund Policy. The purpose of this law is to provide financial assistance towards funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in the Nation.

Those who wish to speak please come to the microphone. First up to speak is Keith Doxtator. Good morning.

Keith Doxtator: Good morning. The Trust Enrollment Committee discussed this at the last monthly meeting. I have a memo here summarizing the four amendments they would like to propose. May I simply hand this over?

Jennifer Webster: Do you want to read it into the record?

Keith Doxtator: Their four proposed amendments would be Section 129.5-3, to add a subsection (d) Other relevant documentation to support eligibility of enrollment. For example: if a parent is not enrolled for them to also provide their birth certificate to help establish that link in the enrollment record.

Number two is Section 129.6-2 and this would be to add funeral related expenses, I'm sorry. Under the funeral related expenses to add the funeral home costs itself. You did a good job detailing out some other sub-costs, I thought that was the one, big one, that should get noticed.

Number three, Section 129.6-4, the line reads "Any unexpended monies after payment(s) have been made shall remain in the Children's Burial Fund for other burials." The Committee wants to recommend the sentence should end after the word "Fund."

And finally, number four, to add a sixth dash to that 129.6 section which identifies the Trust Enrollment Committee as the body which appeals shall be submitted to.

Jennifer Webster: Thank you.

Keith Doxtator: Thank you.

Jennifer Webster: Anybody else? Ready to come to the microphone?

Julie Denny: I kind of concur with what Keith said in reviewing his memo.

Jennifer Webster: Julie could you state your name.

Julie Denny: Julie Denny.

Jennifer Webster: Thank you.

Julie Denny: Okay, I recommend leaving 129-6-1, leaving it for the use of funds after thirty five thousand (\$35,000) but I would like to see 129-6-2 just totally eliminated and that might cover what Keith just said as leaving it as funeral expenses, because in reviewing a bill from a two (2) year old that was enrolled, which obviously was covered by the OLIPP, that billing of a two (2) year old and if we have somebody that falls under the Children's Burial Fund that's not enrolled or not covered by the OLIPP now has to go with the thirty-five hundred (\$3,500). We're limiting what we can, they can do for funeral expenses with a lot of the incidentals such as people want to pay out clergy, they want to give something, honorariums to a drum group, the Oneida Singers, you know that doesn't, we're limiting what we could, so if we could just leave it at whatever is on that funeral bill and funeral related, so we can include those incidentals that normally would come

with, like I said, with a two (2) year old here that was enrolled and all her expenses were covered and we should do the same for those that fall under the thirty-five hundred (\$3,500) Children's Burial Fund. So right now we're limiting what families can get. So, if you just open it up to funeral regulated expenses.

Jennifer Webster: Thank you.

Julie Denny: That's all.

Jennifer Webster: Morning.

Ralinda Ninham-Lamberies: Good afternoon, Ralinda Ninham-Lamberies. I am not sure that 129 point, I'm sorry, wait, 129.6-4 is necessary in the law. I believe it maybe was necessary prior to OLIPP, but there isn't a budget allocation for these types of funeral costs, so there, because there is no allocation, there would be nothing to remain, so I am not, I'm not sure that that is necessary.

Also, I didn't notice anything in the law that would prohibit an individual from collecting funds from multiple tribes if they're eligible to be enrolled in more than one tribe. And I am not sure that would be something that would be intended in the law. Thank you.

Jennifer Webster: Are there any other speakers that would like to speak now? With there being no more speakers registered, the public meeting for the proposed amendments to the Children's Burial Fund Policy is now closed at 12:22 p.m.

Just a reminder, written comments may be submitted until close of business day on Thursday, February 20, 2020. Thank you and have a good afternoon.

-End of Meeting-

MEMORANDUM

To: Legislative Operating Committee

From: Keith Doxtator, Trust Enrollment Director



Date: February 13, 2020

Subject: Children's Burial Fund amendments

The Oneida Trust Enrollment Committee (OTEC) motioned at their January 28, 2020 Regular meeting to have the following amendments submitted for the Children's Burial Fund amendments public meeting February 13, 2020.

- Section 129.5-3 : Add sub-section (d) Other relevant documentation to support eligibility of enrollment. (For example: the Trust Enrollment Department generally requests for a parent Birth Certificate in order to establish the link of Oneida descent, when the parent(s) are not enrolled with the Nation).
- Section 129.6-2: This section lists specific "funeral related expenses". Not listed is funeral home costs. Funeral home costs should be added as sub-section (f) or the first in the list. Maybe it's being assumed, but since expenses are being listed, funeral homes should be included with all the others.
- Section 129.6-4: The line reads "Any unexpended monies after payments(s) have been made shall remain in the Children's Burial Fund for other burials. It's recommended the sentence should end after the word "Fund".
- Add an Appeal Section (129.6-6) : It should identify the OTEC as the body which appeals shall be submitted to. The OTEC is the final hearing body which hears all appeals relating to enrollment matters (including denials). The OTEC already has an approved Appeals Standard Operating Procedure

From: [Lori A. Elm](#)
To: [LOC](#)
Subject: COMMENT - Children's Burial Fund Amendment
Date: Thursday, February 13, 2020 2:04:27 PM

Clarification on Fetal death report and stillbirths information. I found this in Wisconsin State Legislature Chapter 69 Collection of statistic, Subchapter 1, Vital Statistics.

I work with the Cemetery for Oneida and we request a Final Disposition for burials. We have run into a few that do not have them because they are stillbirths. According to the wording below it gives more specific information as a guideline.

(e)

if a death is a miscarriage and 20 weeks or more have elapsed between the mother's last normal menstrual period and delivery or the stillbirth weighs 350 grams or more, one of the following shall submit, within 5 days after delivery, a fetal death report to the state registrar:

if the miscarriage occurs at or on route to a hospital, the individual who manages the hospital or the hospital's medical records.

if the miscarriage does not occur at or on route to a hospital, the funeral director or other person authorized by at least one parent of the stillbirth.

[8\(1\)\(e\)2.2.](#) Except as provided under subd. [1.](#), no fetal death report is required.

Also, the section about food and vendors, majority of the time, I helped with funerals, the funeral home does all of this, and it is locked into their pricing.



Legislative Operating Committee
March 4, 2020

Oneida Food Service Code

Submission Date: 9/19/18	Public Meeting: February 6, 2020
LOC Sponsor: Ernest Stevens III	Emergency Enacted: n/a Expires: n/a

Summary: *This request comes from the Environmental, Health, Safety & Land Division and Licensing Department for amendments and updates to the Oneida Food Service Code that include fee schedule updates, an exemption for cottage food sales, and requirements for a credentialed Food Safety Manager.*

9/19/18 LOC: Motion by Jennifer Webster to add the Oneida Food Service Code to the active files list and assign Ernest Stevens III as the sponsor; Seconded by Daniel Guzman King. Motion carried unanimously.

10/4/18: *Work Group Meeting.* Present: Kristen M. Hooker, Maureen Perkins, Michelle Myers, Vanessa Miller, Jeff Mears, Jamie Betters. The purpose of this work group meeting was to discuss potential amendments to the Oneida Food Service Code (“Law”) with representatives from the following departments and divisions: Environmental, Health, Safety & Land Division; Community Health Nursing; and Internal Services. The next steps are: (1) for the legislative analyst to conduct additional research to be presented back to the work group for consideration and further discussion; (2) for the drafting attorney to provide general updates to the Law based on the LPA and the Federal Food Code; and (3) for the work group to provide any follow up recommendations and/or suggestions to the LRO for amendments to the Law.

11/29/18: *Work Group Meeting.* Present: Vanessa Miller, Tonya Webster, Jennifer Falck, Maureen Perkins, Kristen M. Hooker. The purpose of this work group meeting was to go through the revisions and proposed amendments to the Oneida Food Service Code. The next steps are: (1) for EHSLD and/or Licensing Department to contact Risk Management regarding the current insurance requirements for independent food vendors; (2) for EHSLD to share and get input on the proposed cottage food exemption with representatives of the Nation that may be interested in its development/application; and (3) to reconvene at another work group meeting to finish going through the amendments and discuss the input received from the above groups.

1/25/19: *Work Group Meeting.* Present: Jeff Mears, Kristen Hooker, Maureen Perkins, Vanessa Miller. The purpose of this meeting was: (1) to discuss Risk Management’s stance on the Law’s current insurance provisions and consider possible amendments relating

thereto; and (2) to continue reviewing the Law to gather suggestions from the work group for amendments that include, but are not limited to, updating the fee schedule and adding an exemption for cottage food sales.

2/28/19: *Work Group Meeting.* Present: Jeff Mears, Kristen Hooker, Maureen Perkins, Vanessa Miller, Jennifer Falck. The purpose of this meeting was to discuss the addition of a cottage food sales exemption to the Law. The next step is for the drafting attorney to update the Law to include all amendments proposed during the last two meetings and to bring a draft back to a work group meeting for a final review and comment.

6/6/19: *Work Group Meeting.* Present: Jeff Mears, Kristen Hooker, Maureen Perkins, Vanessa Miller. The purpose of this meeting was to go through the rough draft of the proposed amendments to the Law with the work group for final comments before bringing the draft to a LOC work meeting for review and policy consideration.

11/6/19: *LOC Work Meeting.* Present: David P. Jordan, Daniel Guzman-King, Kirby Metoxen, Kristen M. Hooker, Maureen Perkins, Ernest Stevens III, Jennifer Webster (left early), Jameson Wilson. The purpose of this meeting was to review the current draft of the Oneida Food Service Code, go through the proposed amendments suggested by the work group and discuss any further amendments by the LOC. The LOC reviewed the first half of the draft. The next step is for: (1) the LRO to follow up on the questions/concerns raised by the LOC during its review; (2) the LRO to bring responses back to a LOC work meeting; and (3) for LRO to go through the second half of the draft with the LOC during that meeting.

11/15/19: *LOC Work Meeting.* Present: Kristen Hooker, Maureen Perkins, David Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Daniel Guzman King. The purpose of this meeting was to provide the LOC with responses to the questions/issues it raised during the previous LOC work meeting and to finish going through the draft of the amendments to the Oneida Food Service Code.

12/4/19 LOC: Motion by Jennifer Webster to approve the draft of the amendments to the Oneida Food Service Code with one change and direct a legislative analysis to be completed; Seconded by Kirby Metoxen. Motion carried.

12/18/19 LOC: Motion by Kirby Metoxen to approve the draft amendments to the Oneida Food Service Code and the legislative analysis and to defer to a work meeting; Seconded by Ernest Stevens III. Motion carried.

12/18/19: *LOC Work Meeting.* Present: David Jordan, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Jennifer Webster, Jennifer Falck, Clorissa Santiago, Kristen Hooker, Brandon Wisneski, Maureen Perkins. The purpose of this work meeting was to discuss the considerations raised in the Food Service Code Amendments Legislative Analysis. The next step is for the LRO to update the draft, as well as the legislative analysis, based on the discussions and to prepare a public meeting packet for approval at the next LOC meeting.

1/15/20 LOC: Motion by Kirby Metoxen to approve the public meeting packet and forward the Food Service Code Amendments to a public meeting to be held on February 6, 2020; Seconded by Daniel Guzman King. Motion carried unanimously.

2/6/2020: *Public Meeting Held.* Present: Daniel Guzman King, Jennifer Falck, Maureen Perkins, Brandon Wisneski, Clorissa Santiago, Rae Skenadore, Jaime Betters, Jamison Wilson, other community members who did not sign-in. No comments were received. The meeting closed at 12:30 p.m.

2/13/2020: *LOC Work Meeting.* Present: David Jordan, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Laura Laitinen-Warren, Maureen Perkins, Kristen M. Hooker. The purpose of this meeting was to review written comments sent from a member of the work group prior to the public comment period regarding certain amendments to the Oneida Food Service Code.

2/13/2020: *Public Comment Period Closed at 4:30 p.m.* One (1) written comment was submitted during the public comment period.

Next Steps:

- Accept the public comment and public comment review memorandum and defer to a work meeting for further consideration.



TO: Legislative Operating Committee (LOC)
FROM: Kristen M. Hooker, Legislative Reference Office, Staff Attorney
DATE: February 25, 2020
RE: Oneida Food Service Code Amendments: Public Meeting Comment Review

On February 6, 2020, a public meeting was held regarding proposed amendments to the Oneida Food Service Code (“Law”). The public comment period was then held open until February 13, 2020. This memorandum is submitted as a review of the written comments received within the public comment period.

The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

Comment 1 – Licensing Fee Waiver:

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:

(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.

(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.

Vanessa Miller (written): Shekoli, Regarding section (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.

While I do understand that this fee exemption does not take away any regulatory authority of the Nation and still requires compliance with any and all license requirements, acknowledging of other

governmental license payment, asking for proof of said payment, and then exempting a requirement of the Nation's law (which does include fee payment) based on that acknowledgement, diminishes primacy of our own law. Yaw^ko

Response

The commenter expresses a concern over the licensing fee exemption set forth in section 305.7-1(c)(3)(B) of the Law, which provides:

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.

The commenter believes that requiring the Department to exempt an applicant from the Nation's own licensing fee provision based upon proof that the applicant paid another governmental unit for a similar license diminishes the Law's primacy.

The waiver of licensing fees for those food service businesses and prepackaged restaurants that are located within overlapping jurisdictions and would otherwise be subject to duplicative billing for similar licenses was a policy decision made by the Legislative Operating Committee. The Legislative Operating Committee weighed numerous factors in reaching its decision, including that the waiver could be considered a form of diminishment as described by the commenter. It weighed this against the burden duplicative billing could place on a business, particularly a smaller one, factoring in that the waiver does not take away the Nation's regulatory authority or release the applicant from any of the other compliancy provisions set forth in the Law.

Additionally, the Legislative Operating Committee considered that duplicative licensing fees could deter business development on the Reservation, and thus, undermine the Nation's goal of promoting enterprise within its borders.

The waiver of licensing fees for the food service businesses and prepackaged restaurants described in section 305.7-1(c)(3)(B) of the Law is a policy decision for the Legislative Operating Committee to make. The Legislative Operating Committee may determine that:

1. The Law should remain as drafted to require a licensing fee waiver 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.
2. The Law should be amended to limit licensing fee waivers to only those food service businesses and prepackaged restaurants described in section 305.7-1(c)(3)(B) that meet certain qualifications, such as business size.
 - a. If the Legislative Operating Committee makes this determination, it will then have to decide what limiting qualifications to include within section 305.7-1(c)(3)(B) of the Law.
3. The Law should be amended to remove the requirement that the Department waive the licensing fee for food service businesses and prepackaged restaurants that present proof 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. If the Legislative Operating Committee makes this determination, the following revision is recommended:

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:

(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.

(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.~~

LOC Consideration

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~~

305.2-~~1~~ Adoption, Amendment, Repeal

305.3-~~1~~ Definitions

305.4-~~1~~ Responsibilities and Duties

305.11-~~1~~ Exceptions and ~~Jurisdiction~~

~~305.5-1 Compliance~~

305.6-~~1~~ Requirements for registering ~~5. Compliance~~

305.7-~~1~~ Insurance

305.7. ~~Licensing~~ ~~8-1~~ ~~Inspections~~

305.8. ~~Exemptions~~ ~~9-1~~ ~~Fees~~

305.9. ~~Inspections~~ ~~10-1~~ ~~Independent Food~~

~~Service Vendors Badge~~

305.10. ~~Exemptions~~

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).*

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

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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305.10. Violations, Enforcement

305.11. Appeal Rights

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.

Adopted – BC-06-13-01-B
Amended – BC-02-25-15-C
Amended – BC-__-__-__-__



LEGISLATIVE OPERATING COMMITTEE PUBLIC MEETING

Oneida Food Service Code Amendments

Business Committee Conference Room-2nd Floor Norbert Hill Center
February 6, 2020 12:15 p.m.

Present: Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Maureen Perkins, Kristen M. Hooker, Brandon Wisneski, Rae Skenadore, Jaime Betters, Jamison Wilson, other community members who did not sign-in.

Daniel Guzman King: Good Afternoon. The time is 12:15 p.m. and today's date is Thursday, February 6, 2020. I will now call to order the public meeting for the proposed amendments to the Oneida Food Service Code.

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community. The public meeting is not a question and answer period. The LOC will review and consider all comments received during the public comment period. The LOC will respond to all comments received in a memorandum, which will be submitted in the meeting materials of a future LOC meeting.

All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. If you leave an email address on the sign in sheet, we can ensure you receive a copy of the memorandum.

Additionally, written comments may be submitted to the Nation's Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Thursday, February 13, 2020.

In attendance from the LOC today, is myself - Daniel Guzman King.

The LOC may impose a time limit for all speakers pursuant to section 109.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of five (5) minutes per speaker. This time limit shall apply equally to all persons.

We will now begin today's public meeting for the proposed amendments to the Oneida Food Service Code. 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, regulations, control, supervision and enforcement procedures to govern food service businesses within the boundaries of the Reservation.

So those who wish to speak please come to the microphone and you can state your case.

Ok, with there being no speakers registered to speak, the public meeting for the proposed amendments to the Oneida Food Service Code is now closed at 12:30 p.m.

Written comments may be submitted until close of business day on Thursday, February 13, 2020.
Thank you very much.

-End of Meeting-

Kristen M. Hooker

From: LOC
Sent: Thursday, February 13, 2020 11:21 AM
To: Kristen M. Hooker; Maureen S. Perkins
Subject: FW: Food Service Code Comment

From: Vanessa L. Miller <vmiller@oneidanation.org>
Sent: Thursday, February 13, 2020 11:15 AM
To: LOC <LOC@oneidanation.org>
Subject: Food Service Code Comment

Shekoli,

Regarding section (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.

While I do understand that this fee exemption does not take away any regulatory authority of the Nation and still requires compliance with any and all license requirements, acknowledging of other governmental license payment, asking for proof of said payment, and then exempting a requirement of the Nation's law (which does include fee payment) based on that acknowledgement, diminishes primacy of our own law.

Yaw^ko,

Vanessa Miller



Legislative Operating Committee
March 4, 2020

Curfew Law Amendments

Submission Date: 2/5/20	Public Meeting: n/a
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a

Summary: *This item was added to the Active Files List for a technical amendment to be made to remove an erroneous depiction of the Nation's territorial jurisdiction.*

2/5/20 LOC: Motion by Jennifer Webster to add Curfew Law amendments to the active files list for a technical amendment with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

2/19/20 LOC: Motion by Jennifer Webster to approve the draft law and the legislative analysis and defer to a work meeting for further consideration; seconded by Ernest Stevens III. Motion carried unanimously

2/19/20: *Work Meeting.* Present: Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski. The LOC was updated that the legislative analysis for the Curfew law amendments did not contain any additional considerations. LOC was also informed of and discussed the intent to hold the public meeting for the Curfew law amendments at the same time as the public meeting for the Domestic Animals law amendments.

Next Steps:

- Approve the public meeting packet and forward the Curfew law amendments to a public meeting to be held on April 2, 2020.

ONEIDA NATION PUBLIC MEETING NOTICE**Thursday, April 2, 2020, 12:15 pm**Norbert Hill Center-Business Committee Conference Room
N7210 Seminary Road, Oneida, Wisconsin**Find Public Meeting Materials at**

Oneida-nsn.gov/government/register/public meetings

Send Public Comments to

LOC@oneidanation.org

Ask Questions here

LOC@oneidanation.org

920-869-4312

**CURFEW LAW AMENDMENTS**

The purpose of this law is to protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor.

The Curfew law amendments will:

1. Remove an incorrect reference to the Nation's territorial jurisdiction as the Nation's territorial jurisdiction is provided by the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law; and
2. Remove a duplicative provision regarding personal jurisdiction as personal jurisdiction is already provided by the Nation's Judiciary law.

PUBLIC COMMENTS PERIOD CLOSSES THURSDAY, APRIL 9, 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, 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
This law is not needed in the community.	I do not like the curfew hours included in the law.	Curfew beginning at 10:00 p.m. is too early, curfew should start at 11:00 p.m. instead.



t<yethin<tshaw^=late> kayanl^sla>
we'll put our arms across to stop them

AMENDMENTS TO CURFEW LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Legislative Reference Office	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	Technical corrections to remove inaccurate or duplicative references to the Nation's territorial and personal jurisdiction.		
Purpose	To protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor [3 O.C. 308.1-1].		
Affected Entities	Oneida Police Department and Oneida Judiciary.		
Related Legislation	Judiciary law.		
Public Meeting	A public meeting has not yet been held.		
Fiscal Impact	A fiscal impact statement has not yet been requested.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Curfew law was first adopted by the Oneida Business Committee on October 9, 2019.
- B. Upon a review of the Nation's Code of Laws, the Oneida Law Office and Legislative Operating Committee (LOC) identified references to the Nation's jurisdiction that were either inaccurate or duplicative. In consultation with the Oneida Law Office, the LOC proposes technical amendments to the Curfew law to remove these inaccurate or unnecessary references. The intent of these changes is not to alter how the Curfew law is currently being enforced, but to ensure that all references to jurisdiction in the Nation's Code of Laws are accurate.

SECTION 3. CONSULTATION AND OUTREACH

- A. Representatives from the following departments or entities participated in the development of this law and legislative analysis: Oneida Law Office.
- B. The following laws were reviewed in the drafting of this analysis: Judiciary law, Domestic Animals law, Oneida Nation Gaming Ordinance, Tribal Environmental Response law, Judiciary Rules of Evidence.

SECTION 4. PROCESS

- A. The amendments to this law have followed the process set forth in the Legislative Procedures Act (LPA).
- B. The LOC added the amendments to the Active Files List on February 5, 2020.

SECTION 5. CONTENTS OF THE LEGISLATION

A. Deletion of Territorial Jurisdiction Section. These amendments delete an incorrect reference to the Nation's territorial jurisdiction for this law. The Curfew law incorrectly states that the territorial jurisdiction of this law is limited to land owned by the Nation or individual trust and/or fee land of a member of the Nation.

- *Territorial Jurisdiction.* The Nation's territorial jurisdiction is properly defined in the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law (see below).
- *Conclusion.* Since the reference included in the Curfew law is inaccurate, unnecessary and already located in the Nation's Constitution and Judiciary law, it has been deleted for clarity.

Table 1. Comparison: Territorial Jurisdiction as Referenced in Constitution and Laws of the Nation.

<i>Deleted Language in Current Curfew law</i>	<i>Language in Constitution of the Oneida Nation</i>	<i>Language in Judiciary law</i>
This law extends <u>within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation</u> [3 O.C. 308.4-3].	The jurisdiction of the Oneida Nation shall extend <u>to the territory within the present confines of the Oneida Reservation</u> and to such other lands as may be hereafter added thereto within or without said boundary lines under any law of the United States, except as otherwise provided by law [Article 1 – Territory]	“The territorial jurisdiction of the Trial Court shall extend to the Reservation and all lands held in trust by the United States for the benefit of the Tribe within the State of Wisconsin.” [8 O.C. 801.5-3].

B. Deletion of Personal Jurisdiction Section. These amendments also delete references to the Nation's personal jurisdiction from this law. The personal jurisdiction of the Nation is already provided for in the Nation's Judiciary law.

- *Personal Jurisdiction.* The Judiciary law already clarifies that the Nation has personal jurisdiction over members of the Oneida Nation, members of other federally-recognized Indian tribes, and any “non-Indians” who have consented to the jurisdiction of the Nation (examples include a contract or lease agreement.)
- *Conclusion.* Since the Nation's personal jurisdiction is already provided for in the Judiciary law, it has been deleted from this law for clarity.

Table 2. Comparison: Personal Jurisdiction in laws of the Nation.

<i>Deleted Language in Current Curfew law</i>	<i>Language in Judiciary law</i>
<i>Personal Jurisdiction.</i> This law applies to: (a) All members of the Nation; the Nation's entities and corporations; and members of other federally-recognized tribes; (b) Individuals and businesses leasing, occupying or otherwise using fee land owned by the Nation or by individual members of the Nation; and/or lands held	<i>Personal Jurisdiction</i> (a) Indians. The Trial Court shall have jurisdiction over all Indians. 8 O.C. 801 – Page 5 (b) Non-Indians. The Trial Court shall have jurisdiction over non-Indians who have consented to the jurisdiction of the Tribe or Trial Court or as otherwise consistent with federal law. (1) Consent to Jurisdiction. For purposes of subsection 801.5-4(b)

<p>in trust on behalf of the Nation or individual members of the Nation; and (c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the jurisdiction of the Nation:</p> <p>(1) By entering into a consensual relationship with the Nation, or with the Nation's entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or (2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner. [3 O.C. 304.4-1].</p>	<p>above, a person shall have consented to the jurisdiction of the Trial Court by:</p> <p>(A) entering into a consensual relationship with the Tribe, Tribal entities, Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or (B) other facts which the Trial Court determines manifest an intent to consent to the authority of the Tribe or the jurisdiction of the Trial Court, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner. [8 O.C. 801.5-4].</p>
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SECTION 6. EXISTING LEGISLATION

A. *References to Territorial Jurisdiction in Other Oneida laws.* The following laws also include references to the Nation's territorial jurisdiction.

- Domestic Animals [3 O.C. 304.4-2]
 - *Conclusion.* The reference to territorial jurisdiction in the Domestic Animals law is also incorrect and will need to be updated or deleted. The LOC has added the Domestic Animals law to Active Files List for amendments.
- Judiciary [8 O.C. 801.5-3]
 - *Conclusion.* The reference to territorial jurisdiction in the Judiciary law is correct and no amendments are necessary.
- Oneida Nation Gaming Ordinance (ONGO) [5 O.C. 501.3-1]
 - *Conclusion.* The reference to territorial jurisdiction in ONGO is correct and no amendments are necessary.
- Tribal Environmental Response [4 O.C. 401.4-2]
 - *Conclusion.* The reference to territorial jurisdiction in the Tribal Environmental Response law is correct and no amendments are necessary.
- Judiciary Rules of Evidence [8 O.C. 804.5-2(a)].
 - *Conclusion.* The reference to territorial jurisdiction in the Judiciary Rules of Evidence is correct and no amendments are necessary.

SECTION 7. OTHER CONSIDERATIONS

A. *Fiscal Impact.* A fiscal impact statement has not yet been requested.

- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

- 71 ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating
72 Committee and may be prepared by any agency who may receive funding if the legislation is
73 enacted; who may administer a program if the legislation is enacted; who may have financial
74 information concerning the subject matter of the legislation; or by the Finance Office, upon request
75 of the Legislative Operating Committee [*1 O.C. 109.6-1(a) and (b)*].

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Title 3. Health and Public Safety - Chapter 308
T<yethin<tshaw^=late> Kayanl^sla>
We'll put our arms across to stop them
CURFEW

308.1. Purpose and Policy
308.2. Adoption, Amendment, Repeal
308.3. Definitions
308.4. Jurisdiction

308.5. Curfew
308.6. Enforcement of Curfew Violations
308.7. Penalties of Curfew Violations

308.1. Purpose and Policy

308.1-1. *Purpose.* The purpose of this law is to protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor.

308.1-2. *Policy.* It is the policy of the Nation to support all drug use prevention initiatives of the Nation by protecting the health, safety, and welfare of persons through the establishment of a curfew for minors in public spaces within the Reservation during certain hours in an effort to minimize the opportunity for harm to come to minors during those hours.

308.2. Adoption, Amendment, Repeal

308.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-09-19-F₂ and amended by resolution BC- - - - -.

308.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

308.2-3. 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.

308.2-4. 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.

308.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

308.3. Definitions

308.3-1. 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) “Court of Appeals” means the branch of the Nation's Judiciary delegated the authority of final appeal within the Nation's Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A .

(b) “Family Court” means the branch of the Nation's Judiciary delegated the authority to administer the judicial authorities and responsibilities of the Nation related to the family and/or children, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.

(c) “Guardian” means the person, department, and/or agency appointed the duty and authority of guardianship of a child by a Court for the purpose of managing and caring for the child. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment

in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

(d) “Legal custodian” means any person, department, and/or agency, other than a parent or guardian, to whom legal custody of a child has been granted by Court order and has the rights and responsibilities for the following:

(1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;

(2) To protect, educate and discipline the child so long as it is in the child’s best interest; and

(3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.

(e) “Member of the Nation” means an individual enrolled in the Oneida Nation.

(f) “Minor” means a person age sixteen (16) years old or younger.

(g) “Nation” means the Oneida Nation.

(h) “Parent” means the biological or adoptive parent of a child.

(j) “Public space” means any public streets, highways, roads, alleys, parks, vacant lots, or any public lands.

(j) “Relative” means any person connected with a child by blood, marriage or adoption.

(k) “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.

308.4. Jurisdiction

304.4-1. *Jurisdiction of the Court.* The Family Court has jurisdiction over any action brought under this law.

~~308.4 2. *Personal Jurisdiction.* This law applies to:~~

~~(a) All members of the Nation, individuals eligible for enrollment in the Nation, and members of other federally-recognized tribes.~~

~~(b) Individuals leasing, occupying or otherwise using fee land owned by the Nation or by individual members of the Nation; and/or lands held in trust on behalf of the Nation or individual members of the Nation.~~

~~(c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the jurisdiction of the Nation:~~

~~(1) By entering into a consensual relationship with the Nation, or with the Nation’s entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or~~

~~(2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.~~

~~308.4 3. *Territorial Jurisdiction.* This law extends within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation.~~

308.5. Curfew

308.5-1. *Curfew Established.* No minor shall be on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation, unless the minor is accompanied by a parent, guardian, or legal custodian.

308.5-2. *Parental Responsibility.* No parent, guardian, or legal custodian shall knowingly permit or fail to take action to prevent the minor from being on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation.

308.5-3. *Exemptions to Curfew.* A minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was:

- (a) in the performance of a duty directed by such parent, guardian, or legal custodian;
- (b) engaged in employment or an employment related activity, or traveling to or returning home from employment;
- (c) engaged in interstate travel;
- (d) attending an educational, cultural, religious, or recreational activity that was supervised by adults, or traveling to or returning home from such activity;
- (e) on the sidewalk in front of his or her home or an adjacent home;
- (f) going to, attending, or returning home from a movie theatre;
- (g) engaged in hunting, fishing, or trapping in accordance with the laws, policies, and rules of the Nation;
- (h) exercising rights protected by the Nation's Constitution and the United States Constitution, such as free exercise of religion, freedom of speech, and the right of assembly;
- (i) involved in an emergency situation; and/or
- (j) engaged in any other activity as deemed appropriate by the Oneida Police Department officer.

308.6. Enforcement of Curfew Violations

308.6-1. *Enforcement Procedure.* A suspected violation of curfew shall be enforced by the Oneida Police Department in the following ways:

- (a) A minor who is suspected of violating curfew may be stopped by an Oneida Police Department officer. No person shall assault, obstruct or flee from any Oneida Police Department officer enforcing or attempting to enforce the provisions of this law.
- (b) The Oneida Police Department officer shall ask the minor's name, age, and reason for violating curfew. The minor shall provide the Oneida Police Department officer identification if available. No person shall falsely represent his or her name or age to an Oneida Police Department officer.
- (c) If the Oneida Police Department officer reasonably believes based on the totality of the circumstances that a violation of curfew has occurred and not one of the exemptions in section 308.5-3 apply, the Oneida Police Department officer may take custody of the minor for the purpose of returning such minor to the care and custody of a parent, guardian, or legal custodian.
- (d) Once the Oneida Police Department officer has taken the minor into his or her custody, the minor shall provide the Oneida Police Department officer with contact information for his or her parent, guardian, or legal custodian. The Oneida Police Department officer shall contact the minor's parent, guardian, or legal custodian to come and pick up the minor and take the minor into his or her care and custody. If the minor's parent, guardian, or legal

custodian is unable to pick the minor up, then the Oneida Police Department officer may bring the minor home to release the minor to the custody and care of the minor's parent, guardian, or legal custodian.

(e) If the Oneida Police Department officer is unable to contact the minor's parent, guardian, or legal custodian after reasonable efforts are made, the Oneida Police Department officer shall attempt to locate an adult relative or other responsible adult willing and able to accept the care and custody of the minor, and may release the minor into the care and custody of such person.

308.6-2. *Warning.* The first time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer shall provide the minor and the minor's parent, guardian, or legal custodian a warning and advise the minor and parent, guardian, or legal custodian of the provisions of this law and that any subsequent curfew violations may result in the issuance of a citation and the imposition of a penalty.

308.6-3. *Issuance of a Citation.* Any subsequent time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer may issue a citation to the minor and the minor's parent, guardian, or legal custodian.

(a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Family Court.

(b) A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.

(c) All citations for violations of this law require a mandatory appearance at the citation pre-hearing by the minor and his or her parent, guardian, or legal custodian.

308.7. Penalties of Curfew Violations

308.7-1. Upon a finding by the Family Court that a violation of this law has occurred, the minor and/or the minor's parent, guardian, or legal custodian may be subject to the following penalties:

(a) *Fines.* An individual may be ordered to pay a fine as a result of a violation of this law. The Oneida Business Committee shall hereby be delegated the authority to adopt through resolution a fine schedule which sets forth specific fine amounts for violations of this law.

(1) All fines shall be paid to the Judiciary.

(2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later.

(A) The ninety (90) day deadline for payment of fines may be extended if an alternative payment plan is approved by the Family Court.

(3) If an individual does not pay his or her fine the Family Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process or any other collection process available to the Family Court.

(4) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

(b) *Community service.* An individual may be ordered to perform community service. Community service can be used in lieu of, or in addition to, a fine.

(1) All community service assignments shall be approved by the Family Court. The Family Court shall give preference to culturally relevant community service assignments and/or community service assignments that focus on the betterment of the individual's community.

(2) The Family Court shall provide the individual a written statement of the terms of the community service order, and a statement that the community service order is monitored.

(3) The Family Court's community service order shall specify:

(A) how many hours of community service the individual is required to complete;

(B) the time frame in which the hours shall be completed;

(C) how the individual shall obtain approval for his or her community service assignment;

(D) how the individual shall report his or her hours; and

(E) any other information the Family Court determines is relevant.

(c) *Family counseling and/or parenting programs.* An individual may be ordered to participate in a family counseling and/or a parenting program.

(d) Any other penalty as deemed appropriate by the Family Court.

308.7-2. *Staying a Curfew Penalty.* The Family Court may stay the enforcement of a penalty issued as a result of a curfew violation for a period of time to be determined by the Family Court. If the individual maintains compliance with the law during the time period in which the penalty is stayed, then the Family Court may dismiss the citation. If the individual commits another violation of the law during the time period in which the penalty is stayed, then the penalty shall go into effect.

End.

Adopted – BC-10-09-19-F

Amended – BC- - - -

Title 3. Health and Public Safety - Chapter 308
T<yethin<tshaw^=late> Kayanl^sla>
We'll put our arms across to stop them
CURFEW

308.1. Purpose and Policy
308.2. Adoption, Amendment, Repeal
308.3. Definitions
308.4. Jurisdiction

308.5. Curfew
308.6. Enforcement of Curfew Violations
308.7. Penalties of Curfew Violations

308.1. Purpose and Policy

308.1-1. *Purpose.* The purpose of this law is to protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor.

308.1-2. *Policy.* It is the policy of the Nation to support all drug use prevention initiatives of the Nation by protecting the health, safety, and welfare of persons through the establishment of a curfew for minors in public spaces within the Reservation during certain hours in an effort to minimize the opportunity for harm to come to minors during those hours.

308.2. Adoption, Amendment, Repeal

308.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-09-19-F, and amended by resolution BC-__-__-__-__.

308.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

308.2-3. 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.

308.2-4. 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.

308.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

308.3. Definitions

308.3-1. 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) “Court of Appeals” means the branch of the Nation's Judiciary delegated the authority of final appeal within the Nation's Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A .

(b) “Family Court” means the branch of the Nation's Judiciary delegated the authority to administer the judicial authorities and responsibilities of the Nation related to the family and/or children, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.

(c) “Guardian” means the person, department, and/or agency appointed the duty and authority of guardianship of a child by a Court for the purpose of managing and caring for the child. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment

in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

(d) “Legal custodian” means any person, department, and/or agency, other than a parent or guardian, to whom legal custody of a child has been granted by Court order and has the rights and responsibilities for the following:

(1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;

(2) To protect, educate and discipline the child so long as it is in the child’s best interest; and

(3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.

(e) “Member of the Nation” means an individual enrolled in the Oneida Nation.

(f) “Minor” means a person age sixteen (16) years old or younger.

(g) “Nation” means the Oneida Nation.

(h) “Parent” means the biological or adoptive parent of a child.

(j) “Public space” means any public streets, highways, roads, alleys, parks, vacant lots, or any public lands.

(j) “Relative” means any person connected with a child by blood, marriage or adoption.

(k) “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.

308.4. Jurisdiction

304.4-1. *Jurisdiction of the Court.* The Family Court has jurisdiction over any action brought under this law.

308.5. Curfew

308.5-1. *Curfew Established.* No minor shall be on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation, unless the minor is accompanied by a parent, guardian, or legal custodian.

308.5-2. *Parental Responsibility.* No parent, guardian, or legal custodian shall knowingly permit or fail to take action to prevent the minor from being on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation.

308.5-3. *Exemptions to Curfew.* A minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was:

(a) in the performance of a duty directed by such parent, guardian, or legal custodian;

(b) engaged in employment or an employment related activity, or traveling to or returning home from employment;

(c) engaged in interstate travel;

(d) attending an educational, cultural, religious, or recreational activity that was supervised by adults, or traveling to or returning home from such activity;

(e) on the sidewalk in front of his or her home or an adjacent home;

(f) going to, attending, or returning home from a movie theatre;

- (g) engaged in hunting, fishing, or trapping in accordance with the laws, policies, and rules of the Nation;
- (h) exercising rights protected by the Nation's Constitution and the United States Constitution, such as free exercise of religion, freedom of speech, and the right of assembly;
- (i) involved in an emergency situation; and/or
- (j) engaged in any other activity as deemed appropriate by the Oneida Police Department officer.

308.6. Enforcement of Curfew Violations

308.6-1. *Enforcement Procedure.* A suspected violation of curfew shall be enforced by the Oneida Police Department in the following ways:

- (a) A minor who is suspected of violating curfew may be stopped by an Oneida Police Department officer. No person shall assault, obstruct or flee from any Oneida Police Department officer enforcing or attempting to enforce the provisions of this law.
- (b) The Oneida Police Department officer shall ask the minor's name, age, and reason for violating curfew. The minor shall provide the Oneida Police Department officer identification if available. No person shall falsely represent his or her name or age to an Oneida Police Department officer.
- (c) If the Oneida Police Department officer reasonably believes based on the totality of the circumstances that a violation of curfew has occurred and not one of the exemptions in section 308.5-3 apply, the Oneida Police Department officer may take custody of the minor for the purpose of returning such minor to the care and custody of a parent, guardian, or legal custodian.
- (d) Once the Oneida Police Department officer has taken the minor into his or her custody, the minor shall provide the Oneida Police Department officer with contact information for his or her parent, guardian, or legal custodian. The Oneida Police Department officer shall contact the minor's parent, guardian, or legal custodian to come and pick up the minor and take the minor into his or her care and custody. If the minor's parent, guardian, or legal custodian is unable to pick the minor up, then the Oneida Police Department officer may bring the minor home to release the minor to the custody and care of the minor's parent, guardian, or legal custodian.
- (e) If the Oneida Police Department officer is unable to contact the minor's parent, guardian, or legal custodian after reasonable efforts are made, the Oneida Police Department officer shall attempt to locate an adult relative or other responsible adult willing and able to accept the care and custody of the minor, and may release the minor into the care and custody of such person.

308.6-2. *Warning.* The first time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer shall provide the minor and the minor's parent, guardian, or legal custodian a warning and advise the minor and parent, guardian, or legal custodian of the provisions of this law and that any subsequent curfew violations may result in the issuance of a citation and the imposition of a penalty.

308.6-3. *Issuance of a Citation.* Any subsequent time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer may issue a citation to the minor and the minor's parent, guardian, or legal custodian.

- (a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Family Court.

(b) A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.

(c) All citations for violations of this law require a mandatory appearance at the citation pre-hearing by the minor and his or her parent, guardian, or legal custodian.

308.7. Penalties of Curfew Violations

308.7-1. Upon a finding by the Family Court that a violation of this law has occurred, the minor and/or the minor's parent, guardian, or legal custodian may be subject to the following penalties:

(a) *Fines*. An individual may be ordered to pay a fine as a result of a violation of this law. The Oneida Business Committee shall hereby be delegated the authority to adopt through resolution a fine schedule which sets forth specific fine amounts for violations of this law.

(1) All fines shall be paid to the Judiciary.

(2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later.

(A) The ninety (90) day deadline for payment of fines may be extended if an alternative payment plan is approved by the Family Court.

(3) If an individual does not pay his or her fine the Family Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process or any other collection process available to the Family Court.

(4) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

(b) *Community service*. An individual may be ordered to perform community service. Community service can be used in lieu of, or in addition to, a fine.

(1) All community service assignments shall be approved by the Family Court. The Family Court shall give preference to culturally relevant community service assignments and/or community service assignments that focus on the betterment of the individual's community.

(2) The Family Court shall provide the individual a written statement of the terms of the community service order, and a statement that the community service order is monitored.

(3) The Family Court's community service order shall specify:

(A) how many hours of community service the individual is required to complete;

(B) the time frame in which the hours shall be completed;

(C) how the individual shall obtain approval for his or her community service assignment;

(D) how the individual shall report his or her hours; and

(E) any other information the Family Court determines is relevant.

(c) *Family counseling and/or parenting programs*. An individual may be ordered to participate in a family counseling and/or a parenting program.

(d) Any other penalty as deemed appropriate by the Family Court.

308.7-2. *Staying a Curfew Penalty*. The Family Court may stay the enforcement of a penalty issued as a result of a curfew violation for a period of time to be determined by the Family Court. If the individual maintains compliance with the law during the time period in which the penalty is stayed, then the Family Court may dismiss the citation. If the individual commits another violation of the law during the time period in which the penalty is stayed, then the penalty shall go into effect.

178
179 *End.*
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Adopted – BC-10-09-19-F
Amended – BC-__-__-__-__



Legislative Operating Committee
March 4, 2020

Domestic Animals Law Amendments

Submission Date: 2/5/20	Public Meeting: n/a
LOC Sponsor: Ernest Stevens III	Emergency Enacted: n/a

Summary: *This item was added to the Active Files List for a technical amendment to be made to remove an erroneous depiction of the Nation's territorial jurisdiction.*

2/5/20 LOC: Motion by Daniel Guzman King to add Domestic Animals amendments to the active files list for a technical amendment with Ernest Stevens III as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

2/19/20 LOC: Motion by Ernest Stevens III to approve the draft law and legislative analysis and defer to a work meeting for further consideration; seconded by Jennifer Webster. Motion carried unanimously.

2/19/20: *Work Meeting.* Present: Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski. The LOC was updated that the legislative analysis for the Domestic Animals law amendments did not contain any additional considerations. LOC was also informed of and discussed the intent to hold the public meeting for the Domestic Animals law amendments at the same time as the public meeting for the Curfew law amendments.

Next Steps:

- Approve the public meeting packet and forward the Domestic Animals law amendments to a public meeting to be held on April 2, 2020.

ONEIDA NATION PUBLIC MEETING NOTICE**Thursday, April 2, 2020, 12:15 pm**Norbert Hill Center-Business Committee Conference Room
N7210 Seminary Road, Oneida, Wisconsin**Find Public Meeting Materials at**

Oneida-nsn.gov/government/register/public meetings

Send Public Comments to

LOC@oneidanation.org

Ask Questions here

LOC@oneidanation.org

920-869-4312

**DOMESTIC ANIMALS LAW****AMENDMENTS**

The purpose of this law is to protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals; set minimum standards for treatment of animals; prohibit certain species of animals from being brought onto the Reservation; regulate the keeping of livestock on lots zoned residential within the Reservation; and establish consequences for damages caused by domestic animals.

The Domestic Animals law amendments will:

1. Remove an incorrect reference to the Nation's territorial jurisdiction as the Nation's territorial jurisdiction is provided by the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law;
2. Remove a duplicative provision regarding personal jurisdiction as personal jurisdiction is already provided by the Nation's Judiciary law; and
3. Remove a duplicative provision regarding the citation process as the citation process is provided by the Nation's Citations law.

PUBLIC COMMENTS PERIOD CLOSSES THURSDAY, APRIL 9, 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, 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
This law is not needed in the community.	I do not like how this law limits how many hens you can have.	The amount of hens an owner can keep as provided in section 304.9-3(a) should be increased from 6 to 9 hens.



Tok[^]ske Kayanl[^]hsla Tsi> Ni>yohuntsya-t#
The real/certain laws of the territory of the nation

**AMENDMENTS TO
DOMESTIC ANIMALS LAW
LEGISLATIVE ANALYSIS**

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Legislative Reference Office	SPONSOR: Ernie Stevens III	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	Technical corrections to remove inaccurate or duplicative references to the Nation's territorial jurisdiction, personal jurisdiction and citations process.		
Purpose	To protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals; set minimum standards for treatment of animals; prohibit certain species of animals from being brought onto the Reservation; regulate the keeping of livestock on lots zoned residential with in the Reservation; and establish consequences for damages caused by domestic animals [3 O.C. 304.1-1].		
Affected Entities	Oneida Police Department; Oneida Environmental Health, Safety and Land Division; Oneida Conservation Department; Oneida Environmental Resource Board; Oneida Comprehensive Health Division, Oneida Land Commission; Oneida Emergency Management Coordinator, Oneida Judiciary.		
Related Legislation	Judiciary law.		
Public Meeting	A public meeting has not yet been held.		
Fiscal Impact	A fiscal impact statement has not yet been requested.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A.** The Domestic Animals law was first adopted by the Oneida Business Committee on March 13, 1996 and most recently amended on May 8, 2019. Domestic animals are animals commonly owned as household pets, such as cats and dogs.
- B.** Upon a review of the Nation's Code of Laws, the Oneida Law Office and Legislative Operating Committee (LOC) identified references to the Nation's jurisdiction that were either inaccurate or duplicative. In consultation with the Oneida Law Office, the LOC proposes technical amendments to the Domestic Animals law to remove these inaccurate or unnecessary references. The intent of these changes is not to alter how the Domestic Animals law is currently being enforced, but to ensure that all references to jurisdiction in the Nation's Code of Laws are accurate.

SECTION 3. CONSULTATION AND OUTREACH

- A.** Representatives from the following departments or entities participated in the development of this law and legislative analysis: Oneida Law Office.
- B.** The following laws were reviewed in the drafting of this analysis: Judiciary law, Curfew law, Oneida Nation Gaming Ordinance, Tribal Environmental Response law, Judiciary Rules of Evidence.

SECTION 4. PROCESS

- A. The amendments to this law have followed the process set forth in the Legislative Procedures Act (LPA).
- B. The LOC added the amendments to the Active Files List on February 5, 2020.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. *Deletion of Territorial Jurisdiction Section.* These amendments delete an incorrect reference to the Nation's territorial jurisdiction for this law. The Domestic Animals law incorrectly states that the territorial jurisdiction of this law is limited to land owned by the Nation or individual trust and/or fee land of a member of the Nation.
- *Territorial Jurisdiction.* The Nation's territorial jurisdiction is properly defined in the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law (see below).
 - *Conclusion.* Since the reference included in the Domestic Animals law is inaccurate, unnecessary, and already located in the Nation's Constitution, it has been deleted for clarity.

Table 1. Comparison: Territorial Jurisdiction in laws of the Nation.

<i>Deleted Language in Current Domestic Animals law</i>	<i>Language in Oneida Constitution</i>	<i>Language in Judiciary law</i>
This law extends <u>within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation</u> [3 O.C. 304.4-2].	The jurisdiction of the Oneida Nation shall extend to <u>the territory within the present confines of the Oneida Reservation</u> and to such other lands as may be hereafter added thereto within or without said boundary lines under any law of the United States, except as otherwise provided by law [Article 1 – Territory]	“The territorial jurisdiction of the Trial Court shall extend to <u>the Reservation</u> and all lands held in trust by the United States for the benefit of the Tribe within the State of Wisconsin.” [8 O.C. 801.5-3].

- B. *Deletion of Personal Jurisdiction Section.* These amendments also delete references to the Nation's personal jurisdiction from this law. The personal jurisdiction of the Nation is already provided for in the Nation's Judiciary law.
- *Personal Jurisdiction.* The Judiciary law already clarifies that the Nation has personal jurisdiction over members of the Oneida Nation, members of other federally-recognized Indian tribes, and any “non-Indians” who have consented to the jurisdiction of the Nation (examples include a contract or lease agreement.)
 - *Conclusion.* Since the Nation's personal jurisdiction is already properly defined in the Judiciary law, it has been deleted from this law for clarity.

48 **Table 2. Comparison: Personal Jurisdiction in laws of the Nation.**

<u>Deleted</u> Language in Current Domestic Animals law	Language in Judiciary law
<p><i>Personal Jurisdiction.</i> This law applies to:</p> <p>(a) All members of the Nation; the Nation's entities and corporations; and members of other federally-recognized tribes;</p> <p>(b) Individuals and businesses leasing, occupying or otherwise using fee land owned by the Nation or by individual members of the Nation; and/or lands held in trust on behalf of the Nation or individual members of the Nation; and</p> <p>(c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the jurisdiction of the Nation:</p> <p>(1) By entering into a consensual relationship with the Nation, or with the Nation's entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or</p> <p>(2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner. [3 O.C. 304.4-1].</p>	<p><i>Personal Jurisdiction</i></p> <p>(a) Indians. The Trial Court shall have jurisdiction over all Indians.</p> <p>(b) Non-Indians. The Trial Court shall have jurisdiction over non-Indians who have consented to the jurisdiction of the Tribe or Trial Court or as otherwise consistent with federal law.</p> <p>(1) Consent to Jurisdiction. For purposes of subsection 801.5-4(b) above, a person shall have consented to the jurisdiction of the Trial Court by:</p> <p>(A) entering into a consensual relationship with the Tribe, Tribal entities, Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or</p> <p>(B) other facts which the Trial Court determines manifest an intent to consent to the authority of the Tribe or the jurisdiction of the Trial Court, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner [8 O.C. 801.5-4].</p>

49
50 **C. Updates to Enforcement and Citations Section.** The Citations section of the law has been updated to
51 reflect the Nation's new Citations law.

- 52 ■ *Background.* On February 12, 2020, the Oneida Business Committee adopted a Citations law to
53 establish a consistent process for citations issued for violations of all laws of the Nation. The new
54 Citations law includes a detailed process regarding prehearings, hearings and appeals.
- 55 ■ *Conclusion.* Now that these details are included in the Citations law, it is unnecessary to include
56 the same information in the Domestic Animals law. Therefore, the duplicate citation information
57 has been deleted. Instead, a reference stating that citations will be processed in accordance with the
58 procedures in the Citations law has been added [3 O.C. 304.12-1].

59 **SECTION 6. EXISTING LEGISLATION**

60 **A. References to Territorial Jurisdiction in Other Oneida laws.** The following laws also include
61 references to the Nation's territorial jurisdiction.
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- 63 ▪ Curfew Law [3 O.C. 308.4-3]
 - 64 ○ *Conclusion:* The reference to territorial jurisdiction in the Curfew law is also incorrect and
 - 65 will need to be updated or deleted. The LOC has added the Curfew law to Active Files List
 - 66 for amendments.
- 67 ▪ Judiciary [8 O.C. 801.5-3]
 - 68 ○ *Conclusion.* The reference to territorial jurisdiction in the Judiciary law is correct and no
 - 69 amendments are necessary.
- 70 ▪ Oneida Nation Gaming Ordinance (ONGO) [5 O.C. 501.3-1]
 - 71 ○ *Conclusion.* The reference to territorial jurisdiction in ONGO is correct and no
 - 72 amendments are necessary.
- 73 ▪ Tribal Environmental Response [4 O.C. 401.4-2]
 - 74 ○ *Conclusion.* The reference to territorial jurisdiction in the Tribal Environmental Response
 - 75 law is correct and no amendments are necessary.
- 76 ▪ Judiciary Rules of Evidence [8 O.C. 804.5-2(a)].
 - 77 ○ *Conclusion.* The reference to territorial jurisdiction in the Judiciary Rules of Evidence is
 - 78 correct and no amendments are necessary.

80 **SECTION 7. OTHER CONSIDERATIONS**

81 **A. *Fiscal Impact.*** A fiscal impact statement has not yet been requested.

- 82 ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except
- 83 emergency legislation [1 O.C. 109.6-1].
- 84 ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating
- 85 Committee and may be prepared by any agency who may receive funding if the legislation is
- 86 enacted; who may administer a program if the legislation is enacted; who may have financial
- 87 information concerning the subject matter of the legislation; or by the Finance Office, upon request
- 88 of the Legislative Operating Committee [1 O.C. 109.6-1(a) and (b)].

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Title 3. Health and Public Safety - Chapter 304

~~DOMESTIC ANIMALS~~

K@se>na Olihwe@ke

matters concerning the pet animals

DOMESTIC ANIMALS

304.1. Purpose and Policy
304.2. Adoption, Amendment, Conflicts
304.3. Definitions
~~304.4. Jurisdiction~~
~~304.5. Authority~~
~~304.6. Treatment of Animals~~
~~304.7. Dogs and Cats~~
~~304.8. Livestock~~
~~304.9. Hens~~
~~304.10. Prohibited Animals~~
~~304.11. Dangerous Animals~~

~~304.4. Authority~~
~~304.5. Treatment of Animals~~
~~304.6. Dogs and Cats~~
~~304.7. Livestock~~
~~304.8. Hens~~
~~304.9. Prohibited Animals~~
~~304.10. Dangerous Animals~~
~~304.11. Owner Liability~~
~~304.12. Enforcement of Violations~~

304.1. Purpose and Policy

304.1-1. *Purpose.* The purpose of this law is to:

- (a) protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) set minimum standards for the treatment of animals;
- (c) prohibit certain species of animals from being brought onto the Reservation;
- (d) regulate the keeping of livestock on lots zoned residential within the Reservation; and
- (e) establish consequences for damages caused by domestic animals.

304.1-2. *Policy.* It is the policy of the Nation to protect the health, safety, and welfare of the community by:

- (a) requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) establishing requirements for licensing domestic animals, and
- (c) regulating the types of animals which may be kept as domestic animals.

304.2. Adoption, Amendment, Repeal

304.2-1. This law was adopted by Oneida Business Committee by resolution BC-03-13-96-B and amended by resolutions BC-06-22-11-G, BC-06-28-17-B, ~~and BC-05-08-19-C.~~ and BC- - -

304.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

304.2-3. 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.

304.2-4. 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.

304.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

304.3. Definitions

304.3-1. 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) “Court of Appeals” means the Nation’s Judiciary’s Court of Appeals, which is the court of final appeal within the Nation.
- (b) “District Quarantine” means a rabid or otherwise diseased domestic animal is suspected

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or known to be within a discernible area and all such animals reasonably suspected of being infected are subject to enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animals are tested for diseases, including rabies.

(c) “Fine” means a monetary punishment issued to a person violating this law.

(d) “Hen” means a female chicken of the order and family gallus gallus domesticus.

(e) “Husbandry practices” means accepted manner of managing resources, cultivating, and caring for animals including the breeding, feeding, and tending of the animals.

(f) “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.

(g) “Livestock” means any equine (i.e. horse, donkey, etc.), bovine (i.e. cow, steer, heifer, etc.), sheep, goat, pig.

(h) “Nation” means the Oneida Nation.

(i) “Owner” means any person who owns, harbors, keeps, controls or acts as a caretaker for an animal. Absent evidence of alternative adult ownership, this law presumes that domestic animals are owned by the adult homeowner or renter.

(j) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and may include, but is not limited to, the confiscation of wildlife with return of the same at the discretion of the Trial Court and restitution.

(k) “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.

(l) “Residential household” means a residential lot, except for those residential lots designed as multi-family lots, in which each family unit within the lot constitutes a separate household.

(m) “Tethering” means the act of fastening an animal to a stationary object while unattended so that the animal can only range within a set radius. Tethering does not include the use of a leash to walk an animal.

(n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary.

(o) “Quarantine” means the act of keeping an animal in enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animal is tested for diseases, including rabies.

304.4. Authority Jurisdiction

304.4-1. ~~Personal Jurisdiction. This law applies to:~~

~~(a) All members of the Nation; the Nation’s entities and corporations; and members of other federally recognized tribes;~~

~~(b) Individuals and businesses leasing, occupying or otherwise using fee land owned by the Nation or by individual members of the Nation; and/or lands held in trust on behalf of the Nation or individual members of the Nation; and~~

~~(c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the~~

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jurisdiction of the Nation:

(1) ~~By entering into a consensual relationship with the Nation, or with the Nation's entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or~~

(2) ~~By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.~~

~~304.4 2. Territorial Jurisdiction. This law extends within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation.~~

~~304.5. Authority~~

~~304.5 1. General.~~ This law governs the keeping of all domestic animals which are commonly owned as household pets. Domestic animals include, but are not limited to, dogs, cats, ferrets, rabbits, guinea pigs, turtles, birds, pigeons, hamsters, non-venomous reptiles, amphibians, and arachnids.

(a) Domestic animals do not include prohibited animals as identified by the prohibited animals resolution provided for in section 304.109-2.

~~304.5 2. Authority of the Oneida Police Department and Conservation Department.~~ Oneida Police Officers and Conservation Wardens shall have the authority to:

(a) investigate complaints involving domestic animals;

(b) enforce the provisions of this law through appropriate means, including but not limited to:

(1) seizing any animal that is taken, employed, used, or possessed in violation of this law and/or mistreated, rabid or otherwise in danger or dangerous;

(2) issuing citations consistent with the fine and penalty schedule developed in accordance with this law; and

(3) using force, up to and including lethal force, to stop an immediate threat to public safety caused by an animal.

(A) Where lethal force is used, such execution shall be conducted in as humane manner as possible and, to the extent feasible, avoids damage to the animal's head for the purpose of rabies testing.

~~304.5 3. Fine, Penalty, and Licensing Fee Schedule.~~ The Environmental, Health, Safety, and Land Division and the Environmental Resource Board are hereby delegated joint authority to develop a fine, penalty, and licensing fee schedule. The fine, penalty, and licensing fee schedule shall be adopted by the Oneida Business Committee through resolution.

~~304.5 4. Disease Investigation and Quarantine.~~ The Environmental, Health, Safety, and Land Division, the Emergency Management Coordinator, and the Comprehensive Health Division are hereby delegated joint authority to establish standard operating procedures related to disease investigations and quarantines.

~~304.5 5. Issuance of Licenses.~~ The Environmental, Health, Safety, and Land Division shall make all decisions related to the issuance of a license and/or permit in accordance with this law, unless otherwise noted.

304.65. Treatment of Animals

304.65-1. *Food and Water.* An owner shall provide an animal with a daily supply of food and water sufficient to maintain the animal in good health.

304.65-2. *Shelter.* An owner shall meet the minimum standards for indoor and outdoor shelter for an animal. All shelter shall be structurally sound and maintained in good repair to protect the animal from injury and to contain the animal.

(a) *Minimum indoor standards of shelter.* Minimum standards for indoor shelter include the following:

(1) *Temperature.* The ambient temperature of the indoor shelter shall be compatible with the health of the animal.

(2) *Ventilation.* Indoor shelter facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animal at all times.

(b) *Minimum outdoor standards of shelter.* Minimum standards for outdoor shelter include the following:

(1) *Shelter from Sunlight.* When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. Caged does not include farm fencing used to confine livestock.

(2) *Climatic Conditions.* Natural or artificial shelter appropriate to the local climatic conditions for the animal concerned shall be provided as necessary for the health of the animal.

(3) *Adverse Weather.* If an animal is tied or confined unattended outdoors under weather conditions which adversely affect the health of the animal, a weather appropriate shelter of suitable size to accommodate the animal shall be provided.

(c) *Space Standards.* Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress, or abnormal behavior patterns.

(1) *Dog Kennels.* Dog kennels shall meet the following space requirements where, if there are multiple dogs in the same kennel, the base kennel space requirement is based on the size of the largest dog and the additional kennel space requirements are based on the size of each additional dog kept in the kennel:

(A) *Dog Size Between One and Thirty-Five Pounds.* A dog that weighs between one (1) and thirty-five (35) pounds shall have a required base kennel space of sixty (60) square feet. Required additional kennel space per additional dog of this size is twelve (12) square feet.

(B) *Dog Size Between Thirty-Six and Seventy-Five Pounds.* A dog that weighs between thirty-six (36) and seventy-five (75) pounds shall have a required base kennel space of eighty (80) square feet. Required additional kennel space per additional dog of this size is eighteen (18) square feet.

(C) *Dog Size Seventy-Six Pounds or Greater.* A dog that weighs seventy-six (76) pounds or more shall have a required base kennel space of one hundred (100) square feet. Required additional kennel space per additional dog of this size is twenty-four (24) square feet.

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(d) *Sanitation Standards.* An owner shall meet the minimum standards of sanitation for both indoor and outdoor shelter. Minimum sanitation standards require waste matter from the animal to be removed within twenty-four (24) hours of its deposit.

(e) *Shelter Exception for Livestock.* In the case of livestock kept on farms on land zoned agricultural, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices.

304.65-3. *Tethering.* If a kennel or enclosed yard is not available, an owner may tether an unsupervised animal as long as the owner meets the following conditions:

(a) the tether is connected to the animal with a buckle type collar or body harness made of nylon or leather not less than one inch (1”) in width and at least two inches (2”) greater in diameter than the animal’s neck or torso;

(1) The use of a choke collar, prong collar head harness, or other similar type of head harness or collar shall be prohibited for the use of tethering.

(b) the tether is at least twelve feet (12’) long and allows the animal to move in all directions unimpeded;

(c) the total weight of the tether does not exceed ten percent (10%) of the animal’s body weight;

(d) the animal is tethered so as to prevent injury, strangulation, or entanglement, and allows the animal access to water and shelter;

(e) the tethered animal is not sick, injured, or nursing;

(f) the animal is not tethered on any vacant property or land or with an unoccupied dwelling; and

(g) the animal is not tethered in a manner that allows the animal to cross onto public space or property of others.

304.65-4. *Mistreatment of Animals.* No person shall treat any animal in a manner which causes harm, injury or death. This section does not apply to:

(a) normal and accepted veterinary and/or care practices; or

(b) teaching, research or experimentation conducted at a facility regulated under federal or applicable state law.

304.65-5. *Mandatory Reporting.* An employee of the Nation shall report any animal mistreatment witnessed during the regular course of his or her employment with the Nation to the Oneida Police Department and any other appropriate entity.

304.7. Dogs and Cats

304.76-1. *License Required.* An owner shall be required to obtain a license for any dog or cat five (5) months of age or older on an annual basis.

(a) *License Period.* The license year shall commence on January 1st and end on December 31st of every year.

(b) *License Eligibility.* To be eligible for a license, the owner shall provide:

(1) the licensing fee; and

(2) proof of current rabies vaccination.

(c) *Placement of License Tag.* Upon the receipt of a license the owner shall be provided a license tag for the dog or cat. The owner shall securely attach the license tag to the animal’s

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collar and shall require the animal wear the collar at all times.

(1) *Exception.* A dog or cat shall not be required to wear the collar if the dog or cat is:

(A) hunting or actively involved in herding or controlling livestock if the animal is under control of its owner;

(B) within the owner's residence and/or securely confined in a fenced area; and/or

(C) being shown during a competition.

304.76-2. *Rabies Vaccinations Required.* An owner shall be required to obtain a rabies vaccination for any dog or cat five (5) months of age or older.

304.76-3. *Limit on the Number of Dogs and Cats.* An individual may keep no more than two (2) dogs or three (3) cats; and a total of no more than four (4) dogs and cats combined; in a single residential household.

(a) *Exception.* The limit on the number of dogs and cats a person may keep or possess does not apply to a person who:

(1) is eligible for any grandfather provisions included in this law's adopting resolution;

(2) keeps or possesses a litter of pups or kittens, or a portion of a litter, for a period not exceeding five (5) months from birth;

(3) resides on property zoned agricultural; and/or

(4) obtains a permit for the additional dog or cat.

(b) *Permit for Additional Dogs or Cats.* A person may keep more than two (2) dogs or three cats (3) in a single residential household if the owner obtains a permit from the Environmental, Health, Safety, and Land Division for the additional animal. The application for the permit must be signed by the owner and contain the signature of the homeowner of the residential household if the homeowner is not the applicant.

(1) By seeking a permit for an additional dog or cat the owner agrees that he or she shall reduce the number of licensed dogs or cats on the premises if there are two (2) or more nuisance complaints against the residential household within one (1) calendar year caused by, or related to, the number of dogs or cats housed on the premises.

(2) If two (2) or more nuisance complaints are received against the residential household due to the number of dogs or cats housed on the premises, the owner shall reduce the number of animals within thirty (30) days.

304.76-4. *Running at Large.* An owner shall not allow a dog or cat to run at large by being any place except upon the premises of the owner, unless the dog or cat is crated, penned, or on a leash under the control of a person physically able to control the animal.

(a) A stray dog or cat running at large may be referred to the Oneida Police Department or Oneida Conservation Department.

(b) When an Oneida Police Officer or Oneida Conservation Warden finds a dog or cat running at large, the officer and/or warden shall, if possible, pick up and impound such animal.

(c) Whenever any impounded animal bears an identification mark, such as a collar with

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identification tags or license tag, the owner shall be notified as soon as reasonably possible.
304.76-5. *Nuisance*. An Oneida Police Officer or Oneida Conservation Warden may pick up and impound a dog or cat that has been found to be a nuisance. A dog or cat shall be found to be a nuisance if the actions of the dog or cat:

- (a) resulted in two (2) or more verified disturbances due to excessive barking and/or other noise by the animal, or the animal running at large; and/or
- (b) resulted in one (1) or more verified disturbance due to threatening behavior by the animal running at large.

304.76-6. *Investigations for Suspected Animal Bites*. The owner shall notify the Oneida Police Department in the event the owner's cat or dog bites a human or another domestic animal.

- (a) The responding Oneida Police Officer or Oneida Conservation Warden shall:
 - (1) Ascertain whether the domestic animal is properly licensed and has current vaccinations.
 - (2) Ensure all information provided is correct.
 - (3) Contact the Environmental, Health, Safety, and Land Division to provide notification of the domestic animal bite.
 - (4) If the cat or dog has current rabies vaccinations, order the owner to:
 - (A) Quarantine the animal for ten (10) days; and
 - (B) Present the animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10th) day.
 - (5) If the cat or dog does not have current rabies vaccination, order the owner to:
 - (A) Quarantine the animal for ten (10) days or deliver the animal to an isolation facility at the owner's expense. If a home quarantine is ordered, the owner shall present the domestic animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10th) day; or
 - (B) Euthanize the animal and send the specimen for analysis at the owner's expense, if the animal has exhibited any signs of rabies.

(b) Upon expiration of a quarantine period, a veterinarian may extend the quarantine period. Upon expiration of all quarantine periods, if the veterinarian certifies that the animal has not exhibited any signs of rabies, the animal may be released from quarantine.

(c) If the veterinarian certifies that the animal has exhibited any signs of rabies the following shall occur:

- (1) If the animal has current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis, to be paid for by the Nation.
- (2) If the animal does not have current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis at the owner's expense.

304.76-7. *District Quarantine*. A district quarantine may be initiated by staff designated by the Environmental, Health, Safety, and Land Division, an Oneida Police Officer, an Oneida

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Conservation Warden, and/or a Public Health Officer.

(a) If an area is subject to a district quarantine for rabies, all dogs and cats within the district shall be kept securely confined, tied, leashed or muzzled. Any dog or cat not confined, tied, leashed or muzzled is a public nuisance and may be impounded. All Oneida Police Officers and Oneida Conservation Wardens shall cooperate in the enforcement of the quarantine.

(b) An animal that is immunized against rabies as evidenced by a valid certificate of rabies vaccination or other evidence is exempt from the district quarantine provisions of this section.

304.87. Livestock

304.87-1. An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep livestock on land zoned residential.

304.87-2. *Limitations on Livestock.* Livestock kept on land zoned residential are subject to the following limitations:

(a) One (1) large animal per one (1) acre. Examples of large animals include, but are not limited to, horses, cows, and pigs.

(b) One (1) small animal per one-half (½) acre. Examples of small animals include, but are not limited to, goats, and sheep.

(c) One (1) goat or sheep per recorded lot under one-half (½) acre when setback requirements can be met.

304.87-3. *Liability for Damage Caused by Livestock at Large.* Any person whose livestock escapes from its normal confined area and becomes at large is responsible for any and all damage to persons and property caused by such livestock while it is away from its normal confined area.

304.98. Hens

304.98-1. *Hen Permit.* An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep hens on land zoned residential.

304.98-2. *Prohibition of Roosters.* An owner shall not keep a rooster on land zoned residential.

304.98-3. *Limit on the Number of Hens Allowed.* The number of hens an owner may keep is dependent on the size of the residential lot.

(a) An owner may keep up to six (6) hens on a residential lot that is smaller than two (2) acres in size.

(b) An owner may keep up to twelve (12) hens on a residential lot two (2) acres in size or larger.

304.98-4. *Standards for Keeping Hens.* An owner shall keep hens in the following manner:

(a) No person shall keep a hen over eight (8) weeks of age in a principal structure.

(b) Hens shall be kept within a structure such as a coop or fenced area used exclusively to keep hens and shall provide at least four (4) square feet of space per hen.

(c) No accessory structure used to keep hens shall be located within twenty-five feet (25') of any principal structure which is not owned by the person permitted to keep the hens.

(d) No accessory structure used to keep hens shall be located in a front or side yard.

(e) All hens shall be kept and handled in a sanitary manner to prevent the spread of

communicable diseases amongst birds or to humans.

304.98-5. *Prohibition of Nuisance Hens*. No owner may keep hens that cause any other nuisance associated with unhealthy conditions, create a public health threat, or otherwise interfere with the normal use of property or enjoyment of life by humans or animals.

304.109. Prohibited Animals

304.109-1. No person shall bring into, keep, harbor, maintain, offer for sale or barter, act as a custodian, have custody or control of, or release to the wild on the Reservation a prohibited animal.

304.109-2. *Prohibited Animals*. The Oneida Business Committee shall provide through the adoption of a resolution which orders and families of animals, whether bred in the wild or in captivity, and any or all hybrids are prohibited from being on the Reservation.

304.109-3. *Prohibited Animals Exception*. The prohibition of certain animals shall not apply to:

(a) Individuals who are eligible for any grandfather provisions included in this law's adopting resolution.

(b) A zoological park and/or sanctuary, an educational or medical institution, and/or a specially trained entertainment organization who receives a permit from the Environmental, Health, Safety, and Land Division to own, harbor or possess the prohibited animal.

304.109-4. *Prohibited Animal Permit*. The Environmental, Health, Safety, and Land Division may issue a prohibited animal permit if:

(a) the animal and animal quarters are kept in a clean and sanitary condition and maintained to eliminate objectionable odors; and

(b) the animal is maintained in quarters so constructed as to prevent its escape.

304.109-5. *Release of Prohibited Animals*. The Environmental, Health, Safety, and Land Division, may approve a wildlife refuge and/or sanctuary to release prohibited animals within the Reservation without applying for and receiving a prohibited animal permit.

304.109-6. *Seizure of Prohibited Animals*. An unpermitted prohibited animal may be seized by the Oneida Police Department and/or the Oneida Conservation Department.

(a) A prohibited animal that is seized shall be held by the Oneida Police Department, the Oneida Conservation Department, or its designee until it can be determined if the animal is an endangered or threatened species.

(b) At any time after such identification, the Oneida Police Department and/or Oneida Conservation Department may seek an order from the Trial Court as to the care, custody and control of the animal.

(c) If the Trial Court finds the animal has been taken, employed, used or possessed in violation of this section, the owner shall be responsible for reimbursing the Oneida Police Department and/or the Oneida Conservation Department for the cost of holding the animal and any costs incurred in identifying the animal.

304.109-7. *Notice of Release or Escape*. The owner of a prohibited animal that has been released or escapes shall immediately notify the Oneida Police Department and/or the Oneida Conservation Department and shall be liable for any cost of recapture of the animal.

304.10-8. *Forfeiture of the Prohibited Animal*. An owner found in violation of this section shall

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forfeit or surrender the prohibited animal to the Oneida Police Department, Oneida Conservation Department, or designee. Upon such forfeiture or surrender, the Trial Court may direct destruction or transfer of the animal to a qualified zoological, educational, or scientific institution or qualified private propagator for safekeeping, with costs assessed against the owner.

304.1110. Dangerous Animals

304.1110-1. *Dangerous Animals*. No person shall own, keep, possess, return to or harbor a dangerous animal. An animal shall be presumed to be dangerous if the animal:

- (a) approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack;
- (b) bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or domestic animal;
- (c) is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or
- (d) has been declared to be a dangerous animal and/or ordered to be destroyed in any other jurisdiction.

304.1110-2. *Dangerous Animal Determination*. An Oneida Police Officer or Oneida Conservation Warden may determine an animal to be dangerous whenever, upon investigation, the officer finds that the animal meets the definition of dangerous animal provided in section 304.1110-1.

- (a) Upon making a determination that an animal is dangerous, the Oneida Police Officer or Oneida Conservation Warden shall issue a written order with an accompanying citation declaring the animal to be dangerous.
- (b) The citation and order shall be personally delivered to the apparent owner or custodian of the dangerous animal.
- (c) Upon receipt of the written order and accompanying citation the owner shall remove the dangerous animal from the Reservation within three (3) business days.

304.1110-3. *Contesting a Dangerous Animal Determination*. If the owner wishes to contest the dangerous animal determination, he or she shall file with the Trial Court a written objection to the order within three (3) business days of receipt of the order.

- (a) The written objection shall include specific reasons for objecting to or contesting the order. An owner may argue an animal should not be deemed dangerous due to the animal biting, attacking or menacing any person and/or domestic animal because the animal was acting to:
 - (1) defend its owner or another person from an attack by a person or animal;
 - (2) protect its young or another animal;
 - (3) defend itself against any person or animal which has tormented, assaulted or abused it; and/or
 - (4) defend its owner's property against trespassers.
- (b) Pending the outcome of the hearing, the animal shall be securely confined in a humane manner either on the premises of the owner or caretaker, or with a licensed veterinarian. If confined on the premises of the owner or caretaker, the following requirements shall apply:
 - (1) *Leash and Muzzle*. No owner shall permit a dangerous animal to go outside its kennel or pen unless the animal is securely restrained with a leash no longer than

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four feet (4') in length by a person who is at least sixteen (16) years of age who is in physical control of the leash, competent to govern the animal and capable of physically controlling and restraining the animal. The owner shall not leash an animal to inanimate objects such as a tree, post, or building. When the animal is on a leash outside the animal's kennel, the owner shall muzzle the animal in a humane way by a commercially available muzzling device sufficient to prevent the animal from biting a person or other animal.

(2) *Confinement.* Except when leashed and muzzled the owner shall ensure the dangerous animal is securely confined indoors or in a securely enclosed and locked pen or kennel that is located on the premises of the owner and constructed in a manner that does not allow the animal to exit the pen or kennel on its own volition. The owner shall not permit an animal to be kept on a porch, patio, or in any part of a house or structure on the premises of the owner that would allow the animal to exit the building on its own volition. The owner shall not permit the animal to be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.

(3) *Signs.* The owner of a dangerous animal shall display, in prominent places on his or her premises near all entrances to the premises, signs in letters of not less than two inches (2") high warning that there is a dangerous animal on the property. A similar sign shall be posted on the kennel or pen of the animal. In addition, the owner shall conspicuously display a sign with a symbol warning children of the presence of a dangerous animal.

(4) *Notification.* The owner of a dangerous animal shall notify the Oneida Police Department and/or the Oneida Conservation Department immediately if the animal is at large, is unconfined, has attacked another animal, or has attacked a person.

(c) If an owner or caretaker fails to follow the requirements for harboring a dangerous animal pending a hearing, the animal may be impounded by the Oneida Police Officer or Oneida Conservation Warden issuing the dangerous animal determination.

304.10-4. *Dangerous Animal Determination Hearing.* A hearing on the dangerous animal determination shall be held within fourteen (14) days of submission of the written objection with the Trial Court. At the hearing, the Trial Court shall determine whether the determination that the animal is dangerous should be substantiated.

(a) If the Trial Court concludes that the determination that the animal is dangerous is substantiated, then the Trial Court shall issue an order that mandates the animal be removed from the Reservation within forty-eight (48) hours of the determination.

(1) The order shall contain the requirement that the owner notify the Oneida Police Department within twenty-four (24) hours if the dangerous animal has been sold or been given away. If the dangerous animal has been sold or given away, the owner shall also provide the name, address and telephone number of the new owner of the dangerous animal. If the dangerous animal is sold or given away to a person residing outside the Reservation or to a person or entity that falls outside of the jurisdiction of this law, the owner shall present evidence to the Oneida Police

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Department showing that he or she has notified the police department or other law enforcement agency of the animal's new residence, including the name, address and telephone number of the new owner. The Oneida Police Department shall forward all such notifications to the Environmental, Health, Safety, and Land Division within a reasonable amount of time.

(b) The Trial Court may order a dangerous animal to be destroyed. If such an order is issued, the Trial Court shall require the owner submit proof of destruction within five (5) business days from a licensed veterinarian. If the owner does not satisfy these requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall seize the animal and enforce compliance at the cost of the owner.

(c) The Trial Court may mandate attendance at an additional Trial Court hearing if restitution is appropriate.

304.11-5. *Appeal of the Trial Court's Decision.* An appeal of the Trial Court's decision on the dangerous animal determination may be appealed to the Nation's Court of Appeals.

(a) An appeal shall be submitted to the Court of Appeals within five (5) business days from the date of the Trial Court's decision.

(b) Upon an appeal to the Court of Appeals, the order to remove the animal from the Reservation or any order to destroy an animal is stayed pending the outcome of the appeal.

604.11-6. *Dangerous Animal Exception.* The Trial Court may provide an exception to the dangerous animal provisions of this law for a law enforcement or military animal upon presentation by the animal's owner or handler of a satisfactory arrangement for safe keeping of the animal.

304.12-11. **Owner Liability**

304.12-11-1. An owner shall be liable for damages caused by his or her domestic animal.

(a) *First Offense.* The owner is liable for the full amount of damages caused by the domestic animal.

(b) *Subsequent Offenses.* The owner shall be liable for two (2) times the full amount of damages caused by the domestic animal if the owner knew or should have known that the domestic animal previously caused damages.

304.13-12. **Enforcement of Violations**

304.13-12-1. *Citations.* ~~Citations~~A citation for the violation of this law and/or orders issued pursuant to this law may include fines, penalties and conditional orders in accordance with the fine, penalty, and licensing fee schedule. A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.

~~304.13-2. Citation Pre Hearing. All citations shall include a pre-hearing date with the Trial Court which shall be set for the next scheduled monthly pre-hearing date that is at least thirty (30) days after the citation was issued.~~(a) The act of contesting a dangerous animal determination shall follow the process contained in section 304.11-10.

~~(a) Persons wishing to contest a citation shall appear at the prehearing, at which time the Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued.~~

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

~~304.13 3. Citation Hearing. The Trial Court shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued.~~

~~304.13 4. Appeals of the Trial Court's Determinations. Any person wishing to contest the determination of the Trial Court may appeal to the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure.~~

~~304.13 5. Fines. All fines~~**304.12-2. Fines. All fines as a result of a citation** shall be paid to the Judiciary. Money received from fines shall be contributed to the General Fund.

~~(a) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later. If the fine is not paid by this deadline, the Trial Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process.~~

~~(1) The ninety (90) day deadline for payment of fines may be extended if an alternative payment plan is approved by the Trial Court.~~

~~(b)~~**(a)** Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

End.

Adopted - BC-03-13-96-B
Amended – BC-06-22-11-G
Amended – BC-06-28-17-B
Amended – BC-05-08-19-C
Amended – BC- - - -

Title 3. Health and Public Safety - Chapter 304
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matters concerning the pet animals
DOMESTIC ANIMALS

304.1. Purpose and Policy
304.2. Adoption, Amendment, Conflicts
304.3. Definitions
304.4. Authority
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304.6. Dogs and Cats
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304.8. Hens
304.9. Prohibited Animals
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304.11. Owner Liability
304.12. Enforcement of Violations

304.1. Purpose and Policy

304.1-1. *Purpose.* The purpose of this law is to:

- (a) protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) set minimum standards for the treatment of animals;
- (c) prohibit certain species of animals from being brought onto the Reservation;
- (d) regulate the keeping of livestock on lots zoned residential within the Reservation; and
- (e) establish consequences for damages caused by domestic animals.

304.1-2. *Policy.* It is the policy of the Nation to protect the health, safety, and welfare of the community by:

- (a) requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) establishing requirements for licensing domestic animals, and
- (c) regulating the types of animals which may be kept as domestic animals.

304.2. Adoption, Amendment, Repeal

304.2-1. This law was adopted by Oneida Business Committee by resolution BC-03-13-96-B and amended by resolutions BC-06-22-11-G, BC-06-28-17-B, BC-05-08-19-C, and BC-__-__-__.

304.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

304.2-3. 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.

304.2-4. 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.

304.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

304.3. Definitions

304.3-1. 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) “Court of Appeals” means the Nation’s Judiciary’s Court of Appeals, which is the court of final appeal within the Nation.

(b) “District Quarantine” means a rabid or otherwise diseased domestic animal is suspected or known to be within a discernible area and all such animals reasonably suspected of being infected are subject to enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animals are tested for diseases, including rabies.

(c) “Fine” means a monetary punishment issued to a person violating this law.

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(d) “Hen” means a female chicken of the order and family gallus gallus domesticus.

(e) “Husbandry practices” means accepted manner of managing resources, cultivating, and caring for animals including the breeding, feeding, and tending of the animals.

(f) “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.

(g) “Livestock” means any equine (i.e. horse, donkey, etc.), bovine (i.e. cow, steer, heifer, etc.), sheep, goat, pig.

(h) “Nation” means the Oneida Nation.

(i) “Owner” means any person who owns, harbors, keeps, controls or acts as a caretaker for an animal. Absent evidence of alternative adult ownership, this law presumes that domestic animals are owned by the adult homeowner or renter.

(j) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and may include, but is not limited to, the confiscation of wildlife with return of the same at the discretion of the Trial Court and restitution.

(k) “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.

(l) “Residential household” means a residential lot, except for those residential lots designed as multi-family lots, in which each family unit within the lot constitutes a separate household.

(m) “Tethering” means the act of fastening an animal to a stationary object while unattended so that the animal can only range within a set radius. Tethering does not include the use of a leash to walk an animal.

(n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary.

(o) “Quarantine” means the act of keeping an animal in enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animal is tested for diseases, including rabies.

304.4. Authority

304.4-1. *General.* This law governs the keeping of all domestic animals which are commonly owned as household pets. Domestic animals include, but are not limited to, dogs, cats, ferrets, rabbits, guinea pigs, turtles, birds, pigeons, hamsters, non-venomous reptiles, amphibians, and arachnids.

(a) Domestic animals do not include prohibited animals as identified by the prohibited animals resolution provided for in section 304.9-2.

304.4-2. *Authority of the Oneida Police Department and Conservation Department.* Oneida Police Officers and Conservation Wardens shall have the authority to:

(a) investigate complaints involving domestic animals;

(b) enforce the provisions of this law through appropriate means, including but not limited to:

(1) seizing any animal that is taken, employed, used, or possessed in violation of this law and/or mistreated, rabid or otherwise in danger or dangerous;

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(2) issuing citations consistent with the fine and penalty schedule developed in accordance with this law; and

(3) using force, up to and including lethal force, to stop an immediate threat to public safety caused by an animal.

(A) Where lethal force is used, such execution shall be conducted in as humane manner as possible and, to the extent feasible, avoids damage to the animal's head for the purpose of rabies testing.

304.4-3. *Fine, Penalty, and Licensing Fee Schedule.* The Environmental, Health, Safety, and Land Division and the Environmental Resource Board are hereby delegated joint authority to develop a fine, penalty, and licensing fee schedule. The fine, penalty, and licensing fee schedule shall be adopted by the Oneida Business Committee through resolution.

304.4-4. *Disease Investigation and Quarantine.* The Environmental, Health, Safety, and Land Division, the Emergency Management Coordinator, and the Comprehensive Health Division are hereby delegated joint authority to establish standard operating procedures related to disease investigations and quarantines.

304.4-5. *Issuance of Licenses.* The Environmental, Health, Safety, and Land Division shall make all decisions related to the issuance of a license and/or permit in accordance with this law, unless otherwise noted.

304.5. Treatment of Animals

304.5-1. *Food and Water.* An owner shall provide an animal with a daily supply of food and water sufficient to maintain the animal in good health.

304.5-2. *Shelter.* An owner shall meet the minimum standards for indoor and outdoor shelter for an animal. All shelter shall be structurally sound and maintained in good repair to protect the animal from injury and to contain the animal.

(a) *Minimum indoor standards of shelter.* Minimum standards for indoor shelter include the following:

(1) *Temperature.* The ambient temperature of the indoor shelter shall be compatible with the health of the animal.

(2) *Ventilation.* Indoor shelter facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animal at all times.

(b) *Minimum outdoor standards of shelter.* Minimum standards for outdoor shelter include the following:

(1) *Shelter from Sunlight.* When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. Caged does not include farm fencing used to confine livestock.

(2) *Climatic Conditions.* Natural or artificial shelter appropriate to the local climatic conditions for the animal concerned shall be provided as necessary for the health of the animal.

(3) *Adverse Weather.* If an animal is tied or confined unattended outdoors under weather conditions which adversely affect the health of the animal, a weather appropriate shelter of suitable size to accommodate the animal shall be provided.

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(c) *Space Standards.* Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress, or abnormal behavior patterns.

(1) *Dog Kennels.* Dog kennels shall meet the following space requirements where, if there are multiple dogs in the same kennel, the base kennel space requirement is based on the size of the largest dog and the additional kennel space requirements are based on the size of each additional dog kept in the kennel:

(A) *Dog Size Between One and Thirty-Five Pounds.* A dog that weighs between one (1) and thirty-five (35) pounds shall have a required base kennel space of sixty (60) square feet. Required additional kennel space per additional dog of this size is twelve (12) square feet.

(B) *Dog Size Between Thirty-Six and Seventy-Five Pounds.* A dog that weighs between thirty-six (36) and seventy-five (75) pounds shall have a required base kennel space of eighty (80) square feet. Required additional kennel space per additional dog of this size is eighteen (18) square feet.

(C) *Dog Size Seventy-Six Pounds or Greater.* A dog that weighs seventy-six (76) pounds or more shall have a required base kennel space of one hundred (100) square feet. Required additional kennel space per additional dog of this size is twenty-four (24) square feet.

(d) *Sanitation Standards.* An owner shall meet the minimum standards of sanitation for both indoor and outdoor shelter. Minimum sanitation standards require waste matter from the animal to be removed within twenty-four (24) hours of its deposit.

(e) *Shelter Exception for Livestock.* In the case of livestock kept on farms on land zoned agricultural, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices.

304.5-3. *Tethering.* If a kennel or enclosed yard is not available, an owner may tether an unsupervised animal as long as the owner meets the following conditions:

(a) the tether is connected to the animal with a buckle type collar or body harness made of nylon or leather not less than one inch (1”) in width and at least two inches (2”) greater in diameter than the animal’s neck or torso;

(1) The use of a choke collar, prong collar head harness, or other similar type of head harness or collar shall be prohibited for the use of tethering.

(b) the tether is at least twelve feet (12’) long and allows the animal to move in all directions unimpeded;

(c) the total weight of the tether does not exceed ten percent (10%) of the animal’s body weight;

(d) the animal is tethered so as to prevent injury, strangulation, or entanglement, and allows the animal access to water and shelter;

(e) the tethered animal is not sick, injured, or nursing;

(f) the animal is not tethered on any vacant property or land or with an unoccupied dwelling; and

(g) the animal is not tethered in a manner that allows the animal to cross onto public space or property of others.

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304.5-4. *Mistreatment of Animals*. No person shall treat any animal in a manner which causes harm, injury or death. This section does not apply to:

- (a) normal and accepted veterinary and/or care practices; or
- (b) teaching, research or experimentation conducted at a facility regulated under federal or applicable state law.

304.5-5. *Mandatory Reporting*. An employee of the Nation shall report any animal mistreatment witnessed during the regular course of his or her employment with the Nation to the Oneida Police Department and any other appropriate entity.

304.7. Dogs and Cats

304.6-1. *License Required*. An owner shall be required to obtain a license for any dog or cat five (5) months of age or older on an annual basis.

(a) *License Period*. The license year shall commence on January 1st and end on December 31st of every year.

(b) *License Eligibility*. To be eligible for a license, the owner shall provide:

- (1) the licensing fee; and
- (2) proof of current rabies vaccination.

(c) *Placement of License Tag*. Upon the receipt of a license the owner shall be provided a license tag for the dog or cat. The owner shall securely attach the license tag to the animal's collar and shall require the animal wear the collar at all times.

(1) *Exception*. A dog or cat shall not be required to wear the collar if the dog or cat is:

- (A) hunting or actively involved in herding or controlling livestock if the animal is under control of its owner;
- (B) within the owner's residence and/or securely confined in a fenced area; and/or
- (C) being shown during a competition.

304.6-2. *Rabies Vaccinations Required*. An owner shall be required to obtain a rabies vaccination for any dog or cat five (5) months of age or older.

304.6-3. *Limit on the Number of Dogs and Cats*. An individual may keep no more than two (2) dogs or three (3) cats; and a total of no more than four (4) dogs and cats combined; in a single residential household.

(a) *Exception*. The limit on the number of dogs and cats a person may keep or possess does not apply to a person who:

- (1) is eligible for any grandfather provisions included in this law's adopting resolution;
- (2) keeps or possesses a litter of pups or kittens, or a portion of a litter, for a period not exceeding five (5) months from birth;
- (3) resides on property zoned agricultural; and/or
- (4) obtains a permit for the additional dog or cat.

(b) *Permit for Additional Dogs or Cats*. A person may keep more than two (2) dogs or three cats (3) in a single residential household if the owner obtains a permit from the Environmental, Health, Safety, and Land Division for the additional animal. The

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application for the permit must be signed by the owner and contain the signature of the homeowner of the residential household if the homeowner is not the applicant.

(1) By seeking a permit for an additional dog or cat the owner agrees that he or she shall reduce the number of licensed dogs or cats on the premises if there are two (2) or more nuisance complaints against the residential household within one (1) calendar year caused by, or related to, the number of dogs or cats housed on the premises.

(2) If two (2) or more nuisance complaints are received against the residential household due to the number of dogs or cats housed on the premises, the owner shall reduce the number of animals within thirty (30) days.

304.6-4. *Running at Large.* An owner shall not allow a dog or cat to run at large by being any place except upon the premises of the owner, unless the dog or cat is crated, penned, or on a leash under the control of a person physically able to control the animal.

(a) A stray dog or cat running at large may be referred to the Oneida Police Department or Oneida Conservation Department.

(b) When an Oneida Police Officer or Oneida Conservation Warden finds a dog or cat running at large, the officer and/or warden shall, if possible, pick up and impound such animal.

(c) Whenever any impounded animal bears an identification mark, such as a collar with identification tags or license tag, the owner shall be notified as soon as reasonably possible.

304.6-5. *Nuisance.* An Oneida Police Officer or Oneida Conservation Warden may pick up and impound a dog or cat that has been found to be a nuisance. A dog or cat shall be found to be a nuisance if the actions of the dog or cat:

(a) resulted in two (2) or more verified disturbances due to excessive barking and/or other noise by the animal, or the animal running at large; and/or

(b) resulted in one (1) or more verified disturbance due to threatening behavior by the animal running at large.

304.6-6. *Investigations for Suspected Animal Bites.* The owner shall notify the Oneida Police Department in the event the owner's cat or dog bites a human or another domestic animal.

(a) The responding Oneida Police Officer or Oneida Conservation Warden shall:

(1) Ascertain whether the domestic animal is properly licensed and has current vaccinations.

(2) Ensure all information provided is correct.

(3) Contact the Environmental, Health, Safety, and Land Division to provide notification of the domestic animal bite.

(4) If the cat or dog has current rabies vaccinations, order the owner to:

(A) Quarantine the animal for ten (10) days; and

(B) Present the animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10th) day.

(5) If the cat or dog does not have current rabies vaccination, order the owner to:

(A) Quarantine the animal for ten (10) days or deliver the animal to an isolation facility at the owner's expense. If a home quarantine is ordered,

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the owner shall present the domestic animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10th) day; or

(B) Euthanize the animal and send the specimen for analysis at the owner's expense, if the animal has exhibited any signs of rabies.

(b) Upon expiration of a quarantine period, a veterinarian may extend the quarantine period. Upon expiration of all quarantine periods, if the veterinarian certifies that the animal has not exhibited any signs of rabies, the animal may be released from quarantine.

(c) If the veterinarian certifies that the animal has exhibited any signs of rabies the following shall occur:

(1) If the animal has current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis, to be paid for by the Nation.

(2) If the animal does not have current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis at the owner's expense.

304.6-7. District Quarantine. A district quarantine may be initiated by staff designated by the Environmental, Health, Safety, and Land Division, an Oneida Police Officer, an Oneida Conservation Warden, and/or a Public Health Officer.

(a) If an area is subject to a district quarantine for rabies, all dogs and cats within the district shall be kept securely confined, tied, leashed or muzzled. Any dog or cat not confined, tied, leashed or muzzled is a public nuisance and may be impounded. All Oneida Police Officers and Oneida Conservation Wardens shall cooperate in the enforcement of the quarantine.

(b) An animal that is immunized against rabies as evidenced by a valid certificate of rabies vaccination or other evidence is exempt from the district quarantine provisions of this section.

304.7. Livestock

304.7-1. An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep livestock on land zoned residential.

304.7-2. Limitations on Livestock. Livestock kept on land zoned residential are subject to the following limitations:

(a) One (1) large animal per one (1) acre. Examples of large animals include, but are not limited to, horses, cows, and pigs.

(b) One (1) small animal per one-half (½) acre. Examples of small animals include, but are not limited to, goats, and sheep.

(c) One (1) goat or sheep per recorded lot under one-half (½) acre when setback requirements can be met.

304.7-3. Liability for Damage Caused by Livestock at Large. Any person whose livestock escapes from its normal confined area and becomes at large is responsible for any and all damage to persons and property caused by such livestock while it is away from its normal confined area.

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304.8. Hens

304.8-1. *Hen Permit.* An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep hens on land zoned residential.

304.8-2. *Prohibition of Roosters.* An owner shall not keep a rooster on land zoned residential.

304.8-3. *Limit on the Number of Hens Allowed.* The number of hens an owner may keep is dependent on the size of the residential lot.

(a) An owner may to keep up to six (6) hens on a residential lot that is smaller than two (2) acres in size.

(b) An owner may keep up to twelve (12) hens on a residential lot two (2) acres in size or larger.

304.8-4. *Standards for Keeping Hens.* An owner shall keep hens in the following manner:

(a) No person shall keep a hen over eight (8) weeks of age in a principal structure.

(b) Hens shall be kept within a structure such as a coop or fenced area used exclusively to keep hens and shall provide at least four (4) square feet of space per hen.

(c) No accessory structure used to keep hens shall be located within twenty-five feet (25') of any principal structure which is not owned by the person permitted to keep the hens.

(d) No accessory structure used to keep hens shall be located in a front or side yard.

(e) All hens shall be kept and handled in a sanitary manner to prevent the spread of communicable diseases amongst birds or to humans.

304.8-5. *Prohibition of Nuisance Hens.* No owner may keep hens that cause any other nuisance associated with unhealthy conditions, create a public health threat, or otherwise interfere with the normal use of property or enjoyment of life by humans or animals.

304.9. Prohibited Animals

304.9-1. No person shall bring into, keep, harbor, maintain, offer for sale or barter, act as a custodian, have custody or control of, or release to the wild on the Reservation a prohibited animal.

304.9-2. *Prohibited Animals.* The Oneida Business Committee shall provide through the adoption of a resolution which orders and families of animals, whether bred in the wild or in captivity, and any or all hybrids are prohibited from being on the Reservation.

304.9-3. *Prohibited Animals Exception.* The prohibition of certain animals shall not apply to:

(a) Individuals who are eligible for any grandfather provisions included in this law's adopting resolution.

(b) A zoological park and/or sanctuary, an educational or medical institution, and/or a specially trained entertainment organization who receives a permit from the Environmental, Health, Safety, and Land Division to own, harbor or possess the prohibited animal.

304.9-4. *Prohibited Animal Permit.* The Environmental, Health, Safety, and Land Division may issue a prohibited animal permit if:

(a) the animal and animal quarters are kept in a clean and sanitary condition and maintained to eliminate objectionable odors; and

(b) the animal is maintained in quarters so constructed as to prevent its escape.

304.9-5. *Release of Prohibited Animals.* The Environmental, Health, Safety, and Land Division,

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may approve a wildlife refuge and/or sanctuary to release prohibited animals within the Reservation without applying for and receiving a prohibited animal permit.

304.9-6. *Seizure of Prohibited Animals*. An unpermitted prohibited animal may be seized by the Oneida Police Department and/or the Oneida Conservation Department.

(a) A prohibited animal that is seized shall be held by the Oneida Police Department, the Oneida Conservation Department, or its designee until it can be determined if the animal is an endangered or threatened species.

(b) At any time after such identification, the Oneida Police Department and/or Oneida Conservation Department may seek an order from the Trial Court as to the care, custody and control of the animal.

(c) If the Trial Court finds the animal has been taken, employed, used or possessed in violation of this section, the owner shall be responsible for reimbursing the Oneida Police Department and/or the Oneida Conservation Department for the cost of holding the animal and any costs incurred in identifying the animal.

304.9-7. *Notice of Release or Escape*. The owner of a prohibited animal that has been released or escapes shall immediately notify the Oneida Police Department and/or the Oneida Conservation Department and shall be liable for any cost of recapture of the animal.

304.10-8. *Forfeiture of the Prohibited Animal*. An owner found in violation of this section shall forfeit or surrender the prohibited animal to the Oneida Police Department, Oneida Conservation Department, or designee. Upon such forfeiture or surrender, the Trial Court may direct destruction or transfer of the animal to a qualified zoological, educational, or scientific institution or qualified private propagator for safekeeping, with costs assessed against the owner.

304.10. Dangerous Animals

304.10-1. *Dangerous Animals*. No person shall own, keep, possess, return to or harbor a dangerous animal. An animal shall be presumed to be dangerous if the animal:

(a) approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack;

(b) bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or domestic animal;

(c) is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or

(d) has been declared to be a dangerous animal and/or ordered to be destroyed in any other jurisdiction.

304.10-2. *Dangerous Animal Determination*. An Oneida Police Officer or Oneida Conservation Warden may determine an animal to be dangerous whenever, upon investigation, the officer finds that the animal meets the definition of dangerous animal provided in section 304.10-1.

(a) Upon making a determination that an animal is dangerous, the Oneida Police Officer or Oneida Conservation Warden shall issue a written order with an accompanying citation declaring the animal to be dangerous.

(b) The citation and order shall be personally delivered to the apparent owner or custodian of the dangerous animal.

(c) Upon receipt of the written order and accompanying citation the owner shall remove the dangerous animal from the Reservation within three (3) business days.

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304.10-3. *Contesting a Dangerous Animal Determination.* If the owner wishes to contest the dangerous animal determination, he or she shall file with the Trial Court a written objection to the order within three (3) business days of receipt of the order.

(a) The written objection shall include specific reasons for objecting to or contesting the order. An owner may argue an animal should not be deemed dangerous due to the animal biting, attacking or menacing any person and/or domestic animal because the animal was acting to:

(1) defend its owner or another person from an attack by a person or animal;

(2) protect its young or another animal;

(3) defend itself against any person or animal which has tormented, assaulted or abused it; and/or

(4) defend its owner's property against trespassers.

(b) Pending the outcome of the hearing, the animal shall be securely confined in a humane manner either on the premises of the owner or caretaker, or with a licensed veterinarian. If confined on the premises of the owner or caretaker, the following requirements shall apply:

(1) *Leash and Muzzle.* No owner shall permit a dangerous animal to go outside its kennel or pen unless the animal is securely restrained with a leash no longer than four feet (4') in length by a person who is at least sixteen (16) years of age who is in physical control of the leash, competent to govern the animal and capable of physically controlling and restraining the animal. The owner shall not leash an animal to inanimate objects such as a tree, post, or building. When the animal is on a leash outside the animal's kennel, the owner shall muzzle the animal in a humane way by a commercially available muzzling device sufficient to prevent the animal from biting a person or other animal.

(2) *Confinement.* Except when leashed and muzzled the owner shall ensure the dangerous animal is securely confined indoors or in a securely enclosed and locked pen or kennel that is located on the premises of the owner and constructed in a manner that does not allow the animal to exit the pen or kennel on its own volition. The owner shall not permit an animal to be kept on a porch, patio, or in any part of a house or structure on the premises of the owner that would allow the animal to exit the building on its own volition. The owner shall not permit the animal to be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.

(3) *Signs.* The owner of a dangerous animal shall display, in prominent places on his or her premises near all entrances to the premises, signs in letters of not less than two inches (2") high warning that there is a dangerous animal on the property. A similar sign shall be posted on the kennel or pen of the animal. In addition, the owner shall conspicuously display a sign with a symbol warning children of the presence of a dangerous animal.

(4) *Notification.* The owner of a dangerous animal shall notify the Oneida Police Department and/or the Oneida Conservation Department immediately if the animal is at large, is unconfined, has attacked another animal, or has attacked a person.

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(c) If an owner or caretaker fails to follow the requirements for harboring a dangerous animal pending a hearing, the animal may be impounded by the Oneida Police Officer or Oneida Conservation Warden issuing the dangerous animal determination.

304.10-4. *Dangerous Animal Determination Hearing.* A hearing on the dangerous animal determination shall be held within fourteen (14) days of submission of the written objection with the Trial Court. At the hearing, the Trial Court shall determine whether the determination that the animal is dangerous should be substantiated.

(a) If the Trial Court concludes that the determination that the animal is dangerous is substantiated, then the Trial Court shall issue an order that mandates the animal be removed from the Reservation within forty-eight (48) hours of the determination.

(1) The order shall contain the requirement that the owner notify the Oneida Police Department within twenty-four (24) hours if the dangerous animal has been sold or been given away. If the dangerous animal has been sold or given away, the owner shall also provide the name, address and telephone number of the new owner of the dangerous animal. If the dangerous animal is sold or given away to a person residing outside the Reservation or to a person or entity that falls outside of the jurisdiction of this law, the owner shall present evidence to the Oneida Police Department showing that he or she has notified the police department or other law enforcement agency of the animal's new residence, including the name, address and telephone number of the new owner. The Oneida Police Department shall forward all such notifications to the Environmental, Health, Safety, and Land Division within a reasonable amount of time.

(b) The Trial Court may order a dangerous animal to be destroyed. If such an order is issued, the Trial Court shall require the owner submit proof of destruction within five (5) business days from a licensed veterinarian. If the owner does not satisfy these requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall seize the animal and enforce compliance at the cost of the owner.

(c) The Trial Court may mandate attendance at an additional Trial Court hearing if restitution is appropriate.

304.10-5. *Appeal of the Trial Court's Decision.* An appeal of the Trial Court's decision on the dangerous animal determination may be appealed to the Nation's Court of Appeals.

(a) An appeal shall be submitted to the Court of Appeals within five (5) business days from the date of the Trial Court's decision.

(b) Upon an appeal to the Court of Appeals, the order to remove the animal from the Reservation or any order to destroy an animal is stayed pending the outcome of the appeal.

604.10-6. *Dangerous Animal Exception.* The Trial Court may provide an exception to the dangerous animal provisions of this law for a law enforcement or military animal upon presentation by the animal's owner or handler of a satisfactory arrangement for safe keeping of the animal.

304.11. Owner Liability

304.11-1. An owner shall be liable for damages caused by his or her domestic animal.

(a) *First Offense.* The owner is liable for the full amount of damages caused by the

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domestic animal.

(b) *Subsequent Offenses*. The owner shall be liable for two (2) times the full amount of damages caused by the domestic animal if the owner knew or should have known that the domestic animal previously caused damages.

304.12. Enforcement of Violations

304.12-1. *Citations*. A citation for the violation of this law and/or orders issued pursuant to this law may include fines, penalties and conditional orders in accordance with the fine, penalty, and licensing fee schedule. A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.

(a) The act of contesting a dangerous animal determination shall follow the process contained in section 304.10.

304.12-2. *Fines*. All fines as a result of a citation shall be paid to the Judiciary. Money received from fines shall be contributed to the General Fund.

(a) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

End.

Adopted - BC-03-13-96-B

Amended – BC-06-22-11-G

Amended – BC-06-28-17-B

Amended – BC-05-08-19-C

Amended – BC-__-__-__-__



Legislative Operating Committee
March 4, 2020

Boards, Committees, and Commissions Law Emergency Amendments

Submission Date: 2/19/20	Public Meeting: n/a
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a

Summary: *On February 12, 2020, the Oneida Business Committee adopted a motion to request that the Legislative Operating Committee consider amendments to the Boards, Committees, and Commissions law. Emergency amendments are being sought to provide that an employee of the Nation's Internal Audit Department, Finance Administration, or Law Office shall not be eligible to serve on an appointed or elected entity due to the potential for a real or perceived conflict of interest to exist.*

2/11/20 OBC: *Oneida Business Committee Executive Session.* Present: David P. Jordan, Ernest Stevens III, Daniel Guzman King, Brandon Yellowbird Stevens, Tehassi Hill, Lisa Liggins, Kirby Metoxen, Patricia King, Laura Laitinen-Warren, Jo Anne House, Deborah Thundercloud, Jennifer Falck, Clorissa N. Santiago.

2/19/20 LOC: Motion by Jennifer Webster to add Boards, Committees and Commissions law emergency amendments to the active files list with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.


2/19/20: *Work Meeting.* Present: Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to discuss the breadth of the application of the emergency amendments.

2/27/20: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Clorissa N. Santiago. The purpose of this work meeting was to finalize the breadth of the application of the emergency amendments, and begin discussing a plan for the permanent amendments.

Next Steps:

- Approve the Boards, Committees, and Commissions law emergency adoption packet and forward to the Oneida Business Committee for consideration.



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson 
DATE: March 11, 2020
RE: Boards, Committees, and Commissions Law Emergency Amendments

Please find the following attached backup documentation for your consideration of the Boards, Committees, and Commissions Law Emergency Amendments:

1. Resolution: Boards, Committees, and Commissions Law Emergency Amendments
2. Statement of Effect: Boards, Committees, and Commissions Law Emergency Amendments
3. Boards, Committees, and Commissions Law Emergency Amendments Legislative Analysis
4. Boards, Committees, and Commissions Law (Redline)
5. Boards, Committees, and Commissions Law (Clean)

Overview

An emergency amendment to the Boards, Committees, and Commission law (the “Law”) is being sought to provide that an employee of the Nation’s Internal Audit Department, Finance Administration, or Law Office shall not be eligible to serve on an appointed or elected entity due to the potential for a real or perceived conflict of interest to exist. [1 O.C. 105.15-3].

The potential for a real or perceived conflict of interest to exist for an employee of the Internal Audit Department, Finance Administration, and Law Office is due to the nature of employment in those areas. Employees of the Internal Audit Department, Finance Administration, or Law Office have access to confidential information which requires a higher level of professionalism and fiscal responsibilities than other areas.

Therefore, it is in the best interest of the Nation to recognize the potential for a conflict of interest to exist and amend the Law to restrict employee related actions on this matter to better protect the Nation from a potential conflict of interest.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency amendments to this Law are necessary for the preservation of the general welfare of the Reservation population. The emergency amendments to the Law will ensure that the opportunity for any real or perceived conflict of interest of an employee of the Nation’s Internal

Audit Department, Finance Administration, or Law Office is eliminated before the March 2020 caucus for the July 2020 General Election. Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this amendment would be contrary to public interest as the caucus will be held on March 14, 2020, and the General Election on July 4, 2020, and the process and requirements of the Legislative Procedures Act cannot be completed before then.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

Requested Action

Approve the Resolution: Boards, Committees, and Commissions Law Emergency Amendments.

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____

Boards, Committees, and Commissions Law Emergency Amendments

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Boards, Committees, and Commissions law ("the Law") was adopted by the Oneida Business through resolution BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, and BC-09-26-18-C; and
- WHEREAS,** the Law governs boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions; and
- WHEREAS,** on February 12, 2020, the Oneida Business Committee adopted a motion to request the Legislative Operating Committee to consider amendments to the Boards, Committees, and Commissions law as agreed upon at the February 3, 2020, joint meeting with the Oneida Land Commission; and
- WHEREAS,** an emergency amendment to the Law is being sought to provide that an employee of the Nation's Internal Audit Department, Finance Administration, or Law Office shall not be eligible to serve on an appointed or elected entity due to the potential for a real or perceived conflict of interest to exist; and
- WHEREAS,** the potential for a real or perceived conflict of interest to exist for an employee of the Internal Audit Department, Finance Administration, and Law Office is based on the fact that employees of the Internal Audit Department, Finance Administration, or Law Office have access to confidential information which requires a higher level of professionalism and fiscal responsibilities than other areas; and
- WHEREAS,** it is in the best interest of the Nation to recognize this potential for a conflict of interest to exist and amend the Law to restrict employee actions on this matter to better protect the Nation from potential conflicts of interest; and
- WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis, to be in effect for a period of six (6) months, renewable for an additional six (6) months; and
- WHEREAS,** emergency adoption of legislation is allowed when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation

population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act; and

WHEREAS, the emergency adoption of these amendments to the Law are necessary for the preservation of the general welfare of the Reservation population in order to ensure that any potential conflict of an employee of the Nation's Internal Audit Department, Finance Administration, and Law Office is eliminated prior to the March 14, 2020 caucus for the July 4, 2020 General Election; and

WHEREAS, observance of the requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest since they cannot be completed prior to the July 2020 Election; and

WHEREAS, the Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation; and

NOW THEREFORE BE IT RESOLVED, that the amendments to the Boards, Committees, and Commissions law are hereby adopted on an emergency basis and shall become effective immediately.

BE IT FINALLY RESOLVED, an employee of the Nation's Internal Audit Department, Finance Administration, or Law Office that is currently serving on an appointed or elected board, committee, or commission of the Nation shall be allowed to complete his or her term.



Statement of Effect

Boards, Committees, and Commissions Law Emergency Amendments

Summary

This resolution adopts an emergency amendment to the Boards, Committees and Commissions law which provides that an employee of the Nation's Internal Audit Department, Finance Administration, or Law Office shall not be eligible to serve on an appointed or elected entity due to the potential for a real or perceived conflict of interest to exist.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Date: March 4, 2020

Analysis by the Legislative Reference Office

This resolution adopts an emergency amendment to the Boards, Committees, and Commissions law ("the Law"). The purpose of the Law is to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1].

The emergency amendment to the Law would provide that an employee of the Nation's Internal Audit Department, Finance Administration, or Law Office shall not be eligible to serve on an appointed or elected entity due to the potential for a real or perceived conflict of interest to exist. [1 O.C. 105.15-3]. This provision is being added to the Law due to the fact that employees of the Internal Audit Department, Finance Administration, or Law Office have access to confidential information which requires a higher level of professionalism and fiscal responsibilities than other areas.

Therefore, it is in the best interest of the Nation to recognize this potential for a conflict of interest to exist and amend the Law to restrict employee actions on this matter to better protect the Nation from a potential conflict of interest.

This resolution also clarifies that an employee of the Nation's Internal Audit Department, Finance Administration, or Law Office that is currently serving on an appointed or elected board, committee, or commission of the Nation shall be allowed to complete his or her term.

The Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety or general welfare of the reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [1 O.C. 109.9-5].

On February 12, 2020, the Oneida Business Committee adopted a motion to request the Legislative Operating Committee to consider amendments to the Boards, Committees, and Commissions law

as agreed upon at the February 3, 2020, joint meeting with the Oneida Land Commission. The Oneida Business Committee is delegated the responsibility for determining if the emergency standard provided by the LPA is met. The resolution provides that an emergency amendment to the Law is necessary for the preservation of the general welfare of the Reservation population in order to ensure that any potential conflict of an employee of the Nation's Internal Audit Department, Finance Administration, and Law Office is eliminated prior to the March 14, 2020 caucus for the July 4, 2020 General Election.

Additionally, the resolution provides that observance of the requirements under the LPA for adoption of this amendment would be contrary to public interest. The timeframe for the July 2020 General Election activities would not allow for the process and requirements of the LPA to be completed prior to the election activities beginning.

The emergency amendments to the Law will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendments will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

Conclusion

Determination of an emergency is a decision of the Oneida Business Committee based on the authority granted in the Legislative Procedures Act. Upon a determination that an emergency exists, adoption of this resolution would not conflict with any of the Nation's laws.



EMERGENCY AMENDMENTS TO BOARDS, COMMITTEES AND COMMISSIONS LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Legislative Reference Office	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Proposed Amendments	To restrict employees of the following departments from serving on a board, committee or commission of the Nation due to the potential for a real or perceived conflict of interest: <ul style="list-style-type: none"> • Internal Audit Department • Finance Administration • Oneida Law Office 		
Purpose	To govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions... [1 O.C. 105.1]		
Affected Entities	Oneida Internal Audit Department, Oneida Finance Administration, Oneida Law Office, Oneida Election Board, Oneida Judiciary, Business Committee Support Office, and members of any Board, Committee or Commission of the Nation.		
Related Legislation	Oneida Election law, Oneida Code of Ethics, Oneida Conflict of Interest law.		
Public Meeting	A public meeting is not required for emergency legislation [1 O.C. 109.8-1(b) and 9-5(a)].		
Fiscal Impact	A fiscal impact statement is not required for emergency legislation [1 O.C. 109.9-5(a)].		
Expiration of Emergency Amendments	Emergency amendments expire six (6) months after adoption and may be renewed for one additional six (6) month period.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Boards, Committees and Commissions law was first adopted by the Oneida Business Committee on August 2, 1995, and most recently amended on September 26, 2018. On February 12, 2020, the Oneida Business Committee adopted a motion “to request the Legislative Operating Committee to consider amendments to the Boards, Committees and Commissions law as agreed upon at the February 3, 2020, joint meeting with the Oneida Land Commission.” The LOC added the law to the Active Files List on February 19, 2020.
- B. The proposed amendments address potential conflicts of interest for employees of certain departments of the Nation. The amendments add employees of the Nation’s Internal Audit Department, Finance Administration Office, and Law Office to the list of employees who cannot serve on a board, committee or commission of the Nation due to the potential for a real or perceived conflict of interest.
- C. Given the proximity to the upcoming 2020 Oneida General Election, the LOC proposes emergency amendments to update the Law prior to the general election caucus on March 14, 2020. The Oneida

Business Committee is responsible for determining if the standard for an emergency in accordance with the Legislative Procedures Act (LPA) has been met.

- D.** The Boards, Committees and Commissions law applies to the following entities of the Nation as provided for in Table 1. This Law does not apply to the Oneida Business Committee, standing committees of the Oneida Business Committee, corporate entities, or members of the Judiciary.

Table 1. Boards, Committees and Commissions of the Nation

ELECTED	APPOINTED
<ul style="list-style-type: none">Oneida Election BoardOneida Gaming CommissionOneida Land Claims CommissionOneida Land CommissionOneida Nation Commission on Aging (ONCOA)Oneida Nation School BoardTrust Enrollment Committee	<ul style="list-style-type: none">Anna John Resident Centered Care Community Board (AJRCC)Oneida Community Library BoardOneida Environmental Resource Board (ERB)Oneida Nation Arts BoardOneida Personnel CommissionOneida Police CommissionOneida Pow Wow CommitteeOneida Nation Veterans Affairs Committee (ONVAC)Pardon and Screening Forgiveness CommitteeSoutheastern WI Oneida Tribal Services Advisory Board (SEOTS)

SECTION 3. CONSULTATION AND OUTREACH

- A.** Representatives from the following departments or entities participated in the development of this Law and legislative analysis: Oneida Law Office.
- B.** The following laws were reviewed in the drafting of this analysis: Oneida Election law, Oneida Code of Ethics, Oneida Conflict of Interest law, Oneida Nation Gaming Ordinance.

SECTION 4. PROCESS

- A.** These amendments are being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency law “where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the reservation population and enactment or amendment of legislation is required sooner than would be possible under this law” [1 O.C. 109.9-5].
- B.** The LOC has concluded that observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest as the caucus will be held on March 14, 2020, and the General Election on July 4, 2020, and the process and requirements of the Legislative Procedures Act cannot be completed before then.
- C.** Emergency amendments expire six (6) months after adoption and may be renewed for one additional six (6) month period.
- D.** The LPA does not require a public meeting or fiscal impact statement when considering emergency legislation. However, a public meeting and fiscal impact statement will eventually be required when considering permanent adoption of these amendments.
- C.** The LOC added these emergency amendments to the Active Files List on February 19, 2020.

What is a Conflict of Interest?

“Conflict of interest” means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.” [1 O.C. 105.5-3(g)].

SECTION 5. CONTENTS OF THE LEGISLATION

A. *New Restriction on Oneida Nation Employees Serving on Boards, Committees and Commissions.*

The Boards, Committees and Commissions law states that certain employees of the Nation are not eligible to service on a board, committee or commission due to potential conflicts of interest [1 O.C. 102.15-3].

- **Current Restriction.** Currently, “political appointees” of the Nation, such as BC Member Assistants or the Chairperson’s Assistant, are not eligible to serve on a board, committee, or commission of the Nation. The Law already states that political appointees of the Nation are not eligible to serve on a board, committee or commission due to the potential for conflicts of interest
- **Proposed Restriction.** The emergency amendments expand this restriction to include additional employees. Under the proposed amendments, employees of the following Oneida Nation departments will not be eligible to serve on a board, committee or commission of the Nation:
 - Internal Audit Department;
 - Finance Administration; and
 - Law Office.
- **Number of Employees Impacted.** It is estimated that this new restriction will impact a total of approximately fifteen (15) positions within the organization:
 - At the time this analysis was drafted, the Internal Audit Department had ten (10) employees, the Oneida Law Office had ten (10) employees, and the Finance Administration Office had five (5) employees.
 - Nothing in this law limits the ability of any department of the Nation from placing their own restrictions and expectations within employment contracts, job descriptions, or standard operating procedures. As a result, there may be employees of the Nation who are already restricted from serving on a board, committee or commission outside of this Law.
- **Impact on Candidates for Elected Office.** The Nation’s Election law states that “No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election” [1 O.C. 102.5-3].
 - In other words, employees of these departments may still be nominated for office, run in an election and win election to a board, committee or commission. However, the winning

candidate would have to eliminate their conflict of interest prior to taking office by resigning their position within the Internal Audit Department, Finance Administration, or Law Office.

SECTION 6. EXISTING LEGISLATION

A. *References to Conflict of Interest in Other Laws.* The following laws of the Nation reference conflict of interest as it relates to employees and elected or appointed officials of the Nation. Employees and/or officials are already subject to the following provisions within other laws:

- *Conflict of Interest law.* The Conflict of Interest law applies to “all agents, elected officials, officers, political appointees, contractors, appointed and or elected members...” [2 O.C. 217.4-1]. This law requires employees and officials to disclose conflicts of interest:
 - “Failure to disclose a conflict of interest may result in removal in accordance with the Removal law, penalties pursuant to laws of the Nation regarding penalties, or termination of employment” [2 O.C. 217.6-2 & 217.6-3].
 - “When an existing conflict of interest is disclosed, no employee, elected official, or appointed official may participate in the selection, award or administration of a contract, including contracts supported by federal award and/or “any other prohibited activities identified in any other law, policy or rule of the Nation” [2 O.C. 217.7]
- *Conclusion:* There is no conflict between these amendments and the Nation’s Conflict of Interest law. Upon adoption of these amendments, serving on a board, committee or commission while being employed in the Nation’s Internal Audit, Finance Administration or Law Office will become a “prohibited activity identified in [a] law of the Nation” in accordance with the Conflict of Interest law.
- *Code of Ethics.* All government officials, including persons elected to serve on a board, committee or commission are subject to the Nation’s Code of Ethics law. The Code of Ethics law includes:
 - “A government official shall create and maintain an independent and honorable political system and shall observe high standards of conduct... including, but not limited to:” [1 O.C. 103.3-3(a)]
 - “Encouraging separation between departments or entities of tribal government, and should avoid contact or duty that violates such a separation.”
 - “Avoid participation in action or decision making (except where participation is in accordance with the traditions of the Tribe) that would present an appearance of conflict of interest or an actual conflict of interest.”
 - “A government official should disqualify themselves when their action or inaction might reasonably be questioned, including, but not limited to personal bias...” [1 O.C. 103.3-5]
 - “A government official shall regulate their extra governmental activities to minimize the risk of conflict with duties of their office.” [1 O.C. 103.3-6]
 - “Government officials may be subject to either removal, if elected, or termination, if appointed, for a violation of any part of this ethics code as it applies to them” [1 O.C. 103.6-1]
- *Conclusion:* There is no conflict between the proposed amendments and the Nation’s Code of Ethics law.

B. Restrictions on Employees in Current Bylaws. Boards, committees and commissions may place additional qualifications for membership within their bylaws. Bylaws are a document that provides a framework for the operation and management of a board, committee or commission. Examples of these qualifications include age, residency, education, and experience. Some boards already place restrictions on whether employees of the Oneida Nation may serve on their entity. Below is a review of current restrictions on employees. For a full review of qualifications for each entity, see each entity's bylaws.

Table 2. Restrictions on Employees in Current Bylaws.

Board, Committee or Commission	Employees who may not serve on that entity:
<i>Land Commission</i>	Employees of the Nation's Audit Department, Finance Department, Law Office "or other department associated with items (a) – (j) in section 1-3 of the Land Commission bylaws: <ul style="list-style-type: none"> • the Real Property law, • Leasing law, • Building Code, • Condominium Ordinance, • Zoning and Shoreland Protection law, • Eviction and Termination law, • Mortgage and Foreclosure law, • the Cemetery law, • and any other delegating law, policy, rule and/or resolution of the Nation Division Directors or Area Managers for the Oneida Nation, Independent contractor for Land Management or any other department of the Nation associated with items (a) – (j)
<i>Anna John Resident Centered Care Community Board</i>	Employees of Anna John Resident Centered Care Community.
<i>Oneida Community Library Board</i>	Employees or contractors of any Oneida Nation Library Branch.
<i>Oneida Environmental Resource Board (ERB)</i>	Employees of the Oneida Environmental Health, Safety and Land Division
<i>Oneida Nation Arts Board</i>	Employees of the Oneida Nation Arts Board.
<i>Oneida Personnel Commission</i>	Employees of the Oneida Nation.
<i>Oneida Police Commission</i>	Employees of the Oneida Police Department or individuals terminated from the Oneida Police Department.
<i>Oneida Land Claims Commission</i>	Shall not serve in the capacity of "consultant, contractor or attorney for the Land Claims Commission."

- C. *Restrictions on Employees in Current Laws.*** The following laws of the Nation already restrict certain employees of the Nation from serving on certain boards, committees and commissions of the Nation:

Table 3. Restrictions on Employees in Other Laws of the Nation.

Law or Bylaw	Entity	Restrictions on Oneida Nation Employees
<i>Oneida Law Enforcement Ordinance</i>	Oneida Police Commission	“Must not be an employee of the Oneida Police Department” [3 O.C. 301.6-3(e)].
<i>Oneida Nation Gaming Ordinance</i>	Oneida Gaming Commission	“Commissioners shall perform duties... on a full-time basis... and may not, during tenure in office, be engaged in any other profession or business activity...” [5 O.C. 501.6-9].

SECTION 7. OTHER CONSIDERATIONS

- A. *Deadline for Permanent Adoption of Amendments.*** The emergency amendments will expire six months after adoption and may be renewed for one additional six (6) month period.
- *Conclusion:* The LOC will need to develop and adopt permanent amendments to this law within the next six (6) to twelve (12) months.
- B. *Consider Restrictions on Other Departments or Positions.*** These amendments restrict employees of the Internal Audit Department, Finance Administration and the Law Office from serving on an entity due to the potential for a real or perceived conflict of interest. However, there may be additional leadership positions or departments within the organization that may also have the potential for a conflict of interest. For example, the Land Commission’s bylaws exclude all Area Managers or Directors from serving on that particular board.
- *Conclusion:* During development of permanent amendments to this law, the LOC should determine whether there are any additional positions or departments that should be restricted from serving on a board, committee or commission due to the potential for a real or perceived conflict of interest.
- C. *Consideration of Additional Amendments.*** The emergency amendments are limited solely to restricting certain employees from serving on a board, committee or commission due to real or potential conflict of interest. However, there may be other areas of the law that could benefit from further amendments. In 2019, the Legislative Reference Office (LRO) completed a one-year review of the Boards, Committees and Commissions law. During this review, the LRO collected feedback from boards, committees and commissions for suggested amendments.
- *Conclusion:* During development of permanent amendments to this law, the LOC should review feedback received during the one-year review and consult with relevant boards, committees, commissions and the BC Support Office to identify any additional amendments.
- D. *Fiscal Impact.*** A fiscal impact statement is not required for emergency legislation.
- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

Draft 1 for OBC Emergency Consideration (Redline to Current)

2020 03 11

Title 1. Government and Finances – Chapter 105
~~**BOARDS, COMMITTEES AND COMMISSIONS**~~
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BOARDS, COMMITTEES, AND COMMISSIONS

105.1. Purpose and Policy
 105.2. Adoption, Amendment, Repeal
 105.3. Definitions
 105.4. Creation of an Entity
 105.5. Applications
 105.6. Vacancies
 105.7. Appointment to an Entity
 105.8. Election to an Entity
 105.9. Oath of Office

105.10. Bylaws
 105.11. Electronic Polling
 105.12. Reporting Requirements
 105.13. Stipends, Reimbursement and Compensation
 105.14. Confidential Information
 105.15. Conflicts of Interest
 105.16. Use of the Nation's Assets
 105.17. Dissolution of an Entity
 105.18. Enforcement

105.1. Purpose and Policy

105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

(a) This law shall not apply to the Oneida Business Committee, or Standing Committees of the Oneida Business Committee.

(b) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.

105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

105.2. Adoption, Amendment, Repeal

105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, ~~and BC-09-26-18-C,~~ and BC- - -.

105.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

105.2-3. 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.

105.2-4. 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.

105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

105.3. Definitions

105.3-1. 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) "Application" means the form by which a person seeks to be appointed to fill a vacancy

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on an entity.

(b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.

(c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.

(e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.

(f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.

(g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.

(h) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.

(i) "E-poll" means an electronic poll, which is the act of delivering an e-mail to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.

(j) "Joint meeting" means a meeting with the Oneida Business Committee.

(k) "Nation" means the Oneida Nation.

(l) "Per Diem" means the payment made by the Nation to offset the costs of being on travel on behalf of the Oneida Nation.

(m) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member's daily activities and operations.

(n) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

(o) "Stipend" means the amount paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or commission

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for the betterment of the Nation.

(p) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.

(q) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by clear and convincing evidence.

(r) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.

(s) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

105.4. Creation of an Entity

105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.

105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.

105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

105.5. Applications

105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

(a) All applications shall include:

(1) a statement explaining the attendance requirements of section 105.12-3; and

(2) a section regarding disclosures of conflicts of interest.

(b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.

105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date.

105.5-3. Within eight (8) days after the posted deadline for filing applications the Business Committee Support Office shall notify all persons who have filed an application of the date his or her application was received and if his or her application met the deadline to be considered for the election or appointment.

105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. Applications for appointed positions shall be verified by the Business Committee Support Office as needed or as required in the bylaws of the entity.

105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Oneida Business Committee may

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elect to:

- (a) include within the pool of appointed persons late applications, or
- (b) repost for an additional time period. In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.

105.6. Vacancies

105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.

105.6-2. A position on an entity shall be considered vacant in the following situations:

- (a) *End of Term.* A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.

- (1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.

- (b) *Removal.* Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.

- (c) *Termination of Appointment.* A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.

- (d) *Resignation.* A resignation is effective upon:

- (1) Deliverance of a letter to the Business Committee Support Office and to the Chairperson of the entity, or designee; or
 - (2) Acceptance by motion of the entity of a verbal resignation.

- (e) *New Positions.* Vacancies on new entities are effective upon adoption of bylaws.

105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.

105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The Business Committee Support Office shall post notice of vacancies at the following times:

- (a) *End of Term.* Automatically sixty (60) days prior to completion of the term.

- (b) *Removal.* No later than the next Oneida Business Committee meeting following the effective date of the removal.

- (c) *Resignation.* No later than the next Oneida Business Committee meeting following the Business Committee Support Office's receipt of notice of an effective resignation from the entity.

- (d) *New Positions.* Upon one of the following conditions:

- (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
 - (2) upon date specified when creating the entity.

- (e) *Termination of appointment.* No later than the next Oneida Business Committee meeting following the effective date of the termination.

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105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

105.7. Appointment to an Entity

105.7-1. *Appointment Selection.* The following procedures shall be used to determine how the applicant for an appointed position is selected:

(a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:

(1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and

(2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made.

(b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.

(1) The entity's Chairperson may have until the executive session to review the application materials and provide the Oneida Business Committee a recommendation of an applicant for appointment.

(c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:

(1) choose an applicant for appointment, or

(2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.

(d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.

(e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:

(1) accept the selected applicant and vote to appoint the individual to the vacant position, or

(2) reject the selected applicant and vote to oppose the appointment of the individual.

(f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may

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direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.

105.7-2. *Notification of Appointment.* Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.

(a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.

(b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: "The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

105.7-3. *Declination of Appointment.* An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.

(a) An individual may decline an appointment to an entity in the following ways:

(1) Delivery of an letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or

(2) The failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee.

(b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined in section 105.7-1 to select another applicant for appointment.

105.7-4. *Termination of Appointment.* An appointed member of an entity serves at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.

(a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.

(b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

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105.8. Election to an Entity

105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or petition for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.

(a) When the Election Board notifies a petitioner or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: "The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

105.9. Oath of Office

105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.

(a) The appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.

105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.

105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded to the new member of the entity and the entity.

105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will carry out the duties and responsibilities as a member of the [entity name], and all recommendations shall be made in the best interest of the Oneida Nation as a whole.

105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware of their duty to the Nation and as members of the entity.

105.10. Bylaws

105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.

(a) All existing entities must comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after

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adoption of this law.

(b) Bylaws must contain at least the minimum information required by law, although more information is not prohibited.

(c) *Exception.* Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities must have, at minimum, mission or goal statements for completion of the task.

105.10-2. *Articles.* Bylaws shall contain, at a minimum, the following Articles:

(a) Article I. Authority.

(b) Article II. Officers.

(c) Article III. Meetings.

(d) Article IV. Expectations.

(e) Article V. Stipends and Compensation.

(f) Article VI. Records and Reporting.

(g) Article VII. Amendments.

105.10-3. *Sections.* Articles shall be divided into "sections" as set out.

(a) "Article I. Authority" shall consist of the following:

(1) *Name.* The full name of the entity shall be stated, along with any short name that will be officially used.

(2) *Establishment.* This section shall state the citation and name, if any, of the creation document.

(3) *Authority.* This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.

(4) *Office.* There shall be listed the official office or post box of the entity.

(5) *Membership.* The following information shall be in this section:

(A) Number of members on the entity;

(B) If members on the entity are elected or appointed, and how a member is elected or appointed;

(C) How vacancies are filled; and

(D) Qualifications for membership on the entity.

(i) In order to qualify for membership on an entity, a person shall meet the minimum age requirements set forth for status as a qualified voter of the Nation, unless a law, policy, or directive sets forth a minimum age requirement.

(6) *Termination or Removal.* This section shall identify causes for termination or removal, if any, in addition to those already identified in laws and/or policies of the Nation.

(7) *Trainings and Conferences.* This section shall describe any trainings and/or conferences that the entity deems necessary for members to responsibly serve the entity, if any.

(b) "Article II. Officers" shall consist of the following:

(1) *Chairperson and Vice-Chairperson.* This section creates the chairperson and vice-chairperson positions of the entity. Other officer positions may also be created here.

(2) *Responsibilities of the Chairperson.* Because of the importance of this position, all duties and responsibilities of the chairperson, as well as limitations of the

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chairperson shall be specifically listed here.

(3) *Responsibilities of the Vice-Chairperson.* Because of the importance of this position, all duties and responsibilities of the vice-chairperson, as well as limitations of the vice-chairperson shall be specifically listed here.

(4) *Responsibilities of Additional Officers.* There may be additional sections as needed for every officer position created in subsection one (1) above. These sections shall state all duties and responsibilities of the officer, as well as any limitations of the officer.

(5) *Selection of Officers.* This section shall identify how a member of the entity shall be selected for an official officer position in the entity.

(6) *Budgetary Sign-Off Authority and Travel.* This section shall identify the entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and how the entity shall handle approving travel on behalf of the entity.

(A) An entity shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.

(B) An entity shall approve a member's request to travel on behalf of the entity by majority vote at a regular or emergency meeting of the entity.

(7) *Personnel.* This section shall state the entity's authority for hiring personnel, if any, and the duties of such personnel.

(c) "Article III. Meetings" shall consist of the following:

(1) *Regular meetings.* This section shall identify when and where regular meetings shall be held, and how the entity shall provide notice of the meeting agenda, documents, and minutes.

(2) *Emergency meetings.* This section shall identify what constitutes an emergency meeting, how emergency meetings shall be called, and how the entity shall provide notice of the emergency meeting.

(A) All bylaws shall include a provision requiring that within seventy-two (72) hours after an emergency meeting, the entity shall provide the Nation's Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular meeting.

(3) *Joint Meetings.* This section shall identify if joint meetings shall be held, the frequency and location of joint meetings, and how the entity shall provide notice of the meeting agenda, documents, and minutes.

(4) *Quorum.* This section shall identify how many members of an entity create a quorum.

(5) *Order of Business.* This section sets out how the agenda will be set up.

(6) *Voting.* This section shall identify voting requirements, such as, but not limited to:

(A) the percentages that shall be needed to pass different items;

(B) if, and when, the chairperson is allowed to vote;

(C) if the use of an e-poll is permissible; and

(D) if the use of an e-poll is permissible, who will serve as the Chairperson's designee for the responsibility of conducting an e-poll, if a designee is utilized.

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(d) "Article IV. Expectations" shall consist of the following information:

(1) *Behavior of Members*. This section shall identify the behavioral expectations and requirements of a member of the entity, and identify how the entity shall enforce these behavioral expectations.

(2) *Prohibition of Violence*. This section shall prohibit any violent intentional act committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property, and set forth any further expectations regarding the prohibition of violence.

(3) *Drug and Alcohol Use*. This section shall prohibit the use of alcohol and prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and alcohol.

(4) *Social Media*. This section shall identify expectations for the use of social media in regards to official business of the entity.

(5) *Conflict of Interest*. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities resulting from disclosed conflicts of interest, and means by which a party can alleviate or mitigate the conflict of interest.

(e) "Article V. Stipends and Compensation" shall consist of the following information:

(1) *Stipends*. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.

(2) *Compensation*. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.

(f) "Article VI. Records and Reporting" shall consist of the following information:

(1) *Agenda Items*. Agenda items shall be maintained in a consistent format as identified by this section.

(2) *Minutes*. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the Business Committee Support Office.

(3) *Attachments*. Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented. This section shall identify how records of attachments shall be kept.

(4) *Oneida Business Committee Liaison*. Entities shall regularly communicate with the Oneida Business Committee member who is their designated liaison. This section shall identify a format and frequency for communication which may be as the liaison and entity agree to, but not less than that required in any law or policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. The purpose of the liaison relationship is to uphold the ability of the liaison to act as a support to that entity.

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(5) *Audio Recordings*. An entity shall audio record all meetings. This section shall state how the entity shall audio record meetings, and how the entity shall maintain the audio records.

(A) *Exception*. Audio recordings of executive session portions of a meeting shall not be required.

(g) "Article VII. Amendments" consists of:

(1) *Amendments to Bylaws*. This section shall describe how amendments to the bylaws are made. Any amendments to bylaws shall conform to the requirements of this and any other policy of the Nation. Amendments to bylaws shall be approved by the Oneida Business Committee, in addition to the General Tribal Council when applicable, prior to implementation.

105.11. Electronic Polling

105.11-1. An entity may utilize an e-poll when approval of an action may be required before the next available meeting agenda of the entity.

105.11-2. *Conducting an E-Poll*. The Chairperson of the entity, or designee, shall e-mail the e-poll to all members of the entity. Requests for an e-poll shall be sent only from an official e-mail address of the entity. The e-poll's message shall include the following information:

(a) The e-mail subject line shall begin with "E-poll Request:" and include a short title describing the purpose of the request.

(b) The body of the e-poll shall contain the following elements:

(1) An executive summary of the reason for the request and why the request cannot be presented at the next available meeting of the entity;

(2) A proposed motion which shall be in bold and identified in a separate paragraph by the words "Requested Action;"

(3) All attachments in *.pdf format, which are necessary to understand the request being made; and

(4) A deadline date for a response to be returned regarding the results of the electronic poll which shall be in bold and identified in a separate paragraph by the words "Deadline for Response."

(A) E-poll requests shall be open for response not less than one (1) hour and no more than twenty-four (24) hours.

(B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.

105.11-3. *Response to an E-Poll*. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.

(a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.

(b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.

(c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.

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(d) The Chairperson, or designee, shall monitor all responses and deadline dates for responses.

105.11-4. *Entering an E-Poll in the Record.* Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:

(a) Original e-poll request and all supporting documentation;

(b) A summary of the e-poll results identifying each member of the entity and his or her response; and

(c) A copy of any comment by a member of the entity if comments are made beyond a vote.

105.12. Reporting Requirements

105.12-1. *Minutes.* All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.

(a) Actions taken by an entity are valid upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.

(b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.

(c) No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.

105.12-2. *Standard Operating Procedures.* All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.

105.12-3. *Quarterly Reports to the Oneida Business Committee.* Entities shall provide quarterly reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:

(a) *Contact Information.* The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.

(b) *Meetings.* When and how often the entity is holding meetings and whether any emergency meetings have been held.

(1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.

(c) *Accomplishments.* Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.

(d) *Goals.* Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.

(e) *Budget.* The amount of the entity's budget, the status of the budget at that quarter, the

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amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.

(f) *Requests*. Details of any requests to the Oneida Business Committee.

(g) *Other*. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.

105.12-4. *Annual and Semi-Annual Reports to the General Tribal Council*. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.

(a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.

(b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.

105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

105.13. Stipends, Reimbursement and Compensation

105.13-1. Stipends and reimbursement for expenses shall follow the procedures as set out in this section and according to procedures for payment as set out by the Nation, unless otherwise declined by the entity through its bylaws, or declined by a member.

105.13-2. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending the resolution. Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards.

105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting.

(a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than one (1) meeting stipend per month.

(b) *Meeting Stipends for an Elected Entity*. An individual serving on an elected entity shall be paid no more than two (2) meeting stipends per month.

105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting.

(a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.

(1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).

105.13-5. *Oneida Judiciary Hearings*. A member of an entity shall receive a Judiciary hearing stipend if the member's attendance at the Judiciary hearing is required by official subpoena.

105.13-6. *Hearings of an Entity*. A member of an entity that maintains hearing authority may obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of

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all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.

105.13-7. *Other Stipends*. The Oneida Business Committee shall determine if, and when, any other stipends are appropriate to compensate members of entities for their official actions. All possible stipends shall be included in the Oneida Business Committee resolution which sets stipend amounts.

105.13-8. *Conferences and Training*. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:

(a) A member shall be eligible for a stipend for each full day the member is present at the conference or training, when attendance at the conference or training is required by law, bylaw or resolution.

(b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.

(c) No stipend payments shall be made for those days spent traveling to and from the conference or training.

105.13-9. *Business Expenses*. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.

105.13-10. *Task Force and Ad Hoc Subcommittees*. Members of task force, ad hoc committees and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

105.14. Confidential Information

105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order to protect the interest of the Nation and ensure that no persons engaged in by the Nation, nor their relatives or associates, benefit from the use of confidential information.

(a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.

(b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Nation and the entity.

(c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.

(d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.

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105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and can only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents must be made in accordance with the Nation's laws and policies regarding open records and open meetings.

105.14-3. *Official Oneida Nation E-mail Address.* Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.

(a) If a member is also an employee of the Nation, he or she shall receive a separate e-mail address from his or her regular work e-mail address.

(b) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.

(c) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.

(d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

105.15. Conflicts of Interest

105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.

105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises, and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.

(a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action must be taken by the Nation regarding the status of the official.

105.15-3. *Ineligibility Due to Conflicts of Interest.* Due to the potential for a real or perceived conflict of interest to exist, ~~political appointees~~ the following individuals shall not be eligible to serve on an appointed or elected entity:

(a) political appointees; and

(b) an employee of the Nation's Internal Audit Department, Finance Administration, or Law Office.

105.16. Use of the Nation's Assets

105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.

105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:

(a) all transactions are executed in accordance with management's authorization; and

(b) access to assets is permitted only in accordance with management's authorization; and

(c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.

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105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

105.17. Dissolution of an Entity

105.17-1. *Dissolution of a Task Force or Ad Hoc Committee.* A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.

105.17-2. *Dissolution of an Entity.* All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee.

105.17-3. *Notice of Dissolution.* Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida Business Committee shall provide the entity written notice of the dissolution.

105.17-4. *Management of Records and Materials.* All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.

(a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

105.18. Enforcement

105.18-1. Any member of an entity found to be in violation of this law may be subject to:

(a) sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;

(b) removal pursuant to any laws or policies of the Nation's governing removal, if the individual is a member of an elected entity; or

(c) termination of appointment by the Oneida Business Committee, if the individual is a member of an appointed entity.

End.

Adopted - BC-08-02-95-A

Amended - BC-05-14-97-F

Emergency ~~Amendments~~ Amended - BC-04-12-06-JJ

Amended - BC-09-27-06-E (permanent adoption of emergency amendments)

Amended - BC-09-22-10-C

Amended - BC-09-26-18-C

Emergency Amended - BC- - - -

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Title 1. Government and Finances – Chapter 105
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BOARDS, COMMITTEES, AND COMMISSIONS

105.1. Purpose and Policy
105.2. Adoption, Amendment, Repeal
105.3. Definitions
105.4. Creation of an Entity
105.5. Applications
105.6. Vacancies
105.7. Appointment to an Entity
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105.14. Confidential Information
105.15. Conflicts of Interest
105.16. Use of the Nation's Assets
105.17. Dissolution of an Entity
105.18. Enforcement

105.1. Purpose and Policy

105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

(a) This law shall not apply to the Oneida Business Committee, or Standing Committees of the Oneida Business Committee.

(b) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.

105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

105.2. Adoption, Amendment, Repeal

105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C, and BC-__-__-__-__.

105.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

105.2-3. 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.

105.2-4. 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.

105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

105.3. Definitions

105.3-1. 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) "Application" means the form by which a person seeks to be appointed to fill a vacancy on an entity.

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(b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.

(c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.

(e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.

(f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.

(g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.

(h) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.

(i) "E-poll" means an electronic poll, which is the act of delivering an e-mail to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.

(j) "Joint meeting" means a meeting with the Oneida Business Committee.

(k) "Nation" means the Oneida Nation.

(l) "Per Diem" means the payment made by the Nation to offset the costs of being on travel on behalf of the Oneida Nation.

(m) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member's daily activities and operations.

(n) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

(o) "Stipend" means the amount paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation.

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(p) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.

(q) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by clear and convincing evidence.

(r) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.

(s) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

105.4. Creation of an Entity

105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.

105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.

105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

105.5. Applications

105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

(a) All applications shall include:

(1) a statement explaining the attendance requirements of section 105.12-3; and

(2) a section regarding disclosures of conflicts of interest.

(b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.

105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date.

105.5-3. Within eight (8) days after the posted deadline for filing applications the Business Committee Support Office shall notify all persons who have filed an application of the date his or her application was received and if his or her application met the deadline to be considered for the election or appointment.

105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. Applications for appointed positions shall be verified by the Business Committee Support Office as needed or as required in the bylaws of the entity.

105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Oneida Business Committee may elect to:

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- (a) include within the pool of appointed persons late applications, or
(b) repost for an additional time period. In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.

105.6. Vacancies

105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.

105.6-2. A position on an entity shall be considered vacant in the following situations:

- (a) *End of Term.* A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.

(1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.

- (b) *Removal.* Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.

- (c) *Termination of Appointment.* A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.

- (d) *Resignation.* A resignation is effective upon:

(1) Deliverance of a letter to the Business Committee Support Office and to the Chairperson of the entity, or designee; or

(2) Acceptance by motion of the entity of a verbal resignation.

- (e) *New Positions.* Vacancies on new entities are effective upon adoption of bylaws.

105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.

105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The Business Committee Support Office shall post notice of vacancies at the following times:

- (a) *End of Term.* Automatically sixty (60) days prior to completion of the term.

- (b) *Removal.* No later than the next Oneida Business Committee meeting following the effective date of the removal.

- (c) *Resignation.* No later than the next Oneida Business Committee meeting following the Business Committee Support Office's receipt of notice of an effective resignation from the entity.

- (d) *New Positions.* Upon one of the following conditions:

(1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or

(2) upon date specified when creating the entity.

- (e) *Termination of appointment.* No later than the next Oneida Business Committee meeting following the effective date of the termination.

105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all

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official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

105.7. Appointment to an Entity

105.7-1. *Appointment Selection.* The following procedures shall be used to determine how the applicant for an appointed position is selected:

(a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:

(1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and

(2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made.

(b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.

(1) The entity's Chairperson may have until the executive session to review the application materials and provide the Oneida Business Committee a recommendation of an applicant for appointment.

(c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:

(1) choose an applicant for appointment, or

(2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.

(d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.

(e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:

(1) accept the selected applicant and vote to appoint the individual to the vacant position, or

(2) reject the selected applicant and vote to oppose the appointment of the individual.

(f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section,

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all applications from the first posting shall be considered to have been filed within the deadline period.

105.7-2. *Notification of Appointment.* Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.

(a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.

(b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: "The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

105.7-3. *Declination of Appointment.* An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.

(a) An individual may decline an appointment to an entity in the following ways:

(1) Delivery of an letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or

(2) The failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee.

(b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined in section 105.7-1 to select another applicant for appointment.

105.7-4. *Termination of Appointment.* An appointed member of an entity serves at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.

(a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.

(b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

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105.8. Election to an Entity

105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or petition for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.

(a) When the Election Board notifies a petitioner or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: "The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

105.9. Oath of Office

105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.

(a) The appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.

105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.

105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded to the new member of the entity and the entity.

105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will carry out the duties and responsibilities as a member of the [entity name], and all recommendations shall be made in the best interest of the Oneida Nation as a whole.

105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware of their duty to the Nation and as members of the entity.

105.10. Bylaws

105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.

(a) All existing entities must comply with this format and present bylaws for adoption

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within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law.

(b) Bylaws must contain at least the minimum information required by law, although more information is not prohibited.

(c) *Exception.* Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities must have, at minimum, mission or goal statements for completion of the task.

105.10-2. *Articles.* Bylaws shall contain, at a minimum, the following Articles:

(a) Article I. Authority.

(b) Article II. Officers.

(c) Article III. Meetings.

(d) Article IV. Expectations.

(e) Article V. Stipends and Compensation.

(f) Article VI. Records and Reporting.

(g) Article VII. Amendments.

105.10-3. *Sections.* Articles shall be divided into "sections" as set out.

(a) "Article I. Authority" shall consist of the following:

(1) *Name.* The full name of the entity shall be stated, along with any short name that will be officially used.

(2) *Establishment.* This section shall state the citation and name, if any, of the creation document.

(3) *Authority.* This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.

(4) *Office.* There shall be listed the official office or post box of the entity.

(5) *Membership.* The following information shall be in this section:

(A) Number of members on the entity;

(B) If members on the entity are elected or appointed, and how a member is elected or appointed;

(C) How vacancies are filled; and

(D) Qualifications for membership on the entity.

(i) In order to qualify for membership on an entity, a person shall meet the minimum age requirements set forth for status as a qualified voter of the Nation, unless a law, policy, or directive sets forth a minimum age requirement.

(6) *Termination or Removal.* This section shall identify causes for termination or removal, if any, in addition to those already identified in laws and/or policies of the Nation.

(7) *Trainings and Conferences.* This section shall describe any trainings and/or conferences that the entity deems necessary for members to responsibly serve the entity, if any.

(b) "Article II. Officers" shall consist of the following:

(1) *Chairperson and Vice-Chairperson.* This section creates the chairperson and vice-chairperson positions of the entity. Other officer positions may also be created here.

(2) *Responsibilities of the Chairperson.* Because of the importance of this

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position, all duties and responsibilities of the chairperson, as well as limitations of the chairperson shall be specifically listed here.

(3) *Responsibilities of the Vice-Chairperson.* Because of the importance of this position, all duties and responsibilities of the vice-chairperson, as well as limitations of the vice-chairperson shall be specifically listed here.

(4) *Responsibilities of Additional Officers.* There may be additional sections as needed for every officer position created in subsection one (1) above. These sections shall state all duties and responsibilities of the officer, as well as any limitations of the officer.

(5) *Selection of Officers.* This section shall identify how a member of the entity shall be selected for an official officer position in the entity.

(6) *Budgetary Sign-Off Authority and Travel.* This section shall identify the entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and how the entity shall handle approving travel on behalf of the entity.

(A) An entity shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.

(B) An entity shall approve a member's request to travel on behalf of the entity by majority vote at a regular or emergency meeting of the entity.

(7) *Personnel.* This section shall state the entity's authority for hiring personnel, if any, and the duties of such personnel.

(c) "Article III. Meetings" shall consist of the following:

(1) *Regular meetings.* This section shall identify when and where regular meetings shall be held, and how the entity shall provide notice of the meeting agenda, documents, and minutes.

(2) *Emergency meetings.* This section shall identify what constitutes an emergency meeting, how emergency meetings shall be called, and how the entity shall provide notice of the emergency meeting.

(A) All bylaws shall include a provision requiring that within seventy-two (72) hours after an emergency meeting, the entity shall provide the Nation's Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular meeting.

(3) *Joint Meetings.* This section shall identify if joint meetings shall be held, the frequency and location of joint meetings, and how the entity shall provide notice of the meeting agenda, documents, and minutes.

(4) *Quorum.* This section shall identify how many members of an entity create a quorum.

(5) *Order of Business.* This section sets out how the agenda will be set up.

(6) *Voting.* This section shall identify voting requirements, such as, but not limited to:

(A) the percentages that shall be needed to pass different items;

(B) if, and when, the chairperson is allowed to vote;

(C) if the use of an e-poll is permissible; and

(D) if the use of and e-poll is permissible, who will serve as the

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- Chairperson's designee for the responsibility of conducting an e-poll, if a designee is utilized.
- (d) "Article IV. Expectations" shall consist of the following information:
- (1) *Behavior of Members*. This section shall identify the behavioral expectations and requirements of a member of the entity, and identify how the entity shall enforce these behavioral expectations.
 - (2) *Prohibition of Violence*. This section shall prohibit any violent intentional act committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property, and set forth any further expectations regarding the prohibition of violence.
 - (3) *Drug and Alcohol Use*. This section shall prohibit the use of alcohol and prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and alcohol.
 - (4) *Social Media*. This section shall identify expectations for the use of social media in regards to official business of the entity.
 - (5) *Conflict of Interest*. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities resulting from disclosed conflicts of interest, and means by which a party can alleviate or mitigate the conflict of interest.
- (e) "Article V. Stipends and Compensation" shall consist of the following information:
- (1) *Stipends*. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.
 - (2) *Compensation*. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.
- (f) "Article VI. Records and Reporting" shall consist of the following information:
- (1) *Agenda Items*. Agenda items shall be maintained in a consistent format as identified by this section.
 - (2) *Minutes*. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the Business Committee Support Office.
 - (3) *Attachments*. Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented. This section shall identify how records of attachments shall be kept.
 - (4) *Oneida Business Committee Liaison*. Entities shall regularly communicate with the Oneida Business Committee member who is their designated liaison. This section shall identify a format and frequency for communication which may be as the liaison and entity agree to, but not less than that required in any law or policy on reporting developed by the Oneida Business Committee or Oneida

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General Tribal Council. The purpose of the liaison relationship is to uphold the ability of the liaison to act as a support to that entity.

(5) *Audio Recordings*. An entity shall audio record all meetings. This section shall state how the entity shall audio record meetings, and how the entity shall maintain the audio records.

(A) *Exception*. Audio recordings of executive session portions of a meeting shall not be required.

(g) "Article VII. Amendments" consists of:

(1) *Amendments to Bylaws*. This section shall describe how amendments to the bylaws are made. Any amendments to bylaws shall conform to the requirements of this and any other policy of the Nation. Amendments to bylaws shall be approved by the Oneida Business Committee, in addition to the General Tribal Council when applicable, prior to implementation.

105.11. Electronic Polling

105.11-1. An entity may utilize an e-poll when approval of an action may be required before the next available meeting agenda of the entity.

105.11-2. *Conducting an E-Poll*. The Chairperson of the entity, or designee, shall e-mail the e-poll to all members of the entity. Requests for an e-poll shall be sent only from an official e-mail address of the entity. The e-poll's message shall include the following information:

(a) The e-mail subject line shall begin with "E-poll Request:" and include a short title describing the purpose of the request.

(b) The body of the e-poll shall contain the following elements:

(1) An executive summary of the reason for the request and why the request cannot be presented at the next available meeting of the entity;

(2) A proposed motion which shall be in bold and identified in a separate paragraph by the words "Requested Action;"

(3) All attachments in *.pdf format, which are necessary to understand the request being made; and

(4) A deadline date for a response to be returned regarding the results of the electronic poll which shall be in bold and identified in a separate paragraph by the words "Deadline for Response."

(A) E-poll requests shall be open for response not less than one (1) hour and no more than twenty-four (24) hours.

(B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.

105.11-3. *Response to an E-Poll*. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.

(a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.

(b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.

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(c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.

(d) The Chairperson, or designee, shall monitor all responses and deadline dates for responses.

105.11-4. *Entering an E-Poll in the Record.* Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:

(a) Original e-poll request and all supporting documentation;

(b) A summary of the e-poll results identifying each member of the entity and his or her response; and

(c) A copy of any comment by a member of the entity if comments are made beyond a vote.

105.12. Reporting Requirements

105.12-1. *Minutes.* All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.

(a) Actions taken by an entity are valid upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.

(b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.

(c) No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.

105.12-2. *Standard Operating Procedures.* All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.

105.12-3. *Quarterly Reports to the Oneida Business Committee.* Entities shall provide quarterly reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:

(a) *Contact Information.* The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.

(b) *Meetings.* When and how often the entity is holding meetings and whether any emergency meetings have been held.

(1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.

(c) *Accomplishments.* Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.

(d) *Goals.* Details of both the entity's long term goals, the entity's goals for the next

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quarter, and projected quarterly activities.

(e) *Budget*. The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.

(f) *Requests*. Details of any requests to the Oneida Business Committee.

(g) *Other*. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.

105.12-4. *Annual and Semi-Annual Reports to the General Tribal Council*. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.

(a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.

(b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.

105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

105.13. Stipends, Reimbursement and Compensation

105.13-1. Stipends and reimbursement for expenses shall follow the procedures as set out in this section and according to procedures for payment as set out by the Nation, unless otherwise declined by the entity through its bylaws, or declined by a member.

105.13-2. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending the resolution. Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards.

105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting.

(a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than one (1) meeting stipend per month.

(b) *Meeting Stipends for an Elected Entity*. An individual serving on an elected entity shall be paid no more than two (2) meeting stipends per month.

105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting.

(a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.

(1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).

105.13-5. *Oneida Judiciary Hearings*. A member of an entity shall receive a Judiciary hearing

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stipend if the member's attendance at the Judiciary hearing is required by official subpoena.

105.13-6. *Hearings of an Entity*. A member of an entity that maintains hearing authority may obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.

105.13-7. *Other Stipends*. The Oneida Business Committee shall determine if, and when, any other stipends are appropriate to compensate members of entities for their official actions. All possible stipends shall be included in the Oneida Business Committee resolution which sets stipend amounts.

105.13-8. *Conferences and Training*. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:

(a) A member shall be eligible for a stipend for each full day the member is present at the conference or training, when attendance at the conference or training is required by law, bylaw or resolution.

(b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.

(c) No stipend payments shall be made for those days spent traveling to and from the conference or training.

105.13-9. *Business Expenses*. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.

105.13-10. *Task Force and Ad Hoc Subcommittees*. Members of task force, ad hoc committees and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

105.14. Confidential Information

105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order to protect the interest of the Nation and ensure that no persons engaged in by the Nation, nor their relatives or associates, benefit from the use of confidential information.

(a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.

(b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Nation and the entity.

(c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.

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(d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.

105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and can only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents must be made in accordance with the Nation's laws and policies regarding open records and open meetings.

105.14-3. *Official Oneida Nation E-mail Address.* Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.

(a) If a member is also an employee of the Nation, he or she shall receive a separate e-mail address from his or her regular work e-mail address.

(b) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.

(c) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.

(d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

105.15. Conflicts of Interest

105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.

105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises, and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.

(a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action must be taken by the Nation regarding the status of the official.

105.15-3. *Ineligibility Due to Conflicts of Interest.* Due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed or elected entity:

(a) political appointees; and

(b) an employee of the Nation's Internal Audit Department, Finance Administration, or Law Office.

105.16. Use of the Nation's Assets

105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.

105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:

(a) all transactions are executed in accordance with management's authorization; and

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(b) access to assets is permitted only in accordance with management's authorization;
and

(c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.

105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

105.17. Dissolution of an Entity

105.17-1. *Dissolution of a Task Force or Ad Hoc Committee.* A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.

105.17-2. *Dissolution of an Entity.* All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee.

105.17-3. *Notice of Dissolution.* Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida Business Committee shall provide the entity written notice of the dissolution.

105.17-4. *Management of Records and Materials.* All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.

(a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

105.18. Enforcement

105.18-1. Any member of an entity found to be in violation of this law may be subject to:

(a) sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;

(b) removal pursuant to any laws or policies of the Nation's governing removal, if the individual is a member of an elected entity; or

(c) termination of appointment by the Oneida Business Committee, if the individual is a member of an appointed entity.

End.

Adopted - BC-08-02-95-A

Amended - BC-05-14-97-F

Emergency Amended - BC-04-12-06-JJ

Amended - BC-09-27-06-E (permanent adoption of emergency amendments)

Amended - BC-09-22-10-C

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701 Amended – BC-09-26-18-C
702 Emergency Amended – BC-__-__-__-__
703
704



Legislative Operating Committee
March 4, 2020

Wellness Court Law

Submission Date: 12/20/17	Public Meeting: n/a
LOC Sponsor: Daniel Guzman King	Emergency Enacted: n/a

Summary: *The Tribal Action Plan- Laws and Policies Sub-Committee would like to develop a Wellness Court.*

12/20/17 LOC: Motion by Jennifer Webster to add Wellness Court to the Active Files List with a medium priority and assign Daniel Guzman King as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

2/21/18 LOC: Motion by Jennifer Webster to reprioritize the active files list lowering the Drug and Alcohol Free Law for Elected and Appointed Officials to medium, Employee Protection to medium, removing Hall of Fame Repeal, and to bump up Wellness Court, UCC Codes, and Industrial Hemp to High Priority; seconded by Daniel Guzman King. Motion carried unanimously.

3/21/18: *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Melinda Danforth. The purpose of this work meeting was to discuss the Law and Policy TAP subcommittee, its goals and purpose.

4/9/18: *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Jennifer Falck. The purpose of this work meeting was to plan and prepare for the next TAP subcommittee meeting.

4/12/18: *Work Meeting.* Present: Daniel Guzman King, Clorissa Santiago, Brandon Wisneski, Melinda J. Danforth, Susan House, Matthew J. Denny, Matthew W. Denny, Latsiklanunha Hill, Priscilla Belisle, Layatalati Hill. This was a TAP Law Making and Policy Subcommittee meeting. The purpose of this work meeting was to review the research the LRO completed on Wellness Court laws and discuss next steps for legislation.

4/20/18: *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Melinda Danforth. The purpose of this work meeting was to begin to develop a plan for legislative action taken by the TAP Subcommittee, in regard to the goal of obtaining a Wellness Court law.

5/10/18: *Work Meeting.* Present: Daniel Guzman King, Clorissa Santiago, Brandon Wisneski, Melinda J. Danforth, Susan House, Matthew J. Denny. This was a TAP Law Making and Policy Subcommittee meeting. The purpose of this work meeting was to begin reviewing and discussing potential amendments that should be made to existing laws of the Nation to meet TAP goals and discuss recommendations for new laws and policies that should be created in order to assist in advancing the goals of TAP.

5/29/18 -6/1/18: LRO drafting attorney assigned to this legislative matter attended the National Association of Drug Court Professionals Annual Conference.

7/12/18: *Work Meeting.* Present: Daniel Guzman King, Clorissa Santiago, Brandon Wisneski, Melinda J. Danforth, Susan House, Latsiklanunha Hill, Priscilla Belisle, Mandy Schneider. This was a TAP Law Making and Policy Subcommittee meeting. The purpose of this work meeting was

to continue reviewing and discussing potential amendments that should be made to existing laws of the Nation to meet TAP goals and discuss recommendations for new laws and policies that should be created in order to assist in advancing the goals of TAP.

8/9/18: *Work Meeting.* Present: Daniel Guzman King, Clorissa Santiago, Brandon Wisneski, Melinda J. Danforth, Susan House, Priscilla Belisle, Mandy Schneider, Kristen Hooker, Layatalati Hill, Michelle Hill, Krystal John. This was a TAP Law Making and Policy Subcommittee meeting. The purpose of this work meeting was to discuss potential leasing rules.

9/5/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Jennifer Falck, Clorissa Santiago, Kristen Hooker, Brandon Wisneski, Maureen Perkins. The purpose of this work meeting was to provide the LOC with an overview of information and research that has been collected so far and presented to the TAP Law and Policy Making Subcommittee.

10/18/18 LOC: Motion by Daniel Guzman King to accept the memo and defer to a work meeting; seconded by Jennifer Webster. Motion carried unanimously.

12/5/18: *Work Meeting.* Present: Jennifer Webster, Kirby Metoxen, Daniel Guzman, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski. The purpose of this work meeting was to review the memo received from the TAP Laws and Policy Subcommittee and discuss what additional laws or amendments can be made to further advance TAP's efforts and the development of a Wellness Court.

10/21/19: *Conference Call.* Present: Clorissa N. Santiago, Hon. Layatalati Hill, Stephanie Smith, Jordan Martinson (TLPI Specialist), Catherine Retana (TLPI Wellness Court Specialist), Kristina Pacheco (TLPI Wellness Court Specialist). The purpose of this conference call was to discuss potential technical assistance and training the Tribal Law and Policy Institute (TLPI) would be able to provide the Nation in its efforts to establish a Wellness Court.

11/6/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Clorissa N. Santiago, Brandon Wisneski, Jameson Wilson. The purpose of this work meeting was to provide an update on the fact that a Wellness Court Coordinator has been hired. The LRO has scheduled an introductory meeting with the Wellness Court Coordinator for next week to begin discussing how to move this law forward. The Wellness Court Coordinator has also set up a meeting with Brown County officials later in November to discuss collaboration on the Wellness Court that the LRO will be attending.

11/13/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Hon. Layatalati Hill, Stephanie Smith. The purpose of this work meeting was to make introductions and begin initial discussions for planning for the development of a Wellness Court law.

11/15/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this brief work meeting was to provide the LOC a brief explanation of the November 13, 2019, work meeting with the Wellness Court Coordinator, and ask the LOC if they would be interested in doing outreach on this issue. LOC indicated that they would be interested in holding outreach on this issue.

11/20/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Daniel Guzman King, Stephanie Smith, Hon. Layatalati Hill, Mary Kriescher, Debra Thundercloud, Mark Vandenhooogen, Andrew Lafrombois, Hon. Donald Zuidmulder, and Jennifer Hornacek (others in attendance in this work meeting that were not captured on sign in sheet). The purpose of this work meeting was to discuss with the representatives from Brown County the various treatment courts they currently have and discuss the development of a Wellness Court in Oneida, and how the two jurisdictions can collaborate on that effort.

12/11/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Stephanie Smith, Hon. Layatalati Hill, Jill Sprangers, Chelsea Place, Joel Maxam, Wes Martin, Tsyoslake House. The purpose of this work meeting was to discuss the type of Wellness Court we are interested in

building (diversion v. post-dispositional), the training we were approved for by the Bureau of Justice Assistance (BJA) and the National Drug Court Institute (NDCI), and the upcoming meeting with Brown County on January 6, 2020.

- 12/12/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to provide an update to the LOC on the Wellness Court and the work meetings that have been occurring.
- 1/6/20:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Stephanie Smith, Hon. Layatalati Hill, Chelsea Place, Debra Thundercloud, Mark Vandenhoogen, Hon. Donald Zuidmulder, Chad Wilson, Jennifer Hornacek. The purpose of this work meeting was to continue discussing with representatives from Brown County the development of an Oneida Wellness Court.
- 1/21/20:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Stephanie Smith, Hon. Layatalati Hill, Tsyoslake House. The purpose of this work meeting was to discuss potential legislative timelines for the Wellness Court law – and what steps are required in the legislative process. The work group also discussed holding community meetings and created a plan for those meetings.
- 1/30/20:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker. The purpose of this work meeting was to discuss an outreach plan, and schedule time for webinar viewing.
- 2/13/20:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review a draft of an article and community outreach notices to be published in the Kalihwisaks.
- 2/25/20:** *Work Meeting.* Present: Debra Valentino, Kermit Valentino, Clorissa N. Santiago. The purpose of this work meeting was to discuss the community outreach event that is planned to be held at Yukwatsistay^.

Next Steps:

- Approve the article and the first community outreach notice to be published in the March 19, 2020 Kalihwisaks edition, the second community outreach notice to be published in the April 16, 2020, Kalihwisaks edition, and the third community outreach notice to be published in the May 21, 2020, Kalihwisaks edition.

Wellness Court: Opportunity for Involvement

By: The Legislative Operating Committee

The Legislative Operating Committee is currently in the beginning stages of the development of a Wellness Court law and invites the community to participate in the legislative process.

What is the Legislative Operating Committee?

The Legislative Operating Committee (LOC) is a standing committee of the Oneida Business Committee comprised of the five Oneida Business Committee members that do not hold officer positions. The LOC has a chairperson and a vice-chairperson. It is the LOC's responsibility to bring forth laws to the Oneida Business Committee or the General Tribal Council for consideration. The LOC is required to develop laws in accordance with the Nation's Legislative Procedures Act – a law adopted by the General Tribal Council to set forth a consistent process for the adoption of laws of the Nation.

What is a Wellness Court?

A Wellness Court offers people who may suffer from addictions with alcohol and/or drugs an alternative to the standard criminal justice model of incarceration and probation. A Wellness Court is designed to assist participants and provide necessary support to enter recovery by working cooperatively with rehabilitation services to assist participants in the Wellness Court in a treatment program that will provide the participant with the tools and support necessary to get into recovery, stay in recovery, and lead a productive, alcohol and drug free, lawful, and healthy lifestyle. Wellness Courts incorporate culture and tradition into the treatment and justice process to focus on the physical and spiritual healing of the individual and the overall well-being of the community.

Why is the Nation developing a Wellness Court?

On May 10, 2017, the Oneida Business Committee adopted a Tribal Action Plan through the adoption of resolution BC-05-10-17-C declaring that the Oneida Nation has prioritized alcoholism and substance abuse prevention and treatment as a primary issue and has directed that a comprehensive program be developed to address the needs of members of the Nation and other community members within the Oneida Nation Reservation. The mission of the Tribal Action Plan is for the Oneida Nation and community partners to restore balance to our families by preventing and combating substance abuse.

The development of a Wellness Court law supports the overall goals of the Tribal Action Plan. The Wellness Court law will establish the Nation's Wellness Court and provide the process and procedures the Wellness Court will use. The development of the Wellness Court law will be a collaborative effort by various departments of the Nation, including the Legislative Operating Committee, Oneida Police Department, Oneida Behavioral Health, and the Judiciary's Wellness Court Coordinator. The Legislative Operating Committee will also be collaborating with community organizations, such as Yukwatsistay[^], and other agencies within the judicial system such as the Department of Corrections.

Additionally, the Nation was selected to participate in the Tribal Healing to Wellness Planning Initiative Training provided by the Bureau of Justice Assistance (BJA) and the National Drug Court Institute (NDCI). The training will occur this summer and focus on educating participants with the building blocks of tribal healing to wellness courts so that the Nation may develop a solid implementation plan to integrate the drug court model with tribal traditions.

How can I get involved with the development of the Wellness Court law?

The LOC plans to engage the community in the development of a Wellness Court law by holding a series of community outreach events. The LOC holds community outreach events in an effort to collect thoughts and ideas from the community at the beginning of the legislative process. This provides insight and input early on and is a more efficient way for the LOC to get work done. Everyone is invited and encouraged to attend the community outreach events to join in the discussion and development of the Wellness Court law.

There are currently three community outreach events scheduled for the Wellness Court law:

- ***Community Potluck.*** The LOC will be holding a community potluck on April 9, 2020, from 5:00 p.m. until 7:30 p.m. at the Norbert Hill Center's Cafeteria – N7210 Seminary Road, Oneida, WI 54155. Please bring a dish to pass.
- ***Community Meeting.*** The LOC will be holding a community meeting on May 18, 2020, from 5:30 p.m. until 7:00 p.m. at Yukwatsistay[^] - 431 Hillcrest Drive, Green Bay, WI 54313.
- ***Community Meeting.*** The LOC will be holding a community meeting on June 12, 2020, from 8:00 a.m. until 9:00 a.m. during the Veteran's Breakfast at the Oneida Veterans Building – 131 Riverdale Drive, Oneida, WI 54155.

The Wellness Court law will also be on future LOC meeting agendas. The LOC holds meetings on the first and third Wednesday of every month at 9:00 a.m. in the Norbert Hill Center Business Committee Conference Room. The agendas for LOC meetings are posted on the Nation's website at <https://oneida-nsn.gov/government/business-committee/standing-committees/legislative-operating-committee/#LOC-Meeting-Packets-Minutes> at least three (3) business days prior to a meeting. Members of the community are encouraged to attend the LOC meetings and participate by asking questions or providing input during those meetings.

The Legislative Operating Committee looks forward to the continued development of the Wellness Court law in 2020 and hopes to address the pervasive drug and alcohol addiction affecting our families and community by promoting public safety and recovery. For any questions regarding the Wellness Court law, or the legislative process, please feel free to contact LOC@oneidanation.org

LEGISLATIVE OPERATING COMMITTEE

COMMUNITY OUTREACH EVENTS

WELLNESS COURT LAW

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Join the LOC at the following community outreach events to share ideas, ask questions, and provide input on the development of a Wellness Court law:

DATE	TIME	LOCATION
April 9, 2020	5:00 p.m.—7:30p.m. This community meeting will be a potluck — please bring a dish to pass.	Norbert Hill Center Cafeteria N7210 Seminary Road, Oneida, WI 54155
May 18, 2020	5:30 p.m.—7:00 p.m.	Yukwatsistay^ 431 Hillcrest Drive Green Bay, WI 54313
June 12, 2020	8:00 a.m.—9:00 a.m.	Oneida Veteran's Breakfast 131 Riverdale Drive Oneida, WI 54115

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-FOR MORE INFORMATION-

www.oneida-nsn.gov/Register/PublicMeetings or contact Oneida Nation Legislative Reference Office located in the Norbert Hill Center, PO Box 365, Oneida, Wisconsin 54155
Email: LOC@oneidanation.org Phone: 920-869-4376

LEGISLATIVE OPERATING COMMITTEE

COMMUNITY OUTREACH EVENTS

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LEGISLATIVE OPERATING COMMITTEE COMMUNITY OUTREACH EVENTS

WELLNESS COURT LAW

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TO: Oneida Business Committee
FROM: David P. Jordan, Legislative Operating Committee Chairperson 
DATE: March 11, 2020
RE: Consideration of Legislative Solutions to Issues Identified in the 2020 Special Election Final Report

On February 12, 2020, the Oneida Business Committee accepted the 2020 Special Election final report and declared the official results. The Oneida Business Committee then adopted a motion to send the 2020 Special Election final report to the Legislative Operating Committee for review of the issues identified in number five (5) and report back to the Oneida Business Committee on a determination for a legislative fix if one is needed.

The 2020 Special Election final report identified the following issues of concern in section five (5):

1. Election Law is silent in regards to candidates running unopposed.
2. The Judiciary Law specifically says a “Special” election must be held to fill a vacancy: 801.11-8. Vacancies. If a Judge dies, resigns, is removed from office, becomes incapacitated for a period in excess of one hundred eighty (180) consecutive days, or is declared incompetent by a court of competent jurisdiction, the office of such Judge shall be declared vacant by the Oneida Business Committee and: (a) A special election shall be held to fill the office for the remainder of the Judge’s term of office, if two hundred seventy (270) days or more remain in the term of office;
Possible amendment should be made that the judicial vacancy should go onto the next election – General or Special.

On February 19, 2020, the Legislative Operating Committee reviewed the issues identified in number five (5) of the final report for the 2020 Special Election. The Legislative Operating Committee determined that at this time they do not wish to pursue a legislative fix for the identified issues.

Although the Legislative Operating Committee agrees that the Election law’s silence on candidates running unopposed could be clarified through amendments to the Election law, the Legislative Operating Committee determined amending the Election law is not necessary at this time as precedent on how to handle a candidate running unopposed has now been set.

Additionally, the Legislative Operating Committee spent a great portion of this term pursuing many comprehensive amendments to the Election law, but on the July 11, 2019, the General Tribal Council ultimately adopted a motion which declined to adopt amendments to the Election law. The Legislative Operating Committee has determined that the General Tribal Council’s decision to not amend the Election law should be respected at this time. Instead, the Legislative Operating Committee recommends recording this issue as a topic for discussion the next time amendments

to the Election law are in development. The completion of the 2020 General Election may be a more appropriate time to consider if amendments to the Election law should be pursued.

The Legislative Operating Committee also considered the Oneida Election Board's question as to whether the Judiciary law should be amended to provide that judicial vacancies should go onto the next election – general or special, instead of the current provision which states that a special election shall be held to fill the office for the remainder of the Judge's term of office, if two hundred seventy (270) days or more remain in the term of office. [8 O.C. 801.11-8]. Judges are elected to serve terms of six (6) years. [8 O.C. 801.11-4]. If a Judge's position becomes vacant and there are more than two hundred seventy (270) days left in the term of office, then a special election is triggered because otherwise a situation could arise where there may be three (3) years until the next general election. The Legislative Operating Committee determined this provision ensures that vacancies are filled in a timely manner, and therefore, does not recommend amending the Judiciary law to address this issue at this time.

The Legislative Operating Committee is faced with many different competing priorities. With less than six (6) months left in this term, the Legislative Operating Committee is focused on completing its legislative priorities and is not interested in pursuing amendments to address the issues identified in section five (5) of the 2020 Special Election final report at this time.

Requested Action

Accept as information the Legislative Operating Committee's decision not to pursue amendments to the Election law or the Judiciary law at this time.