



**LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**  
Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
March 18, 2020  
1:30 p.m.

- I. Call to Order and Approval of the Agenda**
  
- II. Minutes to be Approved**
  - 1. Approve the March 4, 2020 LOC Meeting Minutes (pg. 2)
  
- III. Current Business**
  - 1. Indian Preference in Contracting Law Amendments (pg. 4)
  - 2. Children's Burial Fund Policy Amendments (pg. 63)
  - 3. Tobacco Law Amendments (pg. 91)
  - 4. Oneida Food Service Code Amendments (pg. 103)
  
- IV. New Submissions**
  
- V. Additions**
  
- VI. Administrative Updates**
  
- VII. Executive Session**
  
- VIII. Recess/Adjourn**



**LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES**  
Oneida Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
March 04, 2020  
9:00 a.m.

**Present:** David P. Jordan, Kirby Metoxen, Ernest Stevens III, Daniel Guzman King

**Excused:** Jennifer Webster

**Others Present:** Brandon Wisneski, Clorissa N. Santiago, Kristen Hooker, Joanne House, Nicolas Reynolds, Terry Cornelius, Jameson Wilson, Leyne Orosco, Bonnie Pigman, Mollie Passon, Lee Cornelius.

**I. Call to Order and Approval of the Agenda**

David Jordan called the March 4, 2020, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Ernest Stevens III to adopt the agenda: seconded by Kirby Metoxen. Motion carried unanimously.

**II. Minutes to be Approved**

**1. February 19, 2020 LOC Meeting Minutes**

Motion by Kirby Metoxen to approve the February 19, 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. Vehicle Driver Certification and Fleet Management Amendments (:50-14:36)**

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

Motion by Ernest Stevens III to 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; seconded by Kirby Metoxen. Motion carried unanimously.

**2. Children’s Burial Fund Amendments (14:37-21:36)**

Motion by Kirby Metoxen 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. Oneida Food Service Code Amendments (21:37-27:03)**

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

**4. Curfew Law Amendments (27:05-30:22)**

Motion by Kirby Metoxen to approve the public meeting packet and forward the Curfew law amendments to a public meeting to be held on April 2, 2020; seconded by Ernest Stevens III. Motion carried unanimously.

**5. Domestic Animals Law Amendments (30:23-32:15)**

Motion by Kirby Metoxen to approve the public meeting packet and forward to the Domestic Animals law amendments to a public meeting to be held on April 2, 2020; seconded by Ernest Stevens III. Motion carried unanimously.

**6. Boards, Committees and Commissions Law Emergency Amendments (32:16-36:19)**

Motion by Daniel Guzman King to approve the Boards, Committees, and Commissions law emergency adoption packet and forward to the Oneida Business Committee for consideration; seconded by Ernest Stevens III. Motion carried unanimously.

**7. Wellness Court Law (36:20-:54)**

Motion by Daniel Guzman King to 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; seconded by Kirby Metoxen. Motion carried unanimously.

**IV. New Submissions**

**V. Additions**

**VI. Administrative Items**

**1. Consideration of Legislative Solution to Election Issues Memo (39:56-50:26)**

Motion by Daniel Guzman King to approve the memorandum with the noted change and forward to the Oneida Business Committee. Motion failed due to lack of second.

Motion by Kirby Metoxen to approve the memorandum and forward to the Oneida Business Committee; seconded by Ernest Stevens III. Motion carried.

Ayes: Ernest Stevens III, Kirby Metoxen  
 Abstained: Daniel Guzman King

**VII. Executive Session**

**VIII. Adjourn**

Motion by Ernest Stevens III to adjourn at 9:50 a.m.; seconded by Kirby Metoxen. Motion carried unanimously.



Legislative Operating Committee  
March 18, 2020

# Indian Preference in Contracting Law Amendments

<b>Submission Date:</b> 4/17/19	<b>Public Meeting:</b> 12/19/19
<b>LOC Sponsor:</b> Ernest Stevens III	<b>Emergency Enacted:</b> n/a

**Summary:** *The purpose of the amendments to this Law is to complete an overview of any amendments and updates that might be needed for this law.*

**4/17/19 LOC:** Motion by Jennifer Webster to add the Indian Preference in Contracting law to the active files list with a medium priority and Ernest Stevens III as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

**5/20/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Kirby Metoxen, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Paul Stensloff, Jeff House, Cathy Bachhuber. The purpose of this work meeting was to discuss why the law was added to the AFL and what portions of the law needed to be addressed through amendments. The group identified potential areas for amendments and policy considerations for the LOC. Discussed that the notes from the meeting will be compiled and the LOC will begin making policy considerations – additional meetings to have further discussions of those considerations and the law in general will be scheduled.

**6/5/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to begin considering potential amendments to the Law – based on the discussion and suggestions from the last work meeting. The LOC did not complete an initial review of the beginning policy considerations so an additional work meeting will be scheduled this week.

**6/6/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to continue the discussion and consideration of potential amendments to the Law from the June 6 LOC work session – based on the discussion and suggestions for potential amendments from the May 20 LOC work meeting.

**7/25/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Patricia Garvey, Travis Wallenfang, Patrick Stensloff. The purpose of this work meeting was to review the law line-by-line and discuss potential amendments, as well as to review and confirm prior issues the LOC decided to support and not support so we can move forward with amendments to this law.

**9/26/19:** *Work Meeting.* Present: Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Kirby Metoxen, Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Patrick Stensloff, Paul

Witek, Jameson Wilson. The purpose of this work meeting was for Indian Preference, Purchasing, and Community Economic Development Divisions Engineering to educate and discuss with the LOC on the internal spreadsheets that are used for scoring, SOPs, and a proposed fine schedule.

**10/21/19:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Paul Witek. The purpose of this work meeting was to review the draft of the proposed amendments and the fine and penalty resolution with the affected entities.

**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 for the LOC to review the draft of the proposed amendments to the law.

**11/6/19 LOC:** Motion by Ernest Stevens III to approve the draft and the legislative analysis for the Indian Preference in Contracting Law Amendments; seconded by Kirby Metoxen. Motion carried unanimously.

**11/14/19:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Patrick Stensloff. The purpose of this work meeting was to review the updated draft fine and penalty resolution and discuss specific fine amounts for each violation.

**11/20/19 LOC:** Motion by Ernest Stevens III to approve the public meeting packet and forward the Indian Preference in Contracting law amendments to a public meeting on December 19, 2019; seconded by Kirby Metoxen. Motion carried unanimously.

**12/12/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was for the LOC to review and discuss the fine and penalty resolution. LOC directed one change be made to the resolution.

**12/19/19:** *Public Meeting Held.* Present: David P. Jordan, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Lee Cornelius, Jameson Wilson, Rae Skenandore, Crystal Meltz, Amy Hacker, Jeffrey House. One (1) person gave oral comments during the public meeting.

**12/30/19:** *Public Comment Period Closed.* Two (2) submissions of written comments were received during the public comment period.

**2/5/20 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.

**2/5/20:** *Work Meeting.* Present: Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and consider the public comments that were received during the public meeting and subsequent public comment period. The LOC directed some revisions to be made to the draft based on the comments.

**2/19/20 LOC:** 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.

**3/3/20:** *Special OBC Work Session.* Present: David P. Jordan, Patricia King, Tehassi Hill, Lisa Summers, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Clorissa N. Santiago. The purpose of this work meeting was to discuss the Indian Preference in Contracting law amendments and determine if and how it relates to the Oneida Business Committee's goal of utilizing the OESC Group.

**Next Steps:**

- Approve the Indian Preference in Contracting law adoption packet and forward to the Oneida Business Committee for consideration.
- Approve the resolution "Indian Preference in Contracting Law Fine and Penalty Schedule" and forward to the Oneida Business Committee for consideration.



TO: Oneida Business Committee  
FROM: David P. Jordan, LOC Chairperson  
DATE: April 8, 2020  
RE: Indian Preference in Contracting Law Amendments

Please find the following attached backup documentation for your consideration of the proposed amendments to the Indian Preference in Contracting law:

1. Resolution: Amendments to the Indian Preference in Contracting Law
2. Statement of Effect: Amendments to the Indian Preference in Contracting Law
3. Indian Preference in Contracting Law Amendments Legislative Analysis
4. Indian Preference in Contracting Law Amendments (Redline)
5. Indian Preference in Contracting Law Amendments (Clean)
6. Indian Preference in Contracting Law Amendments Fiscal Impact Statement

#### Overview

On April 17, 2019, the LOC added the Indian Preference in Contracting law amendments to its Active Files List. The purpose of the Indian Preference in Contracting law is to establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation. [5 O.C. 502.1-1].

This resolution adopts amendments to the Indian Preference in Contracting law which will:

- Update the definition of tribal corporation to include any corporation chartered and/or wholly owned by the Nation [5 O.C. 502.3-1(ee)];
- Exempt tribal corporations from the requirement to submit a certification renewal application on an annual basis [5 O.C. 502.5-6(c)];
- Permit joint ventures to qualify for Indian Preference on a project-specific basis [5 O.C. 502.5-8];
- Raise the contract threshold for when Indian Preference is applied from one thousand five hundred dollars (\$1,500) to three thousand dollars (\$3,000) [5 O.C. 502.6-1];
- Set a new timeframe for the Indian Preference Office's review of contracts prior the posting or announcement of a contract [5 O.C. 502.6-3];
- Clarify the Indian Preference Office's authority to develop a fine and penalty schedule for violations of this law, to be approved by the Oneida Business Committee by resolution [5 O.C. 502.9-5(a)(4)(A)];
- Make additional updates and clarify language throughout the law.

The Legislative Operating Committee developed the proposed amendments to the Indian Preference in Contracting law through collaboration with representatives from the Nation's Indian Preference Office, Purchasing Department, Oneida Law Office, Community and Economic Development Division, and the Oneida ESC Group.

In accordance with the Legislative Procedures Act, a public meeting on the Indian Preference in Contracting law was held on December 19, 2019. One (1) person provided oral comments during the public meeting. The public comment period was then held open until December 30, 2019. The Legislative Operating Committee received two (2) submissions of written comments during the public comment period. All public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on February 5, 2020. Any changes made based on those comments have been incorporated into this draft.

**Requested Action**

Approve the Resolution: Amendments to the Indian Preference in Contracting Law

# Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

## BC Resolution # \_\_\_\_\_ Amendments to the Indian Preference in Contracting Law

- 1  
2  
3 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe  
4 recognized by the laws of the United States of America; and  
5  
6 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and  
7  
8 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,  
9 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and  
10  
11 **WHEREAS,** the Indian Preference in Contracting law ("the Law") was adopted by the Oneida Business  
12 Committee through resolution BC-03-27-13-B; and  
13  
14 **WHEREAS,** the purpose of the Law is to establish an Indian Preference Office and increase economic  
15 benefits for the Nation and members of the Nation by providing for the maximum utilization  
16 of Indian workers and businesses on projects of the Nation which occur on or near the  
17 Reservation; and  
18  
19 **WHEREAS,** the Legislative Operating Committee worked collaboratively with representatives from the  
20 Nation's Indian Preference Office, Purchasing Department, Oneida Law Office, Community  
21 and Economic Development Division, and the Oneida ESC Group to develop the  
22 amendments to this Law; and  
23  
24 **WHEREAS,** the amendments to the Law update the definition of tribal corporation to now include any  
25 corporation wholly owned by the Nation in addition to those corporations chartered by the  
26 Nation; and  
27  
28 **WHEREAS,** the amendments to the Law provide tribal corporations an exemption from the requirement  
29 to submit a certification renewal application on an annual basis; and  
30  
31 **WHEREAS,** the amendments to the Law now permit joint ventures to qualify for Indian Preference on a  
32 project-specific basis; and  
33  
34 **WHEREAS,** the amendments to the Law raise the contract threshold for when Indian Preference is  
35 applied from one thousand five hundred dollars (\$1,500) to three thousand dollars (\$3,000);  
36 and  
37  
38 **WHEREAS,** the amendments to the Law set a new timeframe for the Indian Preference Office's review  
39 of contracts prior the posting or announcement of a contract; and  
40  
41 **WHEREAS,** the amendments to the Law clarify the Indian Preference Office's authority to develop a  
42 fine and penalty schedule for violations of this law, to be approved by the Oneida Business  
43 Committee by resolution; and

44  
45 **WHEREAS,** the amendments to the Law make other minor drafting revisions; and  
46  
47 **WHEREAS,** in accordance with the Legislative Procedures Act a legislative analysis and fiscal impact  
48 statement were completed for the amendments to the Law; and  
49  
50 **WHEREAS,** a public meeting on the proposed amendments to this Law was held on December 19,  
51 2019, in accordance with the Legislative Procedures Act, and the public comment period  
52 was held open until December 30, 2019; and  
53  
54 **WHEREAS,** the Legislative Operating Committee accepted, reviewed, and considered the public  
55 comments received on February 5, 2020; and  
56  
57 **NOW THEREFORE BE IT RESOLVED,** that the amendments to the Indian Preference law are hereby  
58 adopted and shall be effective on May 8, 2020.  
59  
60 **BE IT FINALLY RESOLVED,** that the Indian Preference Office and Purchasing Department shall  
61 implement the Law as adopted and develop and/or revise any internal processes and/or standard operating  
62 procedures as needed to implement this Law.  
63



## **Statement of Effect**

### *Amendments to the Indian Preference in Contracting Law*

#### **Summary**

This resolution adopts amendments to the Indian Preference in Contracting law.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*

*Date: March 13, 2020*

#### ***Analysis by the Legislative Reference Office***

The Legislative Procedures Act (“the LPA”) was adopted by the General Tribal Council through resolution GTC-01-07-13-A for the purpose of providing a process for the adoption of laws of the Nation. [1 O.C. 109.1-1]. This resolution adopts amendments to the Indian Preference in Contracting law which comply with all processes and procedures required by the LPA, including the development of a legislative analysis, a fiscal analysis, and the opportunity for public review during a public meeting and public comment period. [1 O.C. 109.6, 109.7, 109.8].

The Indian Preference in Contracting law was adopted by the Oneida Business Committee for the purpose of establishing an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation. [5 O.C. 502.1-1].

The amendments to the Indian Preference in Contracting law will:

- Update the definition of tribal corporation to include any corporation chartered and/or wholly owned by the Nation [5 O.C. 502.3-1(ee)];
- Exempt tribal corporations from the requirement to submit a certification renewal application on an annual basis [5 O.C. 502.5-6(c)];
- Permit joint ventures to qualify for Indian Preference on a project-specific basis [5 O.C. 502.5-8];
- Raise the contract threshold for when Indian Preference is applied from one thousand five hundred dollars (\$1,500) to three thousand dollars (\$3,000) [5 O.C. 502.6-1];
- Set a new timeframe for the Indian Preference Office’s review of contracts prior the posting or announcement of a contract [5 O.C. 502.6-3]; and
- Clarify the Indian Preference Office’s authority to develop a fine and penalty schedule for violations of this law, to be approved by the Oneida Business Committee by resolution [5 O.C. 502.9-5(a)(4)(A)].

Other additional minor changes were made to the draft to update the language and ensure compliance with drafting style and formatting requirements.

In accordance with the LPA, a public meeting on the proposed amendments to the Indian Preference in Contracting law was held on December 19, 2019. One (1) person provided oral comments during the public meeting. The public comment period was then held open until December 30, 2019. The Legislative Operating Committee received two (2) submissions of written comments during the public comment period. All public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on February 5, 2020. Any changes made based on those comments have been incorporated into this draft.

### ***Conclusion***

Adoption of this resolution would not conflict with any of the Nation's laws.



# Yukwat^nhas Ukwehu=w# Kayani^hsla

## AMENDMENTS TO INDIAN PREFERENCE IN CONTRACTING LAW LEGISLATIVE ANALYSIS

### SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Ernie Stevens III	SPONSOR: Ernie Stevens III	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	<ul style="list-style-type: none"> <li>To update the definition of tribal corporation to include any corporation chartered and/or wholly owned by the Nation;</li> <li>To raise the threshold to apply Indian Preference from one thousand five hundred dollars (\$1,500) to three-thousand dollars (\$3,000) for any contracts entered into by the Nation;</li> <li>To permit joint ventures to qualify for Indian Preference on a project-specific basis;</li> <li>To exempt tribal corporations from having to submit a certification renewal application on an annual basis;</li> <li>Set a new timeline for Indian Preference Office to review contracts;</li> <li>Clarify the Indian Preference Office’s authority to develop a fine and penalty schedule for violations of this law, to be approved by the Oneida Business Committee by resolution.</li> </ul>		
Purpose	To establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation [5 O.C. 502.1-1].		
Affected Entities	Indian Preference Office, Purchasing Department, Oneida Judiciary, Oneida Police Department, Oneida Licensing Department, Corporations chartered and/or wholly owned by the Nation, and any department or entity of the Nation that enters into projects or contracts greater than \$3,000.		
Related Legislation	Open Records and Open Meetings law, Vendor Licensing law, Personnel Policies and Procedures; Independent Contractor Policy, Travel and Expense Policy.		
Public Meeting	A public meeting was held on December 19, 2019.		
Fiscal Impact	A fiscal impact statement has been provided by the Finance Department.		

### SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A.** The Nation’s Indian Preference in Contracting law was adopted on July 29, 1998 and most recently
- 3 amended on March 27, 2013. The purpose of this law is to increase economic benefits for the Nation
- 4 and members of the Nation by providing maximum utilization of Indian workers and businesses on
- 5 projects of the Nation. The Nation’s Indian Preference Office is responsible for monitoring and
- 6 enforcing Indian Preference in contracting.
- 7 **B.** This law was added to the LOC’s Active file List on April 17, 2019 at the request of Councilmember
- 8 Ernie Stevens III. The original intent of the amendments was to update the definition of “tribal entity.”
- 9 Since that time, a work group of representatives from relevant entities and departments have met to

10 review the law. Many of the proposed amendments reflect the feedback and suggestions of this work  
11 group.

12

### 13 **SECTION 3. CONSULTATION AND OUTREACH**

14 **A.** Representatives from the following departments or entities of the Nation participated in the  
15 development of this law and legislative analysis: Indian Preference Office, Purchasing Department,  
16 Law Office, Community and Economic Development Division, and Oneida ESC Group.

17 **B.** The following laws of the Nation were reviewed in drafting this analysis: Open Meetings and Open  
18 Records law, Vendor Licensing law, Personnel Policies and Procedures, Independent Contractor  
19 Policy, Travel and Expense Policy, Layoff Policy, Furlough Policy, Oneida Nation Law Enforcement  
20 Ordinance.

21

### 22 **SECTION 4. PROCESS**

23 **A.** Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).

24 **B.** The law was added to the Active Files List on April 17, 2019.

25 **C.** A public meeting was held on December 19, 2019 with the public comment period held open until  
26 December 30, 2019.

27 **C.** At the time this legislative analysis was developed, the following work meetings had been held  
28 regarding developments of these amendments and legislative analysis:

29 

- May 20, 2019 Work Meeting: LOC, Indian Preference, Purchasing, Oneida ESC Group.

30 

- June 5, 2019 Work Meeting: LOC.

31 

- June 6, 2019 Work Meeting: LOC.

32 

- July 25, 2019 Work Meeting: LOC, Law Office, Indian Preference, Purchasing.

33 

- September 26, 2019 Work Meeting: LOC, Indian Preference, Purchasing, Community Economic  
34 Development.

35 

- October 21, 2019 Work Meeting: Indian Preference, Community Economic Development.

36 

- October 24, 2019 Work Meeting: LOC.

37 

- November 14, 2019 Work Meeting: Indian Preference and Purchasing.

38 

- December 12, 2019 Work Meeting: LOC.

39 

- February 5, 2020 Work Meeting: LOC.

40 

- March 3, 2020 Special Oneida Business Committee Work Meeting.

41

### 42 **SECTION 5. CONTENTS OF THE LEGISLATION**

43 **A. *Definition of Tribal Corporation.*** The Indian Preference law applies to tribal corporations to the extent  
44 that those corporations enter into contracts with the Oneida Nation [5 O.C. 502.6-1(b)]. Previously, the  
45 definition of tribal corporation was “a corporation chartered by the Oneida Tribe of Indians of  
46 Wisconsin pursuant to the Constitution and Bylaws of the Oneida Tribe.” This definition has been  
47 updated to “a corporation chartered and/or wholly owned by the Nation pursuant to the Constitution  
48 and Bylaws of the Oneida Nation” [5 O.C. 502.3-1(ee)].

49 

- *Effect.* Some of the corporations owned by the Nation are chartered in other states. For example,  
50 Oneida ESC Group is incorporated in the state of Nevada, but wholly owned by the Oneida Nation.  
51 This updated definition clarifies that this law will apply to all of the Nation’s corporations  
52 regardless of where they are chartered, organized or incorporated.

53  
 54  
 55

**Chart 1. List of Oneida Nation Corporations.**

<i>Tribal Corporation</i>	
<i>Oneida Airport Hotel Corporation</i>	Chartered by Oneida Nation.
<i>Bay Bancorporation</i>	Incorporated under WI Business Corporation law. Wholly owned by Oneida Nation.
<i>Oneida ESC Group, LLC</i>	Limited liability company (LLC) organized under Nevada law. Wholly owned by Oneida Nation.
<i>Oneida Golf Course Enterprise Corporation</i>	Chartered by Oneida Nation.
<i>Oneida Seven Generations Corporation.</i>	Chartered by Oneida Nation. Currently in the process of being dissolved.

56

**B. Joint Ventures.** Joint ventures will now qualify for Indian Preference on a project-specific basis.

- 58     ▪ *What is a Joint Venture?* A “joint venture” is a one-time grouping of two (2) or more entities in a  
 59     business undertaking [5 O.C. 502.3-1(v)]. A joint venture is a partnership where each party jointly  
 60     undertakes a transaction for mutual profit. Each member of the joint venture contributes assets and  
 61     shares risk [Cornell Law Legal Information Institute (LII)]. For example, two companies may form  
 62     a joint venture to bid on a construction project that they otherwise would be unable to complete on  
 63     their own.
- 64     ▪ *Joint Ventures Now Eligible for Indian Preference.* Previously, joint ventures were not eligible to  
 65     receive Indian Preference. These amendments will permit joint ventures to receive Indian  
 66     Preference on a project-specific basis [5 O.C. 502.5-8]. In other words, the joint venture will only  
 67     receive Indian Preference for the specific project they are bidding on. Because joint ventures are  
 68     typically a short-term partnership, any future joint venture will need to reapply for Indian  
 69     Preference each time they bid on a project.
- 70     ▪ *Effect.* Entities that form joint ventures to bid on projects will now qualify for Indian Preference  
 71     provided they meet all other requirements of this law.

**C. Threshold to Apply Indian Preference.** Currently, the Indian Preference law applies to all of the  
 72     Nation’s contracts over \$1,500 except where prohibited by law or grant funding requirements. These  
 73     amendments raise this threshold. Now, the Indian Preference law will only apply to the Nation’s  
 74     contracts over \$3,000 [5 O.C. 502.6-1].

- 76     ▪ *Justification.* This change was made at the recommendation of the Purchasing Department to match  
 77     the Nation’s current procurement threshold. The Nation’s procurement policy requires three bids  
 78     for any contract or purchase over \$3,000. Setting both the Indian Preference and three-bid  
 79     thresholds at \$3,000 will make both policies easier to implement for the Nation. Purchasing also  
 80     explained that most Indian Preference vendors bid on projects above \$3,000, such as construction-  
 81     related projects. Therefore, Purchasing Department predicts that the higher threshold will have  
 82     minimal impact on most Indian Preference vendors.
- 83     ▪ *Effect.* Indian Preference will only apply to contracts greater than \$3,000. Any vendors bidding on  
 84     projects between \$1,500 and \$2,999 will no longer receive Indian Preference.

**D. New Timeline for Indian Preference Office to Review Contracts.** The current Indian Preference law  
 85     already requires that projects must be submitted to the Indian Preference Office for review before being  
 86     posted or announced for bids. However, the current law does not include a timeframe for the Indian  
 87     Preference office to complete this review.

88

89       ▪ *New Timeline.* These amendments add a new timeline for when the Indian Preference office must  
90       complete this review. Now, the Indian Preference Office must complete their review within five  
91       (5) business days [5 O.C. 502.6-4]. The intent is to ensure that projects can be posted in a timely  
92       manner.

93 **E. *Fine and Penalty Schedule for Indian Preference Violations.*** The current Indian Preference law  
94       already authorizes the Indian Preference Office to develop and the Business Committee to approve a  
95       fine and penalty schedule for violations of this law. However, no fine and penalty schedule has been  
96       adopted.

97       ▪ *Changes.* Previously, this law stated that fine amounts must be no less than \$100 and no more than  
98       \$1,000. These amendments remove this limitation. In addition, the amendments also specify that  
99       the fine amounts will be adopted by the Business Committee by resolution. [5 O.C. 502.9-5(a)(4)].

100 **F. *Certification Renewal Exemption for Tribal Corporations.*** Indian Preference certification is granted  
101       on an annual basis and expires after one (1) year. Each year, certified entities must submit a renewal  
102       application and reporting form to maintain their certification. This ensures that entities still meet the  
103       requirements for Indian preference. Tribal corporations will now be exempt from having to submit a  
104       certification renewal form on an annual basis. [5 O.C. 502.5-6(c)].

105       ▪ *Background:* Tribal corporations are chartered and/or wholly owned by the Oneida Nation.  
106       Compared to a private entity, tribal corporations are unlikely to experience a change in ownership  
107       or control that would impact their Indian Preference certification status without the Nation being  
108       aware of it. Therefore, the requirement to submit renewal forms each year has been deleted. Tribal  
109       corporations will still be required to notify that Indian Preference Office of any occurrence that  
110       would impact their eligibility for certification in accordance with 502.5-5.

111 **G. *Minor Drafting Changes.*** Minor drafting changes have been made throughout the law, such as  
112       changing “Tribe” to “Nation” or moving the order of existing sections.

113

## 114 **SECTION 6. EFFECT ON EXISTING LEGISLATION**

115 **A. *References to the Other Laws of the Nation:*** The following laws of the Nation are referenced in this  
116       law. These amendments do not conflict with any of the referenced laws.

117       ▪ *Open Records and Open Meetings law.* In accordance with the Nation’s laws and policies  
118       governing open records, general, non-proprietary and non-private information provided for the  
119       purposes of acquiring certification shall be considered open records and available for public  
120       inspection. [5 O.C. 502.5-7 and 502.9-3(c)(2)].

121       ▪ *Personnel Policies and Procedures.* In the execution of employment duties and in accordance  
122       with the Nation’s laws and policies governing employment, employees of the Nation shall follow  
123       this law in following contracting and bidding procedures for the Nation or entities of the Nation  
124       [5 O.C. 502.6-7].

125       ▪ *Vendor Licensing.* All contracts this law applies to must include reference to the Nation’s laws  
126       governing vendor licensing and provide the contracting parties with directions on how to access  
127       that document [5 O.C. 502.6-8(c)].

128 **B. *Other Laws that Reference Indian Preference in Contracting:*** The following laws of the Nation  
129       reference Indian Preference in Contracting. These amendments do not conflict with any of the  
130       referenced laws.

- 131       ▪ *Independent Contractor Policy.* “It is... the policy of the Tribe that the order of preference, as set  
132 out in the Tribe’s Indian Preference law, be used in the selection of independent contractors” [5  
133 *O.C. 503.1-2(b)*].
- 134       ▪ *Travel and Expense Policy.* In regard to business expenses, “Considerations should be given to  
135 patronizing tribally owned business and Indian Preference vendors certified by the Compliance  
136 division” [2 *O.C. 219.9-4(f)*].
- 137       ▪ *Judiciary Canons of Judicial Conduct.* “Nothing in these canons shall be construed as prohibiting  
138 a Judge from affiliating with, using the facilities of, or attending events sponsored by organizations  
139 that support Native American issues, exercise tribal or Indian Preference...” [8 *O.C. 802.3.2.2*].
- 140 **C. *Other Laws that Reference Indian Preference in Hiring:*** The following laws of the Nation reference  
141 Indian Preference as it relates to the Nation’s hiring process. The standards set in this law do not apply  
142 to preference “as applicable to employees hired through the Nation’s HRD or pursuant to an  
143 employment contract” [5 *O.C. 502.6-2(a)*]. The Nation’s Indian preference in hiring process is located  
144 in Section III of the Nation’s Personnel Policies and Procedures. These amendments do not conflict  
145 with any of the referenced laws.
- 146       ▪ *Layoff Policy.* “The Oneida Tribe recognizes Indian preference in the development of layoff SOPs.  
147 Indian preference as used in this policy shall mean a preference granted to retain the Oneida  
148 member employee when all other things being equal with non-member employees. Provided that,  
149 a manager may identify critical positions within the business unit which shall not be subject to  
150 Indian Preference” [2 *O.C. 207.4-1*].
- 151       ▪ *Furlough Policy.* “Indian preference may not be used as a consideration in identifying employees  
152 to be furloughed” [2 *O.C. 205.5-4*].
- 153       ▪ *Oneida Nation Law Enforcement Ordinance.* “The following positions shall be held only by  
154 members of the Oneida Tribe: Police Chief, Assistant Chief, Police Lieutenant or Sergeant,  
155 Conservation Director, Assistant Conservation Director... All other positions and appointments  
156 shall be subject to the Indian Preference rules of the Oneida Tribe” [3 *O.C. 301.5-3(d)*].

157

## 158 **SECTION 7. ENFORCEMENT AND ACCOUNTABILITY**

- 159 **A. *Enforcement.*** The Nation’s Indian Preference Office is authorized to enforce this law [5 *O.C. 502.4-1*  
160 *502.9-5*]. In addition, the Oneida Police Department is authorized to enforce orders issued by the Trial  
161 Court, such as cease-and-desist orders [5 *O.C. 502.9-8*].

162

## 163 **SECTION 8. OTHER CONSIDERATIONS**

- 164 **A. *Fine and Penalty Schedule.*** At the time this analysis was drafted, the Indian Preference Office is  
165 developing a fine and penalty schedule for consideration by the Oneida Business Committee. The LOC  
166 intends to bring a proposed fine and penalty schedule resolution to the Oneida Business Committee at  
167 the time these amendments are up for adoption.
- 168 **B. *Fiscal Impact.*** A fiscal impact statement has been provided by the Finance Department.
- 169       ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except  
170 emergency legislation [1 *O.C. 109.6-1*].
- 171       ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating  
172 Committee and may be prepared by any agency who may receive funding if the legislation is  
173 enacted; who may administer a program if the legislation is enacted; who may have financial

174 information concerning the subject matter of the legislation; or by the Finance Office, upon request  
175 of the Legislative Operating Committee [*1 O.C. 109.6-1(a and b).*].

176

**Title 5. Business - Chapter 502**  
**~~INDIAN PREFERENCE IN CONTRACTING~~**  
**Yukwat^nhas Ukwehu-w# Kayanl^hsla**  
*Laws concerning the hiring of the Oneida People*

- ~~502.1. Purpose and Policy~~
- ~~502.2. Adoption, Amendment, Conflicts~~
- ~~502.3. Definitions~~
- ~~502.4. Jurisdiction~~
- ~~502.5. Indian Preference Office~~
- ~~502.6. Certification of Entities~~
- ~~502.7. Application of Indian Preference~~
- ~~502.8. Skills Bank and Qualified Trades Workers~~
- ~~502.9. Compliance Agreements~~
- ~~502.10. Office Investigations and Enforcement~~

**INDIAN PREFERENCE IN CONTRACTING**

- 502.1. Purpose and Policy
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- 502.6. Application of Indian Preference to Contracts
- 502.7. Compliance Agreements
- 502.8. Skills Bank and Qualified Trades Workers
- 502.9. Investigations and Enforcement

**502.1. Purpose and Policy**

502.1-1. *Purpose.* The purpose of this law is to establish an Indian Preference Office and increase economic benefits for the TribeNation and ~~Tribal~~ members of the Nation by providing for the maximum utilization of Indian workers and businesses on ~~Tribal~~ projects of the Nation which occur on or near the Reservation.

502.1-2. *Policy.* It is the policy of the ~~Tribe:~~

- ~~(a) To~~ Nation to ensure that Indian preference provisions are applied fairly in all situations and in such a way that reflects the intent of this law; and
- ~~(b) To~~ to undertake reasonable efforts to ensure that all entities that enter into contracts with or on behalf of the TribeNation utilize the labor force of Indian workers and businesses by applying Indian preference in all aspects of fulfilling that contract, including but not limited to: hiring, training, business opportunities, labor and/or professional services, and the supply of materials.

**502.2. Adoption, Amendment, Conflicts**

502.2-1. This law is adopted by the Oneida Business Committee by Resolution BC-03-27-13-B and ~~shall be effective immediately.~~ amended by resolution BC- - - - .

502.2-2. This law may be amended pursuant to the procedures set out in Tribal law or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

502.2-3. 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.

502.2-4. 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. ~~However,~~ this law specifically supersedes the following:

- (a) BC-04-03-96-A - Indian Preference Policy Rider I;
- (b) BC-05-22-96-A - Technical Amendments to Rider I Policy;
- (c) BC-06-10-98-D - Amendment to Resolution 5-22-96-A;
- (d) BC-07-29-98-B - Indian Preference Law;

31 (e) BC-03-27-02-A - Sections 9-14 of the Indian Preference Law; and

32 (f) BC-03-26-03-A - Amendment to Indian Preference Law Addendum.

33 502.2-5. This law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of~~  
34 ~~Wisconsin.~~

35 ~~502.2-6. Adoption and enforcement of this law does not waive the sovereign immunity of the~~  
36 ~~Oneida Tribe of Indians of Wisconsin~~Nation.

### 37 38 **502.3. Definitions**

39 502.3-1. This section shall govern the definitions of words and phrases used within this law. All  
40 words not defined herein shall be used in their ordinary and everyday sense.

41 ~~(a)~~ (a) “Agent” means one who acts relative to a fiduciary relationship to another; a  
42 person authorized to negotiate and/or transact business on behalf of an entity.

43 ~~(b)~~ (b) “Bid” means an offer to execute a specified job or jobs within a prescribed time  
44 and not exceeding a proposed amount, and includes both offers that become legally binding  
45 upon acceptance, and nonbinding or informal quotes.

46 ~~(c)~~ (c) “Bid shopping” means the practice of divulging a contractor’s or subcontractor’s  
47 bid to other prospective bidders before the award of a contract, in order to secure a lower  
48 bid.

49 ~~(d)~~ (d) “Broker” means an intermediary; an independent contractor employed to negotiate  
50 business between a buyer and seller for compensation.

51 (e) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding  
52 holidays recognized by the Nation.

53 ~~(f)~~ (f) “Certification” means verification by the Indian Preference Office that an entity  
54 meets all the requirements necessary to qualify for Indian preference in accordance with  
55 this law.

56 ~~(g) Certified entity. See Entity, Certified entity~~

57 ~~(h) “Compliance agreement” means a binding agreement, negotiated between the Indian~~  
58 ~~Preference Office and a contractor, identifying specific Indian preference related~~  
59 ~~requirements for a Tribal project.~~

60 ~~(i) “Construction contract” means any contract issued to build, repair or remodel~~  
61 ~~structures, and includes subcontracts and other construction agreements.~~

62 ~~(j) “Contractor” means one who enters into a contract.~~

63 ~~(k) “Core work crew” means the minimum amount of the contractor’s key employees that~~  
64 ~~are essential to start up and continue work on a Tribal project.~~

65 ~~(l) “Days” means calendar days, except as otherwise provided.~~

66 ~~(m) “Employee” means any person that performs services and/or labor for an employer in~~  
67 ~~exchange for compensation.~~

68 ~~(n) “Employer” means any entity, except the Oneida Tribe of Indians of Wisconsin, that~~  
69 ~~controls and directs an employee under an express or implied contract of employment and~~  
70 ~~is obligated to pay salary or wages in compensation.~~

71 ~~(o) “Entity” means any person, sole proprietor, partnership, corporation, franchise,~~  
72 ~~governmental enterprise, or any other natural or artificial person or organization. The term~~  
73 ~~is intended to be as broad and encompassing as possible to ensure this law covers all~~  
74 ~~employment and contract activities within the jurisdiction of the Tribe.~~

75 ~~(p)~~ (g) “Certified entity” means an entity that has received certification as an Indian-  
76 owned business from the Indian Preference Office.

77 ~~“Tribal~~(h) “Compliance agreement” means a binding agreement, negotiated between the  
78 Indian Preference Office and a contractor identifying specific Indian preference-related  
79 requirements for a project.

80 (i) “Construction contract” means any contract issued to build, repair, or remodel  
81 structures, and includes subcontracts and other construction agreements.

82 (j) “Contractor” means one who enters into a contract.

83 (k) “Core work crew” means the minimum amount of the contractor’s key employees, who  
84 perform a critical function such that an employer would risk likely financial damage or loss  
85 if that task were assigned to a person unfamiliar with and/or untrained in the employer’s  
86 procedures and routines, that are essential to start up and continue work on a project.

87 (l) “Employee” means any person that performs services and/or labor for an employer in  
88 exchange for compensation.

89 (m) “Employer” means any entity”~~means~~, except the Nation, that controls and directs an  
90 employee under an express or implied contract of employment and is obligated to pay  
91 salary or wages in compensation.

92 (n) “Enterprise” means any internal operation owned and operated by the Nation that  
93 generates revenues through its core business functions, including but not limited to, Oneida  
94 Gaming, Oneida Retail, and Oneida Printing.

95 (o) “Entity” means any person, sole proprietor, partnership, corporation, franchise,  
96 governmental body, or any other natural or artificial person or organization. The term is  
97 intended to be as broad and encompassing as possible to ensure this law covers all  
98 Tribal employment and contract activities within the jurisdiction of the Nation.

99 ~~(2)~~ (p) “Entities of the Nation” means all programs, departments, boards, committees,  
100 commissions and similar business units of the Nation, but shall not mean Tribal  
101 corporations, ~~such as Oneida Seven Generations Corporation or Oneida Tribal Integrated~~  
102 ~~Enterprises.~~

103 ~~(q)~~ (q) “Front” means a business entity that is strategically structured, financed, operated  
104 or staffed such as to unfairly take advantage of Indian preference as granted under this law.

105 ~~(r)~~ (r) “Indian” means an enrolled member of any federally-recognized Indian tribe.

106 ~~(s)~~ (s) “Indian-owned business” means an entity which is majority owned and managed  
107 by an Indian.

108 ~~(t)~~ (t) “Indian preference” means preference for Indians, regardless of tribal affiliation,  
109 in all aspects of employment and contracting.

110 ~~(u)~~ (u) “Internal service” means any service provided for free or at cost for the  
111 Tribal Nation and includes but is not limited to such services as certain types of advocacy  
112 or representation, mail delivery and pick up, grant writing or assistance, tourism initiatives,  
113 Human Resource assistance and technical support.

114 ~~(v)~~ (v) “Joint venture” means an entity that is fifty percent (50%) owned and managed  
115 by an Indian.

116 ~~(w)~~ (w) “Key employee” means a one who performs a critical function such that an employer  
117 would risk likely financial damage-time grouping of two (2) or loss if that task were  
118 assigned to a person unfamiliar with and/or untrained more entities in the employer’s  
119 procedures and routines a business undertaking.

120 ~~(x)~~ (w) “Lowest responsible bidder” means a bidder who, after any Indian preference  
121 discounts are applied, submits the lowest bid and is considered to be fully responsible and  
122 qualified to perform the work for which the bid is submitted.

123 ~~(y)~~ (w) “Office(x) “Nation” means the Indian Preference Office or its designee.

- ~~(x) “Oneida” means the Oneida Tribe of Indians of Wisconsin Nation.~~  
~~“Outsourcee(y) “Non-construction contract” means to obtain goods or any contract other than a service from a third party, instead of having construction contract, and includes subcontracts and other agreements.~~  
~~(y) (z) “Project” means any effort whereby the Nation or an entity of the Nation contracts for labor and/or goods or services be provided from within the Tribe by a Tribal entity or Tribal enterprise that will support or benefit any aspect of the Nation’s government, holdings, infrastructure, workplace, economy or community.~~  
~~(z) (aa) “Qualified trades worker” means a skilled worker qualified to perform services for the trade in which the person is trained, and includes general laborers.~~  
~~(aa) (bb) “Reservation” means all the lands within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.~~  
~~(bb) “Skills Bank” means the services provided by the Office, whereby listings of qualified trades workers are maintained and made available for those required to comply with this law.~~  
~~(ee) (cc) “Subcontractor” means a trade contractor, who is awarded a contract for the supply of services pursuant to a construction agreement, or a junior or secondary contractor who performs some or all of the prime contractor’s contractual obligations.~~  
~~(dd) “Trade contractor” means an entity that is awarded a contract for the supply of services pursuant to a construction agreement, including all entities that enter into any subcontracts.~~  
~~(ee) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.~~  
~~(dd) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.~~  
~~(ff) (ee) “Tribal corporation” means a corporation chartered and/or wholly owned by the Oneida Tribe of Indians of Wisconsin Nation pursuant to the Constitution and Bylaws of the Oneida Tribe. Nation.~~  
~~(gg) “Tribal enterprise” means any internal operation owned and operated by the Tribe that generates revenues through its core business functions, including but not limited to: Oneida Gaming, Oneida Retail, Oneida Farm, and Oneida Printing.~~  
~~(hh) Tribal entity. See Entity, Tribal entity.~~  
~~(ii) “Tribal project” means any effort whereby the Tribe or a Tribal entity contracts for labor and/or goods or services that will support or benefit any aspect of the Tribal government, holdings, infrastructure, workplace, economy or community.~~

#### 502.4. Jurisdiction

502.4-1. The Indian Preference Office shall ~~have authority over matters relating to the interpretation implement, monitor, and enforcement of~~enforce this law ~~as set out within this law and other applicable laws and policies relating to Indian preference.~~

502.4-2. The Tribe’s judicial system Trial Court shall have ~~exclusive~~ jurisdiction over all ~~other~~ matters ~~relating~~related to the interpretation and enforcement of this law.

502.4-23. The Indian Preference Office and ~~the Tribe’s judicial system Trial Court~~ shall have jurisdiction over all parties to any contract, subcontract, or compliance agreement to which this law applies, as well as jurisdiction over all subcontractors, employees, or other entities working

171 with, for, or on behalf of such a party in fulfilling such contract, subcontract or compliance  
172 agreement.

173  
174 **502.5. Certification of EntitiesIndian Preference Office**

175 ~~502.5-1. An Indian Preference Office is hereby created *Criteria* for the purpose of implementing,~~  
176 ~~monitoring and enforcing this law and other applicable laws and policies relating to Indian~~  
177 ~~preference.~~

178 ~~502.5 2. The Office shall have the following duties, along with other responsibilities as may be~~  
179 ~~listed throughout this law.~~

180 ~~(a) *Certification of Entities.*~~

181 ~~(1) Verify information provided by entities seeking *as an Indian-Owned Business.*~~  
182 ~~*In order to seek* certification and make determination of eligibility.~~

183 ~~(2) Issue certification.~~

184 ~~(b) *Skills Bank.* Establish and maintain a Skills Bank and actively recruit qualified trades~~  
185 ~~workers for listing in the Skills Bank.~~

186 ~~(1) Identify, initiate, and sponsor training, internship and apprenticeship~~  
187 ~~opportunities necessary in order to increase the pool of qualified trades workers and~~  
188 ~~to assist Indians in becoming qualified in the various job classifications used by~~  
189 ~~employers.~~

190 ~~(2) Cooperate with other Tribal programs to provide counseling and support to~~  
191 ~~assist Indians in retaining employment.~~

192 ~~(c) *Negotiations.* Negotiate compliance agreements that include, but are not limited to the~~  
193 ~~following:~~

194 ~~(1) Numerical hiring goals and timetables that specify the minimum number of~~  
195 ~~Indians that must be utilized per Tribal contract dollar.~~

196 ~~(2) Compensation of qualified trades workers including wage scale, salaries and~~  
197 ~~other benefits. Compensation shall be determined based on the prevailing federal,~~  
198 ~~state and/or Tribal wage scales.~~

199 ~~(d) *Monitoring.*~~

200 ~~(1) Perform on-site inspections to verify compliance with this law.~~

201 ~~(2) Require and review weekly workforce reports.~~

202 ~~(3) Establish a mandatory training process for Tribal entities that do contracting or~~  
203 ~~bidding as a regular function of their duties.~~

204 ~~(4) Provide training to assist certified entities with understanding their rights and~~  
205 ~~abilities under this law.~~

206 ~~(5) Receive feedback from contractors regarding the performance of any certified~~  
207 ~~entity or qualified trades worker.~~

208 ~~(e) *Investigations.* Investigate written complaints and respond to inquiries.~~

209 ~~(f) *Enforcement.*~~

210 ~~(1) Enforce compliance agreements and the provisions of this law.~~

211 ~~(2) Create internal procedures to implement and carry out the provisions of this~~  
212 ~~law.~~

213 ~~(3) Suspend or revoke certification of entities or remove trades workers from the~~  
214 ~~Skills Bank.~~

215 ~~(4) Issue Notices of Noncompliance.~~

216 ~~(5) Represent the interests of the Tribe in bringing or defending Indian preference-~~  
217 ~~related actions before the Tribe's judicial system relating to noncompliance with~~

218 this law, a compliance agreement, or regulations or policies issued pursuant to this  
219 law.

220 ~~(6) Establish a schedule of fines in accordance with 502.10-3, and impose such~~  
221 ~~fines in accordance with 502.10-4.~~

222 ~~502.5-3. Records. Any records created and maintained by the Office shall be made available in~~  
223 ~~accordance with applicable Tribal and federal law.~~

224 ~~502.5-4. Within the scope of authority defined in this law, the Office may enter into cooperative~~  
225 ~~agreements with federal and state agencies, subject to the approval of the Oneida Business~~  
226 ~~Committee.~~

227 ~~502.5-5. Prior to the posting or announcement of a contract for any Tribal project, the~~  
228 ~~specifications for such project shall be submitted to the Office.~~

229 ~~(a) The Office shall, with experts identified from other Tribal entities, review the~~  
230 ~~specifications, including bidding requirements, to ensure that there are no unnecessary and~~  
231 ~~unjustifiable restrictions that may:~~

232 ~~(1) preclude certified entities from bidding or being eligible to fulfill the contract~~  
233 ~~or subcontract;~~

234 ~~(2) disqualify qualified trades workers from employment opportunities created~~  
235 ~~under such contract or subcontract; or~~

236 ~~(3) create conditions that would make bidding, compliance, or employment unduly~~  
237 ~~burdensome for qualified trades workers or certified entities.~~

238 ~~(b) Unbundling a Contract. The Office may require that specific portions of a contract be~~  
239 ~~outsourced to internal services, Tribal enterprises, certified entities and/or qualified trades~~  
240 ~~workers, even if a single entity is capable of providing all of the goods and/or services~~  
241 ~~required under the contract. Provided that, such outsourcing shall not cause undue hardship,~~  
242 ~~unnecessary delay or additional expenses in completing the Tribal project.~~

#### 244 ~~502.6. Certification of Entities~~

245 ~~502.6-1. Applicants seeking certification of an Indian-owned business shall submit a completed~~  
246 ~~and signed application to the Office, along with any documentation required under 502.6-4.~~

247 ~~502.6-2. The Office may interview the following criteria shall be met by the applicant(s) and/or~~  
248 ~~request additional information as may be necessary to make a determination regarding~~  
249 ~~certification. entity:~~

250 ~~502.6-3. Within thirty (30) days of receiving the application and any additional requested~~  
251 ~~information, the Office shall inform the applicant of a determination to:~~

252 ~~(a) grant the certification; or~~

253 ~~(b) deny the certification, including a full written explanation of the reason for the denial;~~

254 ~~or~~

255 ~~(c) grant probationary certification for a period of up to one (1) year, if so determined by~~  
256 ~~the Office for reasonable and just cause as identified and set out in regulations. During the~~  
257 ~~probationary period, the applicant shall satisfy any conditions imposed by the Office, and~~  
258 ~~the Office shall monitor the activities of the applicant, and may request and receive such~~  
259 ~~information as necessary to ensure compliance with this law. The Office shall either grant~~  
260 ~~or deny full certification at the end of the probationary period, or upon petition by the~~  
261 ~~applicant, whichever occurs first.~~

262 ~~502.6-4. Certification may be granted to entities that qualify in accordance with the criteria listed~~  
263 ~~in this law. In order to receive certification, an applicant entity shall provide proof of:~~

264 ~~(a)~~ (a) There is Indian financial ownership, control and management of at least fifty-one  
265 percent (51%) of the entity. Evidence of both financial ownership and control shall be  
266 embodied in the entity's organizational documents, including, but not limited to the  
267 documents of incorporation, stock ownership, or a partnership agreement.

268 (1) *Indian Financial Ownership.* Indian financial ownership is established where  
269 the ~~Tribe, Tribal~~Nation, members of the Nation and/or other Indians own fifty-one  
270 percent (51%) or more of the assets and equipment, receive fifty-one percent (51%)  
271 or more of distributed net profits, and would receive fifty-one percent (51%) or  
272 more of the entity's assets upon dissolution.

273 (2) *Indian Control.* Indian control is established where the ~~Tribe, Tribal~~Nation,  
274 member of the Nation and/or other Indian owner(s) maintain a minimum of fifty-  
275 one percent (51%) of voting rights or other controlling decisional authority.

276 (3) *Indian Management.* Indian Management is established where an Indian  
277 owner(s) is directly involved in the entity's management, this can be shown where:  
278 (A) at least one (1) Indian owner is directly involved in the daily operations  
279 of the entity on a full-time basis and in a senior-level position; or  
280 (B) at least one (1) Indian owner is responsible for the oversight of  
281 operations, even though the daily operations are conducted by non-owner  
282 employees.

283 ~~(b) Financial~~ (b) The entity can demonstrate financial responsibility, including but not  
284 limited to, evidence of an adequate line of credit, contributions of sufficient working  
285 capital, applicable required bonding and insurance, materials and/or equipment necessary  
286 to perform applicable work.

287 (c) ~~All~~ The entity can provide past and current licensing or certifications, including any  
288 penalties, or other punitive actions or debarments taken by any licensing body within the  
289 past ten (10) years.

290 502.6-5-2. Application. The applicant entity shall submit a completed and signed application to  
291 the Indian Preference Office, along with any documentation proving the entity meets the criteria  
292 for certification of an Indian-owned business.

293 (a) Upon receiving an application, the Indian Preference Office may interview the  
294 applicant and/or request additional information as may be necessary to make a  
295 determination regarding certification.

296 502.5-3. Certification Determination. Within thirty (30) days of receiving the application and any  
297 additional requested information, the Indian Preference Office shall inform the applicant of a  
298 determination to:

299 (a) grant the certification;

300 (b) deny the certification, including a full written explanation of the reason for the denial;

301 or

302 (c) grant probationary certification for a period of up to one (1) year, if so determined by  
303 the Indian Preference Office for reasonable and just cause.

304 (1) During the probationary period, the applicant shall satisfy any conditions  
305 imposed by the Indian Preference Office.

306 (2) The Indian Preference Office shall monitor the activities of the applicant, and  
307 may request and receive such information as necessary to ensure compliance with  
308 this law.

309 (3) The Indian Preference Office shall either grant or deny full certification at the  
310 end of the probationary period, or upon petition by the applicant, whichever occurs  
311 first.

312 502.5-4. Once an applicant entity has been granted certification, the Indian Preference Office shall  
313 mail a certificate to the entity.– Granting an entity certification does not convey any comment  
314 regarding the ability of the entity to perform any work nor does it guarantee that an entity has met  
315 all the qualifications to obtain work under any particular contract where Indian preference may be  
316 applied.

317 502.6-6-5-5. Notification Requirements. A certified entity shall report the following to the Indian  
318 Preference Office within ten (10) business days of such an occurrence:

- 319 (a) changes in the ownership or control status of the entity; ~~and/or~~  
320 (b) suspension, revocation, lapse or loss of any licensing, certification, insurance, bonding,  
321 or credit lines; and/or  
322 (c) any other changes that could:  
323 (1) affect an entity's eligibility for certification;  
324 (2) affect the financial liability of any entity, contracting party or the Tribe, Nation;  
325 and/or  
326 (3) alter the status of the qualifications of the entity.

327 502.5-6-7. Certification Renewal. Certification is granted on an annual basis, and shall lapse after  
328 one (1) year unless renewed.

- 329 (a) To apply for a renewal certification, each certified entity shall complete and return a  
330 renewal application and annual reporting form so that the Indian Preference Office may  
331 update its records.  
332 (b) Annual renewal notices, applications and reporting forms shall be mailed to each  
333 certified entity at least thirty (30) days prior to the expiration of an entity's certification;  
334 however, the responsibility for renewal is upon the entity.

335 ~~502.6-8. Open Records. In accordance with the Open Records and Open Meetings law (c)~~  
336 Exemption for Tribal Corporations. Tribal corporations shall be exempt from the  
337 requirement to renew certification on an annual basis. Certification for a Tribal corporation  
338 is granted until such a time that the Indian Preference Office is made aware that there have  
339 been changes that may affect the certification status of a Tribal corporation in accordance  
340 with the notification requirements of section 502.5-5.

341 (1) When a Tribal corporation complies with the notification requirements of  
342 section 502.5-5 the Tribal corporation shall also apply for renewal of its  
343 certification.

344 (A) The Indian Preference Office shall provide the Tribal corporation with  
345 a renewal application and annual reporting form.

346 (B) The Tribal corporation shall return the renewal application and annual  
347 reporting form to the Indian Preference Office ten (10) days.

348 502.5-7. Open Records. In accordance with the Nation's laws and policies governing open  
349 records, general, non-proprietary and non-private information provided for the purposes of  
350 acquiring certification shall be considered open records and available for public inspection.  
351 Provided ~~further,~~ that, all information given for purposes of receiving certification, including  
352 financial information, is subject to internal audit of the Tribe Nation.

353 ~~502.6-9-5-8. Joint Ventures. Joint~~ All joint ventures ~~shall not be certified~~ seeking certification as  
354 eligible for Indian preference even though one equal fifty percent (50%) partner is an Indian that  
355 shares in equal financial ownership, control and direct involvement with-owned business shall

356 submit documentation of the business arrangements of the joint venture in addition to the required  
357 documentation for certification.

358 (a) Certification for a joint venture shall be issued on a project specific basis.

359 502.6-105-9. *Brokers, Agents and Franchises.*

360 (a) *Brokers.* Brokers shall be certified as an Indian-owned business only if they are dealers  
361 who own, operate or maintain a store, warehouse or other establishment in which the  
362 commodities being supplied are bought, kept in stock and sold to the public in the usual  
363 course of business; provided that this requirement shall not apply where the applicant  
364 demonstrates that it is not customary and usual in the area of the trade in question for a  
365 broker to maintain an establishment and to keep commodities in stock.

366 (1) To qualify as an Indian-owned business, the broker shall provide conclusive  
367 evidence that the broker is an independent contractor and not an agent of a non-  
368 Indian owned business.

369 (2) The broker shall also provide proof that he owes no fiduciary responsibility nor  
370 has a fixed or permanent relationship to any one company. A broker shall hold  
371 himself or herself out for employment to the public generally and that the  
372 employment is not that of being a special agent for a single client.

373 (b) *Agents.* Agents who are employees of a non-Indian-owned business or who merely  
374 represent a company, such as an insurance agent or real estate agent for a non-Indian-  
375 owned business, shall not be certified as an Indian-owned business.

376 (c) *Franchises.* A franchise may be certified as an Indian-owned business if the franchisee  
377 does not pay the franchisor a share or percentage of revenue or profits, but only  
378 compensates the franchisor through licensing, royalty and franchise fees as set out by  
379 contract, and/or for services provided, such as training and advising.

380 502.6-115-10. *Fronts are Prohibited.* Entities shall be disqualified from certification as an Indian  
381 preference-eligibility-owned business in all situations where the entity operates as a front in order  
382 to unfairly take advantage of Indian preference granted under this law to Indian-owned businesses.

383 (a) The Indian Preference Office shall not certify entities that operate solely as fronts.

384 (b) No entity shall manipulate its business structure or misrepresent the roles of Indian  
385 individuals or entities in such a way as to become eligible for Indian preference in a manner  
386 inconsistent with the purpose and intent of this law.

387 (c) Examples of fronts include but are not limited to:

388 (1) Entities that represent that they are exercising management control of a Tribal  
389 project in order to qualify for Indian preference when in fact such management  
390 control is exercised by a non-Indian entity-;

391 (2) Entities where Indians have senior management titles without the correlating  
392 responsibilities, control, or knowledge of operations; where the entity only qualifies  
393 for certification because an Indian holds that senior management role-;

394 (3) Entities, not including legitimate brokers, that derive profit only by providing  
395 goods or services at an increased cost, where such goods or services could be  
396 acquired directly on the open market and/or from the entity's source without paying  
397 a marked-up cost-; and/or

398 (4) Any other situation where the Indian Preference Office determines that the  
399 application of Indian preference would in fact predominantly or substantially  
400 benefit non-Indians or non-Indian-owned businesses; or where Indians or Indian-  
401 owned businesses only benefit by assisting the non-Indian or non-Indian-owned  
402 business with receiving the contract.

403  
404 **502.76. Application of Indian Preference to Contracts**

405 502.76-1. *Application of the Law.* Except where prohibited or limited by law or grant funding  
406 requirements, this law shall apply to all contracts over ~~one~~three thousand ~~five hundred~~ dollars  
407 (\$~~1,500.00~~3,000) that meet the requirements of (a) and/or (b) below:

408 (a) This law shall apply to:

409 (1) all contracts, subcontracts, and compliance agreements to which the  
410 ~~T~~TribeNation is a party, and all contracts, subcontracts and compliance agreements  
411 that are entered into on behalf of, or for the benefit of the ~~T~~TribeNation, whereby  
412 goods and services are provided on or near the Reservation; ~~and~~

413 (2) all subcontractors, employees, or other entities working with, for, on behalf of  
414 a party to a contract, subcontract or compliance agreement as identified in (1), in  
415 fulfilling such contract, subcontract, or compliance agreement.

416 (b) *Tribal Corporations.* This law shall apply to Tribal corporations to the extent such  
417 corporations enter into contracts with the ~~T~~TribeNation.

418 502.76-2. *Non-Applicability of the Law.*

419 (a) ~~Tribal~~Indian Preference in Hiring of Employees of the Nation. The standards set out  
420 in this law shall not apply to preference as applicable to ~~Tribal~~employees hired through  
421 the ~~O~~OneidaNation's Human Resources ~~department~~Department or pursuant to an  
422 employment contract.

423 (b) *Internal Services and Tribal Enterprises.* The application of Indian preference shall be  
424 superseded in specific situations in accordance with the following:

425 (1) The ~~T~~TribeNation shall exclusively utilize internal services and ~~Tribal~~  
426 enterprises whenever an internal service of the ~~T~~TribeNation or ~~Tribal~~ enterprise  
427 could or does provide the necessary goods and services in the ordinary course of  
428 business.

429 (2) If an internal service or ~~Tribal~~enterprise is unable to fulfill some or all of the  
430 requirements of a contract, then the provisions of this law shall apply to any  
431 outsourcing conducted by the internal service or ~~Tribal~~enterprise.

432 502.6-3. Contract Specifications Review. Prior to the posting or announcement of a contract for  
433 any project of the Nation, the specifications for such project shall be submitted to the Indian  
434 Preference Office.

435 (a) Within five (5) business days of receiving the specifications of the project the Indian  
436 Preference Office shall, with experts identified from other entities of the Nation, review  
437 the specifications, including bidding requirements, to ensure that there are no unnecessary  
438 and/or unjustifiable restrictions that may:

439 502.7-3-(1) preclude certified entities from bidding or being eligible to fulfill the  
440 contract or subcontract;

441 (2) disqualify qualified trades workers from employment opportunities created  
442 under such contract or subcontract; and/or

443 (3) create conditions that would make bidding, compliance, or employment unduly  
444 burdensome for qualified trades workers or certified entities.

445 (b) Unbundling a Contract. The Indian Preference Office may require that specific  
446 portions of a contract be outsourced to internal services, enterprises, certified entities  
447 and/or qualified trades workers, even if a single entity is capable of providing all of the  
448 goods and/or services required under the contract. Provided that, such outsourcing shall

449 not cause undue hardship, unnecessary delay or additional expenses in completing the  
450 project.

451 502.6-4. In soliciting bids, the entity offering the contract shall indicate that Indian preference  
452 shall be applied in accordance with this law.

453 502.7-4-6-5. Cooperative Agreements. Within the scope of authority defined in this law, the  
454 Indian Preference Office may enter into cooperative agreements with federal and state agencies,  
455 subject to the approval of the Oneida Business Committee.

456 502.6-6. Cultural Setting of Contracts. All parties to a contract to which this law applies shall  
457 recognize that any operations are taking place within a unique cultural setting within the  
458 community of the Tribe-Nation. Every contractor shall make reasonable accommodations to the  
459 customs and beliefs of all Indian workers so as to promote rather than hinder the employment of  
460 Indians.

461 (a) If an Indian worker wishes to attend any traditional cultural activities or ceremonies,  
462 the worker shall provide reasonable advance notice to the contractor in requesting such  
463 time off.

464 (b) Where attendance at traditional cultural activities or ceremonies requires a worker to  
465 take time off from a regularly scheduled shift or workday, such time may be paid or unpaid,  
466 at the discretion of the employer or as established by contract or compliance agreement.

467 502.6-7-5. Tribal Employees of the Nation. In the execution of employment duties and in  
468 accordance with the Tribe's Personnel Policies Nation's laws and Proceedures, Tribal policies  
469 governing employment, employees of the Nation shall follow this law in following contracting  
470 and bidding procedures for the Tribe Nation or Tribal entities of the Nation.

471 (a) The Indian Preference Office shall establish a training process for entities of the Nation  
472 that do contracting or bidding as a regular function of their duties.

473 502.7-6-8. Contracts and Attachments. All contracts this law applies to shall:

474 (a) Stipulate that compliance with this law is required, and that violation of any portion of  
475 this law or applicable compliance agreement may be deemed a material and substantial  
476 breach of contract, enforceable:

477 (1) As set forth by the terms of the original contract for a breach of contract; and

478 (2) In accordance with the provisions of this law.

479 (b) Reference this law, and shall contain an Acknowledgment Clause acknowledgment  
480 clause, whereby the contractor shall agree to the following:

481 (1) The contractor has read and understands the provisions of this law;

482 (2) The contractor understands how this law affects the contractor's rights and  
483 responsibilities; and

484 (3) The contractor agrees that the provisions of this law shall govern the  
485 performance of the parties.

486 (c) Reference Chapter 56 of the Oneida Code of Laws, Oneida Vendor Licensing Nation's  
487 laws governing vendor licensing, and provide the contracting parties with directions on  
488 how to access that document.

489 502.6-9. Applying Indian Preference to Non-Construction Contracts. Where more than one (1)  
490 bid is received for a non-construction contract, an Indian preference percentage discount of five  
491 percent (5%) shall be applied to all bids received from certified Indian-owned businesses.

492 502.6-10. Applying Indian Preference to Construction Contracts. Where more than one (1) bid  
493 is received for a construction contract, the discount applied to bids from certified Indian-owned  
494 businesses shall be:

~~502.7-7. In the event that a dispute may arise regarding this law or a compliance agreement, all affected parties shall cooperate in good faith with the Office toward a mutually satisfactory resolution.~~

- ~~(a) ten percent (10%) of the first fifty thousand dollar (\$50,000) segment of a bid;~~
- ~~(b) plus nine percent (9%) of the next fifty thousand dollar (\$50,000) segment of a bid;~~
- ~~(c) plus eight percent (8%) of the next one hundred thousand dollar (\$100,000) segment of a bid;~~
- ~~(d) plus seven percent (7%) of the next one hundred thousand dollar (\$100,000) segment of a bid;~~
- ~~(e) plus six percent (6%) of the next one hundred thousand dollar (\$100,000) segment of a bid;~~
- ~~(f) plus five percent (5%) of the next one hundred thousand dollar (\$100,000) segment of a bid;~~
- ~~(g) plus four percent (4%) of the next five hundred thousand dollar (\$500,000) segment of a bid;~~
- ~~(h) plus two percent (2%) of the next one million dollar (\$1,000,000) segment of a bid;~~
- ~~and~~
- ~~(i) plus one percent (1%) of any amount over two million dollars (\$2,000,000).~~

~~502.7-8-11. Awarding the Contract.~~ After the appropriate discount has been subtracted from preferred bids, the following shall be used to determine which bidder is awarded the contract:

- (a) If a bid from a certified entity is less than the total of the apparent low bid after Indian preference is applied, then the contract shall be awarded to the certified entity.
- (b) If none of the certified entity bids are less than the total of the apparent low bid after the Indian preference discount is applied, the contract shall be awarded to the lowest responsible bidder.

~~502.7-9. Applying Indian Preference to Non-Construction Contracts.~~ Where more than one (1) bid is received for a non-construction contract, an Indian preference percentage discount of five percent (5%) shall be applied to all bids received from certified Indian-owned businesses.

~~502.7-10. Applying Indian Preference to Construction Contracts.~~ Where more than one (1) bid is received for a construction contract, the discount applied to bids from certified Indian-owned businesses shall be:

- ~~(a) ten percent (10%) of the first \$50,000 segment of a bid.~~
- ~~(b) plus nine percent (9%) of the next \$50,000 segment of a bid.~~
- ~~(c) plus eight percent (8%) of the next \$100,000 segment of a bid.~~
- ~~(d) plus seven percent (7%) of the next \$100,000 segment of a bid.~~
- ~~(e) plus six percent (6%) of the next \$100,000 segment of a bid.~~
- ~~(f) plus five percent (5%) of the next \$100,000 segment of a bid.~~
- ~~(g) plus four percent (4%) of the next \$500,000 segment of a bid.~~
- ~~(h) plus two percent (2%) of the next \$1,000,000 segment of a bid.~~
- ~~(i) plus one percent (1%) of any amount over \$2,000,000.~~

~~502.7-11. Bid shopping is prohibited.~~

## ~~502.8. Skills Bank and Qualified Trades Workers~~

~~502.8-1. The~~ 6-12. Monitoring the Contract. Once a contract is awarded to an entity, the Indian Preference Office shall ~~establish~~ perform the following monitoring duties:

- (a) Perform on-site inspections to verify compliance with this law;
- (b) Require and administer a Skills Bank review weekly workforce reports;

542 (c) Provide training to assist ~~with providing Indians and first generation~~  
543 ~~descendants~~certified entities with employment opportunities. ~~The goal~~understanding their  
544 rights and abilities under this law; and

545 (d) Receive feedback from contractors regarding the performance of ~~the Tribe is to achieve~~  
546 one hundred percent (100%) participation of any certified entity or qualified trades workers  
547 on Tribal projects~~worker~~.

548 ~~502.8-2. The Skills Bank shall be the exclusive referral source under this law, representing the~~  
549 ~~official compilation of qualified trades workers eligible for Indian preference in accordance with~~  
550 ~~this law. Skills Bank listings shall include the names and qualifications of the qualified trades~~  
551 ~~workers.~~

552 ~~502.8-3. The Office shall regularly update the Skills Bank listings.~~

553 ~~502.8-4. Entities required to fill positions in accordance with~~502.6-13. In the event that a dispute  
554 may arise regarding this law ~~and/or a compliance agreement under 502.9,~~ all affected parties shall  
555 contactcooperate in good faith with the Indian Preference Office ~~prior to the commencement of~~  
556 any worktoward a mutually satisfactory resolution.

557 ~~(a) Except where prohibited by law or grant funding requirements, the entity shall hire~~  
558 ~~qualified trades workers from the Skills Bank in the following order of priority:~~

559 ~~(1) Members of the Oneida Tribe.~~

560 ~~(2) First generation descendants of Oneida Tribal members.~~

561 ~~(3) Members of other federally recognized Indian tribes.~~

562 ~~(b) If a law or grant funding requirements prohibit the hiring of qualified trades workers~~  
563 ~~in accordance with 502.8-4(a), qualified trades workers shall be hired in accordance with~~  
564 ~~the requirements of said law or grant.~~

565 ~~(c) If the necessary labor cannot be acquired from the Skills Bank, then a limited waiver~~  
566 ~~may be granted in accordance with 502.8-4.~~

567 ~~502.8-5. In order to be added to the Skills Bank, an applicant shall submit a completed application~~  
568 ~~and documentation of the following:~~

569 ~~(a) proof of enrollment or proof that the individual is a first generation descendant of the~~  
570 ~~Oneida Tribe.~~

571 ~~(b) education; including degrees, diplomas, apprenticeships, internships or continuing~~  
572 ~~education training related to the field.~~

573 ~~(c) if applicable, proof of a driver license, including any endorsements.~~

574 ~~(d) if the worker is seeking to be listed as a qualified trades worker for a specific trade,~~  
575 ~~then the worker shall provide specific information related to that trade, including:~~

576 ~~(1) past and current licensing, credentials and certifications, including information~~  
577 ~~related to penalties or punitive actions taken by any licensing body within the past~~  
578 ~~ten (10) years; and~~

579 ~~(2) any required or possessed insurance and/or bonding.~~

580 ~~502.8-6. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition~~  
581 ~~that he or she is eligible to receive Indian preference in accordance with this law. A qualified~~  
582 ~~trades worker shall be qualified for Indian preference for employment for a particular skill or trade~~  
583 ~~if he or she meets the minimum qualifications for a particular skill or trade.~~

584 ~~502.8-7. Wage and Hour Standards, Layoffs and Terminations, Call Backs, Promotions, Unions:~~

585 ~~(a) Every contractor utilizing qualified trades workers shall ensure that such workers~~  
586 ~~receive equal compensation, including overtime pay, and shall have equal work standards,~~  
587 ~~that are provided to other employees. Contractors that hire qualified trades workers in~~

588 ~~order to comply with this law, but do not utilize those workers in a manner similar to other~~  
589 ~~employees are not maintaining equal work standards.~~

590 ~~(b) In making any layoffs or terminations, all contractors shall notify the Office prior to~~  
591 ~~laying off or terminating a qualified trades worker.~~

592 ~~(1) No qualified trades worker with at least minimum qualifications for the job~~  
593 ~~classification shall be terminated or laid off so long as a non Indian employee in~~  
594 ~~the same craft with similar skills remains employed. If the contractor lays off by~~  
595 ~~crews, qualified trades workers shall be transferred to any crew that will be retained,~~  
596 ~~as long as there are non Indian employees in the same craft employed elsewhere~~  
597 ~~under the same contract.~~

598 ~~(2) No contractor shall terminate or lay off any qualified trades worker pursuant to~~  
599 ~~this law, without documented good cause. The contractor shall promptly replace~~  
600 ~~the qualified trades worker with another qualified trades worker.~~

601 ~~(3) When a contractor begins to call back laid off employees, that contractor shall~~  
602 ~~notify the Office and shall call back qualified trades workers before bringing back~~  
603 ~~other employees.~~

604 ~~(e) Qualified trades workers and certified entities shall not be required to affiliate with~~  
605 ~~organized labor for employment under this law. The mere absence of affiliation with~~  
606 ~~organized labor shall not disqualify a qualified trades worker from employment or~~  
607 ~~contracting where that worker is otherwise qualified. A qualified trades worker shall not~~  
608 ~~be guaranteed to receive the benefits of a union contract, other than wage scales, unless the~~  
609 ~~worker elects to join the union.~~

610 ~~502.8-8. Construction Contracts: Core Work Crew. As a condition of a construction contract~~  
611 ~~award, the contractor shall identify its core work crew, including those core work crew employees~~  
612 ~~utilized by known subcontractors. If such employees are approved by the Office, they may be~~  
613 ~~employed on the Tribal project without regard to Indian preference. Provided that, core work crew~~  
614 ~~employees shall at no time displace qualified trades workers and/or potential qualified trades~~  
615 ~~workers by performing work outside their trade or skill.~~

616 ~~(a) For the purposes of employment on a Tribal project, the Office and the contractor, and~~  
617 ~~any subcontractor, shall negotiate the designated members of the contractor's core work~~  
618 ~~crew.~~

619 ~~(b) Any contractor that fills vacant positions immediately prior to undertaking work~~  
620 ~~pursuant to a contract to which this section applies shall provide evidence acceptable to the~~  
621 ~~Office that such actions were not intended to circumvent the provisions of this law.~~

622 ~~(c) A contractor shall not use extraneous qualification criteria or other personnel~~  
623 ~~requirements that prevent qualified trades workers from being employed, unless the~~  
624 ~~contractor is able to demonstrate that such criteria or requirements are required by~~  
625 ~~regulatory compliance.~~

626  
627 ~~502.9.~~

628 **502.7. Compliance Agreements**

629 ~~502.97-1. Compliance Agreements. All contractors and subcontractors shall comply with the~~  
630 ~~terms of any compliance agreement executed in accordance with this law. Once a bid has been~~  
631 ~~accepted, but before work commences on any portion of a contract or subcontract, each contractor~~  
632 ~~shall meet with the Indian Preference Office to negotiate and execute a compliance agreement. All~~  
633 ~~contractors and subcontractors shall comply with the terms of any compliance agreement executed~~  
634 ~~in accordance with this law.~~

635 502.7-2. Contents of a Compliance Agreement. A compliance agreement shall include, but is not  
636 limited to, the following information:

637 (a) Numerical hiring goals and timetables that specify the minimum number of Indians  
638 that must be utilized per contract dollar; and

639 (b) Compensation of qualified trades workers including wage scale, salaries and other  
640 benefits. Compensation shall be determined based on the prevailing wage scales of the  
641 Nation and/or federal or state governments.

642 502.7-3.502.9-2. Term of a Compliance Agreement. Where a contract lasts for more than one (1)  
643 year, compliance agreements shall be reviewed annually and revised as necessary to reflect  
644 changes in hiring plans or the number of certified entities available.

645 502.9-37-4. Unless prior written consent of the Indian Preference Office has been received, a  
646 contractor shall not deviate from an executed compliance agreement by adding or removing any  
647 subcontracts, subcontractors or positions filled by qualified trades workers or certified entities, or  
648 by filling a vacancy with a non-qualified trades worker or a non-certified entity.

649 502.9-47-5. Limited Waivers. The Indian Preference Office shall establish standard operating  
650 procedures to provide for emergency conditions and situations whereby a limited waiver of  
651 compliance may be authorized, in situations where a contractor has made a significant and  
652 documented good faith effort to achieve compliance, or can demonstrate that compliance is not  
653 practical for reasons other than pricing.

## 654 502.8. Skills Bank and Qualified Trades Workers

655 502.8-1. The Indian Preference Office shall establish and administer a Skills Bank to assist with  
656 providing Indians and first-generation descendants with employment opportunities. The goal of  
657 the Nation is to achieve one hundred percent (100%) participation of qualified trades workers on  
658 projects.

659 (a) The Indian Preference Office shall identify, initiate, and sponsor training, internship,  
660 and apprenticeship opportunities necessary in order to increase the pool of qualified trades  
661 workers and to assist Indians in becoming qualified in the various job classifications used  
662 by employers.

663 (b) The Indian Preference Office shall cooperate with other programs of the Nation to  
664 provide counseling and support to assist Indians in retaining employment.

665 502.8-2. The Skills Bank shall be the exclusive referral source under this law, representing the  
666 official compilation of qualified trades workers eligible for Indian preference in accordance with  
667 this law. Skills Bank listings shall include the names and qualifications of the qualified trades  
668 workers.

669 502.10- The Indian Preference Office shall regularly update the Skills Bank listings.

670 502.8-3. Entities required to fill positions in accordance with this law and/or a compliance  
671 agreement under section 502.7, shall contact the Indian Preference Office prior to the  
672 commencement of any work.

673 (a) Except where prohibited by law or grant funding requirements, the entity shall hire  
674 qualified trades workers from the Skills Bank in the following order of priority:

675 (1) Members of the Nation;

676 (2) First generation descendants of the Nation; and then

677 (3) Members of other federally-recognized Indian tribes.

678 (b) If a law or grant funding requirement prohibits the hiring of qualified trades workers  
679 in accordance with section 502.8-3(a), qualified trades workers shall be hired in accordance  
680 with the requirements of said law or grant.  
681

682 (c) If the necessary labor cannot be acquired from the Skills Bank, then a limited waiver  
683 may be granted by the Indian Preference Office.

684 502.8-4. In order to be added to the Skills Bank, an applicant shall submit a completed application  
685 and documentation of the following:

686 (a) proof of enrollment or proof that the individual is a first-generation descendant of the  
687 Nation;

688 (b) education; including degrees, diplomas, apprenticeships, internships or continuing  
689 education training related to the field;

690 (c) proof of a driver's license, including any endorsements, if applicable;

691 (d) if the worker is seeking to be listed as a qualified trades worker for a specific trade,  
692 then the worker shall provide specific information related to that trade, including:

693 (1) past and current licensing;

694 (2) credentials and certifications; and

695 (3) information related to penalties or punitive actions taken by any licensing body  
696 within the past ten (10) years.

697 502.8-5. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition  
698 that he or she is eligible to receive Indian preference in accordance with this law. A qualified  
699 trades worker shall be qualified for Indian preference for employment for a particular skill or trade  
700 if he or she meets the minimum qualifications for a particular skill or trade.

701 502.8-6. Wage and Hour Standards, Layoffs and Terminations, Call-Backs, Promotions, Unions.

702 (a) Every contractor utilizing qualified trades workers shall ensure that such workers  
703 receive equal compensation, including overtime pay, and shall have equal work standards,  
704 that are provided to other employees. Contractors that hire qualified trades workers in  
705 order to comply with this law, but do not utilize those workers in a manner similar to other  
706 employees are not maintaining equal work standards.

707 (b) In making any layoffs or terminations, all contractors shall notify the Indian Preference  
708 Office prior to laying off or terminating a qualified trades worker.

709 (1) No qualified trades worker with at least minimum qualifications for the job  
710 classification shall be terminated or laid off so long as a non-Indian employee in  
711 the same craft with similar skills remains employed. If the contractor lays off by  
712 crews, qualified trades workers shall be transferred to any crew that will be retained,  
713 as long as there are non-Indian employees in the same craft employed elsewhere  
714 under the same contract.

715 (2) No contractor shall terminate or lay off any qualified trades worker pursuant to  
716 this law, without documented good cause. The contractor shall promptly replace  
717 the qualified trades worker with another qualified trades worker.

718 (3) When a contractor begins to call back laid-off employees, that contractor shall  
719 notify the Indian Preference Office and shall call back qualified trades workers  
720 before bringing back other employees.

721 (c) Qualified trades workers and certified entities shall not be required to affiliate with  
722 organized labor for employment under this law. The mere absence of affiliation with  
723 organized labor shall not disqualify a qualified trades worker from employment or  
724 contracting where that worker is otherwise qualified. A qualified trades worker shall not  
725 be guaranteed to receive the benefits of a union contract, other than wage scales, unless the  
726 worker elects to join the union.

727 502.8-7. Construction Contracts: Core Work Crew. As a condition of a construction contract  
728 award, the contractor shall identify its core work crew, including those core work crew employees

729 utilized by known subcontractors. If such employees are approved by the Indian Preference Office,  
730 they may be employed on the project without regard to Indian preference. Provided that, core  
731 work crew employees shall at no time displace qualified trades workers and/or potential qualified  
732 trades workers by performing work outside their trade or skill.

733 (a) For the purposes of employment on a project, the Indian Preference Office and the  
734 contractor, and any subcontractor, shall negotiate the designated members of the  
735 contractor's core work crew.

736 (b) Any contractor that fills vacant positions immediately prior to undertaking work  
737 pursuant to a contract to which this section applies shall provide evidence acceptable to the  
738 Indian Preference Office that such actions were not intended to circumvent the provisions  
739 of this law.

740 (c) A contractor shall not use extraneous qualification criteria or other personnel  
741 requirements that prevent qualified trades workers from being employed, unless the  
742 contractor is able to demonstrate that such criteria or requirements are required by  
743 regulatory compliance.

#### 744 **502.9. Investigations and Enforcement**

745 **502.109-1. ~~Office Investigations~~ Any Complaints.** An individual or entity may file a written  
746 complaint with the Indian Preference Office if aggrieved by a perceived an act of none compliance  
747 non-compliance with:

748 (a) this law;

749 (b) a compliance agreement; and/or

750 (c) any standard operating procedure issued pursuant to this law; who wishes to complain  
751 shall file a written complaint with the Office.

752 **502.9-2. Contents of the Complaint.** A complaint shall provide such include information that will  
753 reasonably enable the Indian Preference Office to understand the general nature of the complaint  
754 and carry out an investigation. Wherever possible, the complainant shall provide the Office with,  
755 such as evidence of any discriminatory practices, alleged misconduct, or other none compliance non-  
756 compliance.

757 ~~(a)~~ **502.9-3. Complaint Investigation.** Upon receipt of a complaint or after witnessing  
758 none compliance non-compliance with this law while conducting its monitoring duties, the Indian  
759 Preference Office shall conduct an investigation.

760 (1) If the Office receives a complaint or information that an entity is operating in  
761 a manner that is harmful to the health, safety, or welfare of the Tribe or community,  
762 the Office shall immediately refer the complaint or information to the appropriate  
763 Tribal department or authority for investigation. The Office may also  
764 independently investigate such complaint or information for purposes of ensuring  
765 compliance with this law, and shall have the authority to review the results of any  
766 other investigation conducted by another Tribal department or authority in  
767 accordance with the Open Records and Open Meetings Law.

768 ~~(2)~~ (a) In conducting an investigation, the to determine if the complaint has merit, the Indian  
769 Preference Office shall be authorized to:

770 (1) inspect and copy all relevant records;

771 (2) interview and shall have the right to speak to workers; and to

772 (3) conduct inspections of the job site(s);

773 ~~(3)~~ (b) Information collected during an Indian Preference Office investigation shall be kept  
774 confidential unless disclosure is necessary or required as part of any judicial or  
775

776 administrative proceeding or in accordance with ~~Tribal law. Provided that, any report or~~  
777 ~~recommendation prepared by the Office for use at a hearing shall be promptly released to~~  
778 ~~the complainant and alleged violator.~~ a law of the Nation.

779 (b) Any report or recommendation prepared by the Indian Preference Office for  
780 use at a hearing shall be promptly released to the complainant and alleged violator.

781 (c) If, after conducting the Indian Preference Office receives a complaint or information  
782 that an entity is operating in a manner that is harmful to the health, safety, or welfare of the  
783 Nation or community, the Indian Preference Office shall immediately refer the complaint  
784 or information to the appropriate department or authority of the Nation for investigation  
785 under.

786 (1) The referral of a complaint does not prohibit the Indian Preference Office from  
787 its independent investigation of such complaint or information for purposes of  
788 ensuring compliance with this section, the law.

789 (2) The Indian Preference Office shall have the authority to review the results of  
790 any other investigation conducted by another department or authority of the Nation  
791 in accordance with the Nation's laws and policies governing open records.

792 502.9-4. Alleged Violation Has No Merit. If the Indian Preference Office determines that the  
793 alleged violation has no merit, the Indian Preference Office shall notify all parties in writing that  
794 the ~~issue will~~ complaint shall be closed. A

795 (a) The complainant may appeal file a complaint to contest this decision to with the Tribe's  
796 judicial system Nation's Trial Court within ten (10) business days after issuance of such  
797 notice.

798 ~~(1) The complainant's appeal may only request the Tribe's judicial system~~ (b) The Trial  
799 Court shall then conduct an in-camera inspection of the investigation completed by the  
800 Indian Preference Office. - During an in-camera inspection, only a judge(s) may review the  
801 information obtained by the Indian Preference Office during the investigation, as this  
802 information is confidential and disclosure is not necessary.

803 ~~(2c) If, after reviewing the Office's investigation, the Tribe's judicial system~~  
804 ~~determines that there is sufficient evidence of a genuine and material issue of~~  
805 ~~noncompliance, the Tribe's judicial system shall order the Office to take action in~~  
806 ~~accordance with 502.10-4 and/or 502.10-5, as if the Office's original investigation~~  
807 ~~had determined that sufficient evidence of a genuine and material issue of~~  
808 ~~noncompliance existed.~~

809 ~~(3) If, after reviewing the Indian Preference Office's investigation, the Tribe's judicial~~  
810 ~~system Trial Court determines the alleged violation has no merit, the Tribe's judicial~~  
811 ~~system Trial Court shall notify all parties in writing that the issue matter will be~~  
812 ~~closed dismissed and no further appeals of the matter will be accepted.~~

813 ~~502.10-2. Retaliatory Action Prohibited. No entity shall punish, terminate, harass or take any~~  
814 ~~other adverse personnel or hiring action in retaliation for a party's exercise of Indian preference~~  
815 ~~rights under this law. However, this section shall not prohibit action that can be reasonably justified~~  
816 ~~as taken in good faith based on documented employee performance.~~

817 ~~502.10-3. Fines and Fees.~~

818 ~~(a) The Office shall establish, and the Oneida Business Committee shall approve:~~

819 ~~(1) a schedule of fines that may be imposed upon any person or entity violating~~  
820 ~~provisions of this law. Each offense shall result in a fine of no less than one hundred~~  
821 ~~dollars (\$100) nor more than one thousand dollars (\$1,000); and a separate offense~~

822 shall be deemed committed on each day during which a violation occurs or  
823 continues.

824 (2) a schedule of penalty fees that may be imposed upon any person or entity on  
825 all amounts due on monetary judgments not paid within at least thirty (30) days of  
826 the initial judgment.

827 (b) No fines or penalty fees may be assessed against the Tribe, the Office or other Tribal  
828 departments, or employees engaged in their official duties under this law.

829 502.10-4.(d) If, after an reviewing the Indian Preference Office's investigation under  
830 502.10-1, the Office reasonably believes Trial Court determines that there is sufficient  
831 evidence of a genuine and material issue of noncompliance non-compliance, the Trial Court  
832 shall order the Indian Preference Office to take action in accordance with section 502.9-5.  
833 502.9-5. Alleged Violation Has Merit. If the Indian Preference Office determines that the alleged  
834 violation has merit and there is sufficient evidence of a genuine and material issue of non-  
835 compliance, the Indian Preference Office may take action to resolve the complaint.

836 (a) The Indian Preference Office may take any of the following actions to resolve the  
837 complaint:

838 (a1) Attempt to reach an informal or formal resolution of the alleged  
839 noncompliance non-compliance;

840 (A) If a formal resolution is reached, any agreement shall be in writing and  
841 signed by all parties. The issue shall then remain in abeyance for the term  
842 of the contract during which time all parties shall comply with the terms of  
843 the written agreement. ~~Breach of the terms of the written agreement may~~  
844 ~~be a cause of action for litigation before the Tribe's judicial system~~ Trial  
845 Court.

846 (b2) Issue a Notice notice of Noncompliance non-compliance to the entity by  
847 certified mail;

848 (A) The Notice notice shall state the specific violation(s) alleged, the  
849 requirements that must be met to ensure compliance with this law, and shall  
850 provide a reasonable amount of time, not to exceed thirty (30) days, wherein  
851 the entity shall provide evidence that it has taken the steps necessary to  
852 come into compliance.

853 (e3) Place the entity's certification in probationary status for a period not to exceed  
854 six (6) months; or suspend, revoke, or deny renewal of the entity's certification;

855 (A) Once certification is revoked, an entity shall not be eligible to ~~re~~ apply  
856 for re-certification until one (1) year has passed from the effective date of  
857 the revocation.

858 (B) At any time that certification is suspended, revoked, or has lapsed, a  
859 formerly certified entity shall not qualify for Indian preference. ~~Where a~~  
860 ~~certified entity loses certification:~~

861 ~~(C)~~ Where a certified entity loses certification:

862 (i) the contractor may be required to replace that entity with another  
863 certified entity if the work has not begun or performance under a  
864 contract has not commenced, unless replacement is impossible or  
865 would cause undue hardship; or

866 (2ii) the Indian Preference Office may authorize the contractor to  
867 continue to utilize that entity without regard to Indian preference if

868 work has already begun or performance under a contract has  
869 commenced.

870 (d4) Issue a fine;

871 (A) The Indian Preference Office shall be delegated authority to develop a  
872 fine and penalty schedule that may be imposed upon any person or entity  
873 violating provisions of this law. The fine and penalty schedule shall be  
874 adopted by the Oneida Business Committee through resolution.

875 (B) No fines as established or penalties may be assessed against the Nation,  
876 the Indian Preference Office, or other department of the Nation, or  
877 employees engaged in their official duties under 502.10-3 this law.

878 (e5) Re-negotiate a compliance agreement with the contractor to include additional  
879 opportunities for qualified trades workers or certified entities; and/or

880 (f6) Request the appropriate entity withdraw any licensing issued by the  
881 TribeNation.

882 (b) An individual or entity may contest an action taken by the Indian Preference Office by  
883 filing a complaint with the Trial Court within ten (10) business days after the date of  
884 issuance of the Indian Preference Office's decision.

885 502.10-5-9-6. Additional Enforcement Measures. If the Indian Preference Office is unable to  
886 facilitate a satisfactory resolution, and a Notice notice of Noncompliance non-compliance or action  
887 against a certified entity's certification has not resulted in a successful resolution, the Indian  
888 Preference Office may file an action with the Tribe's judicial system Trial Court, seeking  
889 appropriate relief, including but not limited to:

890 (a) An injunction;

891 (b) Specific performance, including but not limited to:

892 (1) reinstatement of a qualified trades worker at the previous wage;

893 (2) immediate removal of employees hired in violation of this law; and/or

894 (3) employment, promotion or additional training for Indian preference-eligible  
895 parties injured by a violation;

896 (c) Payment of back pay, damages, and/or costs associated with the enforcement of an  
897 order issued by the Tribe's judicial system Trial Court, including but not limited to filing  
898 fees, attorney fees, and/or costs incurred by the Indian Preference Office in bringing an  
899 action. Provided that, no money damages may be claimed in any suit against the  
900 TribeNation, the Indian Preference Office or other Tribal departments of the Nation, or  
901 Tribal officials of the Nation or employees engaged in their official duties under this law;  
902 and/or

903 (d) ~~Other~~ Any other action the Tribe's judicial system Trial Court deems lawful, equitable,  
904 and necessary to ensure compliance with this law and to alleviate or remedy any harm  
905 caused by noncompliance non-compliance.

906 502.10-6-9-7. Although relief granted by the Tribe's judicial system under 502.10-5 Trial Court  
907 may benefit an individual qualified trades worker, certified Indian preference entity, or other  
908 individual or entity, neither the Indian Preference Office nor the TribeNation represents those  
909 individuals and/or entities in any action for non-compliance with this law.

910 502.10-7-9-8. Cease-and-Desist Orders. The Oneida Tribal Police are Department is hereby  
911 expressly authorized and directed to enforce such cease-and-desist or related orders as may from  
912 time to time be properly issued by the Tribe's judicial system Trial Court. Such orders shall require  
913 a decree or order to render them enforceable. The Oneida Tribal Police Department shall not be  
914 civilly liable for enforcing such orders so long as the Commission Trial Court signs the order.

915 ~~502.10-8. Appeals.~~

916 ~~(a) Any appeal from an action taken by the Office shall be filed with the Tribe's judicial~~  
917 ~~system within ten (10) business days after the date of issuance of the Office's decision.~~  
918 ~~Any decision not appealed within the required time frame shall become final.~~

919 ~~(b) Except as otherwise stated in this law, a party may appeal orders, rulings and judgments~~  
920 ~~of the Tribe's judicial system in accordance with the applicable rules of appellate~~  
921 ~~procedure.~~

922 502.9-9. Retaliatory Action Prohibited. No entity shall punish, terminate, harass or take any other  
923 adverse personnel or hiring action in retaliation for a party's exercise of Indian preference rights  
924 under this law. However, this section shall not prohibit action that can be reasonably justified as  
925 taken in good faith based on documented employee performance.

926  
927 *End.*

928  
929 Adopted BC-03-27-13-B

930 Amended BC- - - -

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935  
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**Title 5. Business - Chapter 502**  
**Yukwat^nhas Ukwehu=vw# Kayanl^hsla**  
*Laws concerning the hiring of the Oneida People*  
**INDIAN PREFERENCE IN CONTRACTING**

502.1. Purpose and Policy	502.6. Application of Indian Preference to Contracts
502.2. Adoption, Amendment, Conflicts	502.7. Compliance Agreements
502.3. Definitions	502.8. Skills Bank and Qualified Trades Workers
502.4. Jurisdiction	502.9. Investigations and Enforcement
502.5. Certification of Entities	

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**502.1. Purpose and Policy**

502.1-1. *Purpose.* The purpose of this law is to establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation.

502.1-2. *Policy.* It is the policy of the Nation to ensure that Indian preference provisions are applied fairly in all situations and in such a way that reflects the intent of this law; and to undertake reasonable efforts to ensure that all entities that enter into contracts with or on behalf of the Nation utilize the labor force of Indian workers and businesses by applying Indian preference in all aspects of fulfilling that contract, including but not limited to: hiring, training, business opportunities, labor and/or professional services, and the supply of materials.

**502.2. Adoption, Amendment, Conflicts**

502.2-1. This law is adopted by the Oneida Business Committee by Resolution BC-03-27-13-B and amended by resolution BC-\_\_-\_\_-\_\_-\_\_.

502.2-2. 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.

502.2-3. 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.

502.2-4. 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. However, this law specifically supersedes the following:

- (a) BC-04-03-96-A - Indian Preference Policy Rider I;
- (b) BC-05-22-96-A - Technical Amendments to Rider I Policy;
- (c) BC-06-10-98-D - Amendment to Resolution 5-22-96-A;
- (d) BC-07-29-98-B - Indian Preference Law;
- (e) BC-03-27-02-A - Sections 9-14 of the Indian Preference Law; and
- (f) BC-03-26-03-A - Amendment to Indian Preference Law Addendum.

502.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**502.3. Definitions**

502.3-1. 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) "Agent" means one who acts relative to a fiduciary relationship to another; a person authorized to negotiate and/or transact business on behalf of an entity.

- 39 (b) “Bid” means an offer to execute a specified job or jobs within a prescribed time and  
40 not exceeding a proposed amount, and includes both offers that become legally binding  
41 upon acceptance, and nonbinding or informal quotes.
- 42 (c) “Bid shopping” means the practice of divulging a contractor’s or subcontractor’s bid  
43 to other prospective bidders before the award of a contract, in order to secure a lower bid.
- 44 (d) “Broker” means an intermediary; an independent contractor employed to negotiate  
45 business between a buyer and seller for compensation.
- 46 (e) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m.,  
47 excluding holidays recognized by the Nation.
- 48 (f) “Certification” means verification by the Indian Preference Office that an entity  
49 meets all the requirements necessary to qualify for Indian preference in accordance with  
50 this law.
- 51 (g) “Certified entity” means an entity that has received certification as an Indian-owned  
52 business from the Indian Preference Office.
- 53 (h) “Compliance agreement” means a binding agreement, negotiated between the Indian  
54 Preference Office and a contractor identifying specific Indian preference-related  
55 requirements for a project.
- 56 (i) “Construction contract” means any contract issued to build, repair, or remodel  
57 structures, and includes subcontracts and other construction agreements.
- 58 (j) “Contractor” means one who enters into a contract.
- 59 (k) “Core work crew” means the minimum amount of the contractor’s key employees,  
60 who perform a critical function such that an employer would risk likely financial damage  
61 or loss if that task were assigned to a person unfamiliar with and/or untrained in the  
62 employer’s procedures and routines, that are essential to start up and continue work on a  
63 project.
- 64 (l) “Employee” means any person that performs services and/or labor for an employer in  
65 exchange for compensation.
- 66 (m) “Employer” means any entity, except the Nation, that controls and directs an  
67 employee under an express or implied contract of employment and is obligated to pay  
68 salary or wages in compensation.
- 69 (n) “Enterprise” means any internal operation owned and operated by the Nation that  
70 generates revenues through its core business functions, including but not limited to,  
71 Oneida Gaming, Oneida Retail, and Oneida Printing.
- 72 (o) “Entity” means any person, sole proprietor, partnership, corporation, franchise,  
73 governmental body, or any other natural or artificial person or organization. The term is  
74 intended to be as broad and encompassing as possible to ensure this law covers all  
75 employment and contract activities within the jurisdiction of the Nation.
- 76 (p) “Entities of the Nation” means all programs, departments, boards, committees,  
77 commissions and similar business units of the Nation, but shall not mean Tribal  
78 corporations.
- 79 (q) “Front” means a business entity that is strategically structured, financed, operated or  
80 staffed such as to unfairly take advantage of Indian preference as granted under this law.
- 81 (r) “Indian” means an enrolled member of any federally-recognized Indian tribe.
- 82 (s) “Indian-owned business” means an entity which is majority owned and managed by  
83 an Indian.
- 84 (t) “Indian preference” means preference for Indians, regardless of tribal affiliation, in all  
85 aspects of employment and contracting.

86 (u) “Internal service” means any service provided for free or at cost for the Nation and  
87 includes but is not limited to such services as certain types of advocacy or representation,  
88 mail delivery and pick up, grant writing or assistance, tourism initiatives, Human  
89 Resource assistance and technical support.

90 (v) “Joint venture” means a one-time grouping of two (2) or more entities in a business  
91 undertaking.

92 (w) “Lowest responsible bidder” means a bidder who, after any Indian preference  
93 discounts are applied, submits the lowest bid and is considered to be fully responsible and  
94 qualified to perform the work for which the bid is submitted.

95 (x) “Nation” means the Oneida Nation.

96 (y) “Non-construction contract” means any contract other than a construction contract,  
97 and includes subcontracts and other agreements.

98 (z) “Project” means any effort whereby the Nation or an entity of the Nation contracts  
99 for labor and/or goods or services that will support or benefit any aspect of the Nation’s  
100 government, holdings, infrastructure, workplace, economy or community.

101 (aa) “Qualified trades worker” means a skilled worker qualified to perform services for  
102 the trade in which the person is trained, and includes general laborers.

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

106 (cc) “Subcontractor” means a trade contractor, who is awarded a contract for the supply  
107 of services pursuant to a construction agreement, or a junior or secondary contractor who  
108 performs some or all of the prime contractor’s contractual obligations.

109 (dd) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the  
110 judicial system that was established by Oneida General Tribal Council resolution GTC-  
111 01-07-13-B, and then later authorized to administer the judicial authorities and  
112 responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-  
113 17-A.

114 (ee) “Tribal corporation” means a corporation chartered and/or wholly owned by the  
115 Nation pursuant to the Constitution and Bylaws of the Oneida Nation.

#### 117 **502.4. Jurisdiction**

118 502.4-1. The Indian Preference Office shall implement, monitor, and enforce this law and other  
119 applicable laws and policies relating to Indian preference.

120 502.4-2. The Trial Court shall have jurisdiction over all matters related to the interpretation and  
121 enforcement of this law.

122 502.4-3. The Indian Preference Office and Trial Court shall have jurisdiction over all parties to  
123 any contract, subcontract, or compliance agreement to which this law applies, as well as  
124 jurisdiction over all subcontractors, employees, or other entities working with, for, or on behalf  
125 of such a party in fulfilling such contract, subcontract or compliance agreement.

#### 127 **502.5. Certification of Entities**

128 502.5-1. *Criteria for Certification as an Indian-Owned Business.* In order to seek certification  
129 as an Indian-owned business the following criteria shall be met by the applicant entity:

130 (a) There is Indian financial ownership, control and management of at least fifty-one  
131 percent (51%) of the entity. Evidence of both financial ownership and control shall be

132 embodied in the entity's organizational documents, including, but not limited to the  
133 documents of incorporation, stock ownership, or a partnership agreement.

134 (1) *Indian Financial Ownership.* Indian financial ownership is established where  
135 the Nation, members of the Nation and/or other Indians own fifty-one percent  
136 (51%) or more of the assets and equipment, receive fifty-one percent (51%) or  
137 more of distributed net profits, and would receive fifty-one percent (51%) or more  
138 of the entity's assets upon dissolution.

139 (2) *Indian Control.* Indian control is established where the Nation, member of  
140 the Nation and/or other Indian owner(s) maintain a minimum of fifty-one percent  
141 (51%) of voting rights or other controlling decisional authority.

142 (3) *Indian Management.* Indian Management is established where an Indian  
143 owner(s) is directly involved in the entity's management, this can be shown  
144 where:

145 (A) at least one (1) Indian owner is directly involved in the daily  
146 operations of the entity on a full-time basis and in a senior-level position;  
147 or

148 (B) at least one (1) Indian owner is responsible for the oversight of  
149 operations, even though the daily operations are conducted by non-owner  
150 employees.

151 (b) The entity can demonstrate financial responsibility, including but not limited to,  
152 evidence of an adequate line of credit, contributions of sufficient working capital,  
153 applicable required bonding and insurance, materials and/or equipment necessary to  
154 perform applicable work.

155 (c) The entity can provide past and current licensing or certifications, including any  
156 penalties, or other punitive actions or debarments taken by any licensing body within the  
157 past ten (10) years.

158 502.5-2. *Application.* The applicant entity shall submit a completed and signed application to  
159 the Indian Preference Office, along with any documentation proving the entity meets the criteria  
160 for certification of an Indian-owned business.

161 (a) Upon receiving an application, the Indian Preference Office may interview the  
162 applicant and/or request additional information as may be necessary to make a  
163 determination regarding certification.

164 502.5-3. *Certification Determination.* Within thirty (30) days of receiving the application and  
165 any additional requested information, the Indian Preference Office shall inform the applicant of a  
166 determination to:

167 (a) grant the certification;

168 (b) deny the certification, including a full written explanation of the reason for the  
169 denial; or

170 (c) grant probationary certification for a period of up to one (1) year, if so determined by  
171 the Indian Preference Office for reasonable and just cause.

172 (1) During the probationary period, the applicant shall satisfy any conditions  
173 imposed by the Indian Preference Office.

174 (2) The Indian Preference Office shall monitor the activities of the applicant, and  
175 may request and receive such information as necessary to ensure compliance with  
176 this law.

177 (3) The Indian Preference Office shall either grant or deny full certification at the  
178 end of the probationary period, or upon petition by the applicant, whichever  
179 occurs first.

180 502.5-4. Once an applicant entity has been granted certification, the Indian Preference Office  
181 shall mail a certificate to the entity. Granting an entity certification does not convey any  
182 comment regarding the ability of the entity to perform any work nor does it guarantee that an  
183 entity has met all the qualifications to obtain work under any particular contract where Indian  
184 preference may be applied.

185 502.5-5. *Notification Requirements.* A certified entity shall report the following to the Indian  
186 Preference Office within ten (10) business days of such an occurrence:

- 187 (a) changes in the ownership or control status of the entity;  
188 (b) suspension, revocation, lapse or loss of any licensing, certification, insurance,  
189 bonding, or credit lines; and/or  
190 (c) any other changes that could:  
191 (1) affect an entity's eligibility for certification;  
192 (2) affect the financial liability of any entity, contracting party or the Nation;  
193 and/or  
194 (3) alter the status of the qualifications of the entity.

195 502.5-6. *Certification Renewal.* Certification is granted on an annual basis and shall lapse after  
196 one (1) year unless renewed.

- 197 (a) To apply for a renewal certification, each certified entity shall complete and return a  
198 renewal application and annual reporting form so that the Indian Preference Office may  
199 update its records.  
200 (b) Annual renewal notices, applications and reporting forms shall be mailed to each  
201 certified entity at least thirty (30) days prior to the expiration of an entity's certification;  
202 however, the responsibility for renewal is upon the entity.  
203 (c) *Exemption for Tribal Corporations.* Tribal corporations shall be exempt from the  
204 requirement to renew certification on an annual basis. Certification for a Tribal  
205 corporation is granted until such a time that the Indian Preference Office is made aware  
206 that there have been changes that may affect the certification status of a Tribal  
207 corporation in accordance with the notification requirements of section 502.5-5.

208 (1) When a Tribal corporation complies with the notification requirements of  
209 section 502.5-5 the Tribal corporation shall also apply for renewal of its  
210 certification.

211 (A) The Indian Preference Office shall provide the Tribal corporation  
212 with a renewal application and annual reporting form.

213 (B) The Tribal corporation shall return the renewal application and annual  
214 reporting form to the Indian Preference Office ten (10) days.

215 502.5-7. *Open Records.* In accordance with the Nation's laws and policies governing open  
216 records, general, non-proprietary and non-private information provided for the purposes of  
217 acquiring certification shall be considered open records and available for public inspection.  
218 Provided that, all information given for purposes of receiving certification, including financial  
219 information, is subject to internal audit of the Nation.

220 502.5-8. *Joint Ventures.* All joint ventures seeking certification as an Indian-owned business  
221 shall submit documentation of the business arrangements of the joint venture in addition to the  
222 required documentation for certification.

223 (a) Certification for a joint venture shall be issued on a project specific basis.

224 502.5-9. *Brokers, Agents and Franchises.*

225 (a) *Brokers.* Brokers shall be certified as an Indian-owned business only if they are  
226 dealers who own, operate or maintain a store, warehouse or other establishment in which  
227 the commodities being supplied are bought, kept in stock and sold to the public in the  
228 usual course of business; provided that this requirement shall not apply where the  
229 applicant demonstrates that it is not customary and usual in the area of the trade in  
230 question for a broker to maintain an establishment and to keep commodities in stock.

231 (1) To qualify as an Indian-owned business, the broker shall provide conclusive  
232 evidence that the broker is an independent contractor and not an agent of a non-  
233 Indian owned business.

234 (2) The broker shall also provide proof that he owes no fiduciary responsibility  
235 nor has a fixed or permanent relationship to any one company. A broker shall  
236 hold himself or herself out for employment to the public generally and that the  
237 employment is not that of being a special agent for a single client.

238 (b) *Agents.* Agents who are employees of a non-Indian-owned business or who merely  
239 represent a company, such as an insurance agent or real estate agent for a non-Indian-  
240 owned business, shall not be certified as an Indian-owned business.

241 (c) *Franchises.* A franchise may be certified as an Indian-owned business if the  
242 franchisee does not pay the franchisor a share or percentage of revenue or profits, but  
243 only compensates the franchisor through licensing, royalty and franchise fees as set out  
244 by contract, and/or for services provided, such as training and advising.

245 502.5-10. *Fronts are Prohibited.* Entities shall be disqualified from certification as an Indian-  
246 owned business in all situations where the entity operates as a front in order to unfairly take  
247 advantage of Indian preference granted under this law to Indian-owned businesses.

248 (a) The Indian Preference Office shall not certify entities that operate solely as fronts.

249 (b) No entity shall manipulate its business structure or misrepresent the roles of Indian  
250 individuals or entities in such a way as to become eligible for Indian preference in a  
251 manner inconsistent with the purpose and intent of this law.

252 (c) Examples of fronts include but are not limited to:

253 (1) Entities that represent that they are exercising management control of a  
254 project in order to qualify for Indian preference when in fact such management  
255 control is exercised by a non-Indian entity;

256 (2) Entities where Indians have senior management titles without the correlating  
257 responsibilities, control, or knowledge of operations; where the entity only  
258 qualifies for certification because an Indian holds that senior management role;

259 (3) Entities, not including legitimate brokers, that derive profit only by providing  
260 goods or services at an increased cost, where such goods or services could be  
261 acquired directly on the open market and/or from the entity's source without  
262 paying a marked-up cost; and/or

263 (4) Any other situation where the Indian Preference Office determines that the  
264 application of Indian preference would in fact predominantly or substantially  
265 benefit non-Indians or non-Indian-owned businesses; or where Indians or Indian-  
266 owned businesses only benefit by assisting the non-Indian or non-Indian-owned  
267 business with receiving the contract.  
268

269 **502.6. Application of Indian Preference to Contracts**

270 502.6-1. *Application of the Law.* Except where prohibited or limited by law or grant funding  
271 requirements, this law shall apply to all contracts over three thousand dollars (\$3,000) that meet  
272 the requirements of (a) and/or (b) below:

273 (a) This law shall apply to:

274 (1) all contracts, subcontracts, and compliance agreements to which the Nation is  
275 a party, and all contracts, subcontracts and compliance agreements that are  
276 entered into on behalf of, or for the benefit of the Nation, whereby goods and  
277 services are provided on or near the Reservation; and

278 (2) all subcontractors, employees, or other entities working with, for, on behalf of  
279 a party to a contract, subcontract or compliance agreement as identified in (1), in  
280 fulfilling such contract, subcontract, or compliance agreement.

281 (b) *Tribal Corporations.* This law shall apply to Tribal corporations to the extent such  
282 corporations enter into contracts with the Nation.

283 502.6-2. *Non-Applicability of the Law.*

284 (a) *Indian Preference in Hiring of Employees of the Nation.* The standards set out in this  
285 law shall not apply to preference as applicable to employees hired through the Nation's  
286 Human Resources Department or pursuant to an employment contract.

287 (b) *Internal Services and Enterprises.* The application of Indian preference shall be  
288 superseded in specific situations in accordance with the following:

289 (1) The Nation shall exclusively utilize internal services and enterprises  
290 whenever an internal service of the Nation or enterprise could or does provide the  
291 necessary goods and services in the ordinary course of business.

292 (2) If an internal service or enterprise is unable to fulfill some or all of the  
293 requirements of a contract, then the provisions of this law shall apply to any  
294 outsourcing conducted by the internal service or enterprise.

295 502.6-3. *Contract Specifications Review.* Prior to the posting or announcement of a contract for  
296 any project of the Nation, the specifications for such project shall be submitted to the Indian  
297 Preference Office.

298 (a) Within five (5) business days of receiving the specifications of the project the Indian  
299 Preference Office shall, with experts identified from other entities of the Nation, review  
300 the specifications, including bidding requirements, to ensure that there are no  
301 unnecessary and/or unjustifiable restrictions that may:

302 (1) preclude certified entities from bidding or being eligible to fulfill the contract  
303 or subcontract;

304 (2) disqualify qualified trades workers from employment opportunities created  
305 under such contract or subcontract; and/or

306 (3) create conditions that would make bidding, compliance, or employment  
307 unduly burdensome for qualified trades workers or certified entities.

308 (b) *Unbundling a Contract.* The Indian Preference Office may require that specific  
309 portions of a contract be outsourced to internal services, enterprises, certified entities  
310 and/or qualified trades workers, even if a single entity is capable of providing all of the  
311 goods and/or services required under the contract. Provided that, such outsourcing shall  
312 not cause undue hardship, unnecessary delay or additional expenses in completing the  
313 project.

314 502.6-4. In soliciting bids, the entity offering the contract shall indicate that Indian preference  
315 shall be applied in accordance with this law.

316 502.6-5. *Cooperative Agreements.* Within the scope of authority defined in this law, the Indian  
317 Preference Office may enter into cooperative agreements with federal and state agencies, subject  
318 to the approval of the Oneida Business Committee.

319 502.6-6. *Cultural Setting of Contracts.* All parties to a contract to which this law applies shall  
320 recognize that any operations are taking place within a unique cultural setting within the Nation.  
321 Every contractor shall make reasonable accommodations to the customs and beliefs of all Indian  
322 workers so as to promote rather than hinder the employment of Indians.

323 (a) If an Indian worker wishes to attend any traditional cultural activities or ceremonies,  
324 the worker shall provide reasonable advance notice to the contractor in requesting such  
325 time off.

326 (b) Where attendance at traditional cultural activities or ceremonies requires a worker to  
327 take time off from a regularly scheduled shift or workday, such time may be paid or  
328 unpaid, at the discretion of the employer or as established by contract or compliance  
329 agreement.

330 502.6-7. *Employees of the Nation.* In the execution of employment duties and in accordance  
331 with the Nation's laws and policies governing employment, employees of the Nation shall follow  
332 this law in following contracting and bidding procedures for the Nation or entities of the Nation.

333 (a) The Indian Preference Office shall establish a training process for entities of the  
334 Nation that do contracting or bidding as a regular function of their duties.

335 502.6-8. *Contracts and Attachments.* All contracts this law applies to shall:

336 (a) Stipulate that compliance with this law is required, and that violation of any portion  
337 of this law or applicable compliance agreement may be deemed a material and substantial  
338 breach of contract, enforceable:

339 (1) As set forth by the terms of the original contract for a breach of contract; and

340 (2) In accordance with the provisions of this law.

341 (b) Reference this law, and shall contain an acknowledgment clause, whereby the  
342 contractor shall agree to the following:

343 (1) The contractor has read and understands the provisions of this law;

344 (2) The contractor understands how this law affects the contractor's rights and  
345 responsibilities; and

346 (3) The contractor agrees that the provisions of this law shall govern the  
347 performance of the parties.

348 (c) Reference the Nation's laws governing vendor licensing, and provide the contracting  
349 parties with directions on how to access that document.

350 502.6-9. *Applying Indian Preference to Non-Construction Contracts.* Where more than one (1)  
351 bid is received for a non-construction contract, an Indian preference percentage discount of five  
352 percent (5%) shall be applied to all bids received from certified Indian-owned businesses.

353 502.6-10. *Applying Indian Preference to Construction Contracts.* Where more than one (1) bid  
354 is received for a construction contract, the discount applied to bids from certified Indian-owned  
355 businesses shall be:

356 (a) ten percent (10%) of the first fifty thousand dollar (\$50,000) segment of a bid;

357 (b) plus nine percent (9%) of the next fifty thousand dollar (\$50,000) segment of a bid;

358 (c) plus eight percent (8%) of the next one hundred thousand dollar (\$100,000) segment  
359 of a bid;

360 (d) plus seven percent (7%) of the next one hundred thousand dollar (\$100,000) segment  
361 of a bid;

- 362 (e) plus six percent (6%) of the next one hundred thousand dollar (\$100,000) segment of  
363 a bid;  
364 (f) plus five percent (5%) of the next one hundred thousand dollar (\$100,000) segment of  
365 a bid;  
366 (g) plus four percent (4%) of the next five hundred thousand dollar (\$500,000) segment  
367 of a bid;  
368 (h) plus two percent (2%) of the next one million dollar (\$1,000,000) segment of a bid;  
369 and  
370 (i) plus one percent (1%) of any amount over two million dollars (\$2,000,000).

371 502.6-11. *Awarding the Contract.* After the appropriate discount has been subtracted from  
372 preferred bids, the following shall be used to determine which bidder is awarded the contract:

- 373 (a) If a bid from a certified entity is less than the total of the apparent low bid after  
374 Indian preference is applied, then the contract shall be awarded to the certified entity.  
375 (b) If none of the certified entity bids are less than the total of the apparent low bid after  
376 the Indian preference discount is applied, the contract shall be awarded to the lowest  
377 responsible bidder.  
378 (c) Bid shopping is prohibited.

379 502.6-12. *Monitoring the Contract.* Once a contract is awarded to an entity, the Indian  
380 Preference Office shall perform the following monitoring duties:

- 381 (a) Perform on-site inspections to verify compliance with this law;  
382 (b) Require and review weekly workforce reports;  
383 (c) Provide training to assist certified entities with understanding their rights and abilities  
384 under this law; and  
385 (d) Receive feedback from contractors regarding the performance of any certified entity  
386 or qualified trades worker.

387 502.6-13. In the event that a dispute may arise regarding this law or a compliance agreement, all  
388 affected parties shall cooperate in good faith with the Indian Preference Office toward a mutually  
389 satisfactory resolution.

390

### 391 **502.7. Compliance Agreements**

392 502.7-1. *Compliance Agreements.* Once a bid has been accepted, but before work commences  
393 on any portion of a contract or subcontract, each contractor shall meet with the Indian Preference  
394 Office to negotiate and execute a compliance agreement. All contractors and subcontractors shall  
395 comply with the terms of any compliance agreement executed in accordance with this law.

396 502.7-2. *Contents of a Compliance Agreement.* A compliance agreement shall include, but is  
397 not limited to, the following information:

- 398 (a) Numerical hiring goals and timetables that specify the minimum number of Indians  
399 that must be utilized per contract dollar; and  
400 (b) Compensation of qualified trades workers including wage scale, salaries and other  
401 benefits. Compensation shall be determined based on the prevailing wage scales of the  
402 Nation and/or federal or state governments.

403 502.7-3. *Term of a Compliance Agreement.* Where a contract lasts for more than one (1) year,  
404 compliance agreements shall be reviewed annually and revised as necessary to reflect changes in  
405 hiring plans or the number of certified entities available.

406 502.7-4. Unless prior written consent of the Indian Preference Office has been received, a  
407 contractor shall not deviate from an executed compliance agreement by adding or removing any

408 subcontracts, subcontractors or positions filled by qualified trades workers or certified entities, or  
409 by filling a vacancy with a non-qualified trades worker or a non-certified entity.  
410 502.7-5. *Limited Waivers*. The Indian Preference Office shall establish standard operating  
411 procedures to provide for emergency conditions and situations whereby a limited waiver of  
412 compliance may be authorized, in situations where a contractor has made a significant and  
413 documented good faith effort to achieve compliance, or can demonstrate that compliance is not  
414 practical for reasons other than pricing.

415

#### 416 **502.8. Skills Bank and Qualified Trades Workers**

417 502.8-1. The Indian Preference Office shall establish and administer a Skills Bank to assist with  
418 providing Indians and first-generation descendants with employment opportunities. The goal of  
419 the Nation is to achieve one hundred percent (100%) participation of qualified trades workers on  
420 projects.

421 (a) The Indian Preference Office shall identify, initiate, and sponsor training, internship,  
422 and apprenticeship opportunities necessary in order to increase the pool of qualified  
423 trades workers and to assist Indians in becoming qualified in the various job  
424 classifications used by employers.

425 (b) The Indian Preference Office shall cooperate with other programs of the Nation to  
426 provide counseling and support to assist Indians in retaining employment.

427 502.8-2. The Skills Bank shall be the exclusive referral source under this law, representing the  
428 official compilation of qualified trades workers eligible for Indian preference in accordance with  
429 this law. Skills Bank listings shall include the names and qualifications of the qualified trades  
430 workers. The Indian Preference Office shall regularly update the Skills Bank listings.

431 502.8-3. Entities required to fill positions in accordance with this law and/or a compliance  
432 agreement under section 502.7, shall contact the Indian Preference Office prior to the  
433 commencement of any work.

434 (a) Except where prohibited by law or grant funding requirements, the entity shall hire  
435 qualified trades workers from the Skills Bank in the following order of priority:

- 436 (1) Members of the Nation;  
437 (2) First generation descendants of the Nation; and then  
438 (3) Members of other federally-recognized Indian tribes.

439 (b) If a law or grant funding requirement prohibits the hiring of qualified trades workers  
440 in accordance with section 502.8-3(a), qualified trades workers shall be hired in  
441 accordance with the requirements of said law or grant.

442 (c) If the necessary labor cannot be acquired from the Skills Bank, then a limited waiver  
443 may be granted by the Indian Preference Office.

444 502.8-4. In order to be added to the Skills Bank, an applicant shall submit a completed  
445 application and documentation of the following:

446 (a) proof of enrollment or proof that the individual is a first-generation descendant of the  
447 Nation;

448 (b) education; including degrees, diplomas, apprenticeships, internships or continuing  
449 education training related to the field;

450 (c) proof of a driver's license, including any endorsements, if applicable;

451 (d) if the worker is seeking to be listed as a qualified trades worker for a specific trade,  
452 then the worker shall provide specific information related to that trade, including:

- 453 (1) past and current licensing;  
454 (2) credentials and certifications; and

455 (3) information related to penalties or punitive actions taken by any licensing  
456 body within the past ten (10) years.

457 502.8-5. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition  
458 that he or she is eligible to receive Indian preference in accordance with this law. A qualified  
459 trades worker shall be qualified for Indian preference for employment for a particular skill or  
460 trade if he or she meets the minimum qualifications for a particular skill or trade.

461 502.8-6. *Wage and Hour Standards, Layoffs and Terminations, Call-Backs, Promotions,*  
462 *Unions.*

463 (a) Every contractor utilizing qualified trades workers shall ensure that such workers  
464 receive equal compensation, including overtime pay, and shall have equal work  
465 standards, that are provided to other employees. Contractors that hire qualified trades  
466 workers in order to comply with this law, but do not utilize those workers in a manner  
467 similar to other employees are not maintaining equal work standards.

468 (b) In making any layoffs or terminations, all contractors shall notify the Indian  
469 Preference Office prior to laying off or terminating a qualified trades worker.

470 (1) No qualified trades worker with at least minimum qualifications for the job  
471 classification shall be terminated or laid off so long as a non-Indian employee in  
472 the same craft with similar skills remains employed. If the contractor lays off by  
473 crews, qualified trades workers shall be transferred to any crew that will be  
474 retained, as long as there are non-Indian employees in the same craft employed  
475 elsewhere under the same contract.

476 (2) No contractor shall terminate or lay off any qualified trades worker pursuant  
477 to this law, without documented good cause. The contractor shall promptly  
478 replace the qualified trades worker with another qualified trades worker.

479 (3) When a contractor begins to call back laid-off employees, that contractor shall  
480 notify the Indian Preference Office and shall call back qualified trades workers  
481 before bringing back other employees.

482 (c) Qualified trades workers and certified entities shall not be required to affiliate with  
483 organized labor for employment under this law. The mere absence of affiliation with  
484 organized labor shall not disqualify a qualified trades worker from employment or  
485 contracting where that worker is otherwise qualified. A qualified trades worker shall not  
486 be guaranteed to receive the benefits of a union contract, other than wage scales, unless  
487 the worker elects to join the union.

488 502.8-7. *Construction Contracts: Core Work Crew.* As a condition of a construction contract  
489 award, the contractor shall identify its core work crew, including those core work crew  
490 employees utilized by known subcontractors. If such employees are approved by the Indian  
491 Preference Office, they may be employed on the project without regard to Indian preference.  
492 Provided that, core work crew employees shall at no time displace qualified trades workers  
493 and/or potential qualified trades workers by performing work outside their trade or skill.

494 (a) For the purposes of employment on a project, the Indian Preference Office and the  
495 contractor, and any subcontractor, shall negotiate the designated members of the  
496 contractor's core work crew.

497 (b) Any contractor that fills vacant positions immediately prior to undertaking work  
498 pursuant to a contract to which this section applies shall provide evidence acceptable to  
499 the Indian Preference Office that such actions were not intended to circumvent the  
500 provisions of this law.

501 (c) A contractor shall not use extraneous qualification criteria or other personnel  
502 requirements that prevent qualified trades workers from being employed, unless the  
503 contractor is able to demonstrate that such criteria or requirements are required by  
504 regulatory compliance.  
505

506 **502.9. Investigations and Enforcement**

507 502.9-1. *Complaints.* An individual or entity may file a written complaint with the Indian  
508 Preference Office if aggrieved by an act of non-compliance with:

- 509 (a) this law;  
510 (b) a compliance agreement; and/or  
511 (c) any standard operating procedure issued pursuant to this law.

512 502.9-2. *Contents of the Complaint.* A complaint shall include information that will reasonably  
513 enable the Indian Preference Office to understand the general nature of the complaint and carry  
514 out an investigation, such as evidence of any discriminatory practices, alleged misconduct, or  
515 other non-compliance.

516 502.9-3. *Complaint Investigation.* Upon receipt of a complaint or after witnessing non-  
517 compliance with this law while conducting its monitoring duties, the Indian Preference Office  
518 shall conduct an investigation.

519 (a) In conducting an investigation to determine if the complaint has merit, the Indian  
520 Preference Office shall be authorized to:

- 521 (1) inspect and copy all relevant records;  
522 (2) interview and speak to workers; and  
523 (3) conduct inspections of the job site.

524 (b) Information collected during an Indian Preference Office investigation shall be kept  
525 confidential unless disclosure is necessary or required as part of any judicial or  
526 administrative proceeding or in accordance with a law of the Nation.

527 (1) Any report or recommendation prepared by the Indian Preference Office for  
528 use at a hearing shall be promptly released to the complainant and alleged  
529 violator.

530 (c) If the Indian Preference Office receives a complaint or information that an entity is  
531 operating in a manner that is harmful to the health, safety, or welfare of the Nation or  
532 community, the Indian Preference Office shall immediately refer the complaint or  
533 information to the appropriate department or authority of the Nation for investigation.

534 (1) The referral of a complaint does not prohibit the Indian Preference Office  
535 from its independent investigation of such complaint or information for purposes  
536 of ensuring compliance with this law.

537 (2) The Indian Preference Office shall have the authority to review the results of  
538 any other investigation conducted by another department or authority of the  
539 Nation in accordance with the Nation's laws and policies governing open records.

540 502.9-4. *Alleged Violation Has No Merit.* If the Indian Preference Office determines that the  
541 alleged violation has no merit, the Indian Preference Office shall notify all parties in writing that  
542 the complaint shall be closed.

543 (a) The complainant may file a complaint to contest this decision with the Nation's Trial  
544 Court within ten (10) business days after issuance of such notice.

545 (b) The Trial Court shall then conduct an in-camera inspection of the investigation  
546 completed by the Indian Preference Office. During an in-camera inspection only a judge

547 may review the information obtained by the Indian Preference Office during the  
548 investigation as this information is confidential and disclosure is not necessary.

549 (c) If after reviewing the Indian Preference Office's investigation, the Trial Court  
550 determines the alleged violation has no merit, the Trial Court shall notify all parties in  
551 writing that the matter will be dismissed and no further appeals of the matter will be  
552 accepted.

553 (d) If after reviewing the Indian Preference Office's investigation the Trial Court  
554 determines that there is sufficient evidence of a genuine and material issue of non-  
555 compliance, the Trial Court shall order the Indian Preference Office to take action in  
556 accordance with section 502.9-5.

557 502.9-5. *Alleged Violation Has Merit.* If the Indian Preference Office determines that the  
558 alleged violation has merit and there is sufficient evidence of a genuine and material issue of  
559 non-compliance, the Indian Preference Office may take action to resolve the complaint.

560 (a) The Indian Preference Office may take any of the following actions to resolve the  
561 complaint:

562 (1) Attempt to reach an informal or formal resolution of the alleged non-  
563 compliance;

564 (A) If a formal resolution is reached, any agreement shall be in writing  
565 and signed by all parties. The issue shall then remain in abeyance for the  
566 term of the contract during which time all parties shall comply with the  
567 terms of the written agreement. Breach of the terms of the written  
568 agreement may be a cause of action for litigation before the Trial Court.

569 (2) Issue a notice of non-compliance to the entity by certified mail;

570 (A) The notice shall state the specific violation(s) alleged, the  
571 requirements that must be met to ensure compliance with this law, and  
572 shall provide a reasonable amount of time, not to exceed thirty (30) days,  
573 wherein the entity shall provide evidence that it has taken the steps  
574 necessary to come into compliance.

575 (3) Place the entity's certification in probationary status for a period not to  
576 exceed six (6) months; or suspend, revoke, or deny renewal of the entity's  
577 certification;

578 (A) Once certification is revoked, an entity shall not be eligible to apply  
579 for re-certification until one (1) year has passed from the effective date of  
580 the revocation.

581 (B) At any time that certification is suspended, revoked, or has lapsed, a  
582 formerly certified entity shall not qualify for Indian preference.

583 (C) Where a certified entity loses certification:

584 (i) the contractor may be required to replace that entity with  
585 another certified entity if the work has not begun or performance  
586 under a contract has not commenced, unless replacement is  
587 impossible or would cause undue hardship; or

588 (ii) the Indian Preference Office may authorize the contractor to  
589 continue to utilize that entity without regard to Indian preference if  
590 work has already begun or performance under a contract has  
591 commenced.

592 (4) Issue a fine;

593 (A) The Indian Preference Office shall be delegated authority to develop a  
594 fine and penalty schedule that may be imposed upon any person or entity  
595 violating provisions of this law. The fine and penalty schedule shall be  
596 adopted by the Oneida Business Committee through resolution.

597 (B) No fines or penalties may be assessed against the Nation, the Indian  
598 Preference Office, or other department of the Nation, or employees  
599 engaged in their official duties under this law.

600 (5) Re-negotiate a compliance agreement with the contractor to include  
601 additional opportunities for qualified trades workers or certified entities; and/or

602 (6) Request the appropriate entity withdraw any licensing issued by the Nation.

603 (b) An individual or entity may contest an action taken by the Indian Preference Office  
604 by filing a complaint with the Trial Court within ten (10) business days after the date of  
605 issuance of the Indian Preference Office's decision.

606 502.9-6. *Additional Enforcement Measures.* If the Indian Preference Office is unable to  
607 facilitate a satisfactory resolution, and a notice of non-compliance or action against a certified  
608 entity's certification has not resulted in a successful resolution, the Indian Preference Office may  
609 file an action with the Trial Court, seeking appropriate relief, including but not limited to:

610 (a) An injunction;

611 (b) Specific performance, including but not limited to:

612 (1) reinstatement of a qualified trades worker at the previous wage;

613 (2) immediate removal of employees hired in violation of this law; and/or

614 (3) employment, promotion or additional training for Indian preference-eligible  
615 parties injured by a violation;

616 (c) Payment of back pay, damages, and/or costs associated with the enforcement of an  
617 order issued by the Trial Court, including but not limited to filing fees, attorney fees,  
618 and/or costs incurred by the Indian Preference Office in bringing an action. Provided that,  
619 no money damages may be claimed in any suit against the Nation, the Indian Preference  
620 Office or other departments of the Nation, or officials of the Nation or employees  
621 engaged in their official duties under this law; and/or

622 (d) Any other action the Trial Court deems lawful, equitable, and necessary to ensure  
623 compliance with this law and to alleviate or remedy any harm caused by non-compliance.

624 502.9-7. Although relief granted by the Trial Court may benefit an individual qualified trades  
625 worker, certified Indian preference entity, or other individual or entity, neither the Indian  
626 Preference Office nor the Nation represents those individuals and/or entities in any action for  
627 non-compliance with this law.

628 502.9-8. *Cease-and-Desist Orders.* The Oneida Police Department is hereby expressly  
629 authorized and directed to enforce such cease-and-desist or related orders as may from time to  
630 time be properly issued by the Trial Court. Such orders shall require a decree or order to render  
631 them enforceable. The Oneida Police Department shall not be civilly liable for enforcing such  
632 orders so long as the Trial Court signs the order.

633 502.9-9. *Retaliatory Action Prohibited.* No entity shall punish, terminate, harass or take any  
634 other adverse personnel or hiring action in retaliation for a party's exercise of Indian preference  
635 rights under this law. However, this section shall not prohibit action that can be reasonably  
636 justified as taken in good faith based on documented employee performance.

637  
638 *End.*

639

640 Adopted BC-03-27-13-B  
641 Amended BC-\_\_-\_\_-\_\_-\_\_  
642  
643  
644  
645  
646  
647

# FINANCE ADMINISTRATION

## Fiscal Impact Statement



# MEMORANDUM

TO: Larry Barton, Chief Financial Officer  
 RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

FROM: Terry Cornelius, Chief Financial Analyst

DATE: March 4, 2020

RE: **Fiscal Impact of the Amendments to the Indian Preference in Contracting Law**

## I. Estimated Fiscal Impact Summary

<b>Law:</b> Amendments to the Indian Preference in Contracting Law		Draft 2
<b>Implementing Agency</b>	Legislative Operating Committee	
<b>Estimated time to comply</b>	30 days, for Indian Preference to develop reporting format	
<b>Estimated Impact</b>	<b>Current Fiscal Year</b>	<b>10 Year Estimate</b>
<b>Total Estimated Fiscal Impact</b>	<b>Indeterminate</b>	<b>Indeterminate</b>

## II. Background

This Law was adopted by the Oneida Business Committee by resolution BC-07-29-98-B as the Indian Preference Law, which was amended by resolutions BC-03-27-02-A and BC-03-26-03-A, before being adopted in its present form of the Indian Preference in Contracting Law by Oneida Business Committee Resolution BC-03-27-13-B. A public meeting was held on December 19, 2019. The amendments to the legislation are the following:

- The definition of a tribal corporation is updated.
  - Now includes any corporation chartered and/or wholly owned by the Nation.
- The threshold to invoke Indian Preference is raised from \$1,500.00 to \$3,000.00.
  - This is in keeping with Accounting Department Policies.
- Joint Ventures are now permitted to qualify for Indian Preference.
- Tribal corporations no longer have to submit certification renewal application every year.
- A new timeline is set for Indian Preference Office to review contracts.
- The Indian Preference Office will be granted authority to develop a fine and penalty schedule for violations of this law.

- This is to be approved later by the Oneida Business Committee via a BC Resolution.

### **III. Methodology and Assumptions**

A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.

Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The analysis was completed based on the information provided as of the date of this memo.

### **III. Executive Summary of Findings**

According to Patrick Stensloff, the Director of Purchasing, the portions of the Amendments to the Law which pertain to monetizing Indian Preference do not have a material direct fiscal impact. The document maintains a five percent ( 5%) discount to be provided for certified Indian owned businesses for non-construction contracts. For construction contracts, the Amendment maintains that same laddered approach to Indian Preference discounts as the version which was approved with Business Committee Resolution BC-03-27-13-B.

There is a small change in that the threshold before Indian Preference rules kick in is raised from a floor of \$1,500.00 to a new floor of \$3,000.00. This level is in keeping with other Central Accounting practices and will have a positive impact for the Nation by lowering our expenses for small contracts. We asked both the Purchasing Department and the Engineering Department regarding the quantification of this benefit. Both indicated there are no reports tracked which would be able to demonstrate the number of construction contracts between \$1,500.00 and \$3,000.00 nor the extra amounts paid by the Nation to certified Indian owned businesses in such an instance. The Engineering Department indicated there was not enough staff time available to build such a report.

Another change in the Amendment is establishing that the Indian Preference Office may develop a fine and penalty schedule, to be approved by the Oneida Business Committee. This could serve to lessen non-compliance with contracts on behalf of chosen vendors. It is, however, difficult to predict a dollar amount of impact of a fine and penalty schedule.

Indian Preference Office has requested 30 days after approval to be in compliance. The Office must draft a Renewal Application and an Annual Reporting format.

### **III. Financial Impact**

The Fiscal Impact of implementing this legislation is indeterminate due to the inability to obtain reporting of small dollar contracts under \$3,000.00 wherein Indian Preference was applied.

Of concern is that this proposed Amendment, and the existing Law, seems to hinge awarding contracts on price, alone. Accepting the lowest bid in contracting does not always render a level of acceptable quality in the work performed. Much can be gained by measuring the experience of the vendors in the type of work requested. Deciding to award solely based upon lowest bidders could lead to failures and rework, thereby resulting in an increase of overall project costs.

#### **IV. Recommendation**

Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of this legislation, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.

# Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

## BC Resolution # \_\_\_\_\_ Indian Preference in Contracting Law Fine and Penalty Schedule

1  
2  
3 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe  
4 recognized by the laws of the United States of America; and  
5

6 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and  
7

8 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,  
9 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and  
10

11 **WHEREAS,** the Indian Preference in Contracting law ("the Law") was adopted by the Oneida Business  
12 Committee through resolution BC-03-27-13-B; and then amended by resolutions BC-\_\_-  
13 \_\_-\_\_-\_\_; and  
14

15 **WHEREAS,** the purpose of the Law is to establish an Indian Preference Office and increase economic  
16 benefits for the Nation and members of the Nation by providing for the maximum utilization  
17 of Indian workers and businesses on projects of the Nation which occur on or near the  
18 Reservation; and  
19

20 **WHEREAS,** the Law allows the Indian Preference Office to take action to resolve a complaint if the  
21 Indian Preference Office determines that an alleged violation has merit and there is  
22 sufficient evidence of a genuine and material issue of non-compliance; and  
23

24 **WHEREAS,** the actions the Indian Preference Office is delegated the authority to take include an  
25 informal or formal resolution of the alleged noncompliance, a notice of noncompliance by  
26 certified mail, placing the entity's Indian preference certification in probationary status,  
27 suspension, denial, or revocation, of the entity's Indian preference certification, issuance  
28 of fines, renegotiation of compliance agreement, and a request for withdrawal of licensing  
29 issued by the Nation; and  
30

31 **WHEREAS,** the Law delegates authority to the Indian Preference Office to develop a fine and penalty  
32 schedule that may be imposed upon any person or entity violating provisions of the Law;  
33 and  
34

35 **WHEREAS,** the fine and penalty schedule is required to be adopted by the Oneida Business Committee  
36 through resolution; and  
37

38 **NOW THEREFORE BE IT RESOLVED,** that by a finding by the Indian Preference Office that an alleged  
39 violation has merit and there is sufficient evidence of a genuine and material issue of non-compliance  
40 section 502.9-5(a) of the Law allows the Indian Preference Office to take any of the following action against  
41 an entity:

- 42     ▪ Attempt to reach an informal or formal resolution of the alleged non-compliance;
- 43     ▪ Issue a notice of non-compliance to the entity by certified mail;

BC Resolution # \_\_\_\_\_  
**Indian Preference in Contracting Law Fine and Penalty Schedule**  
 Page 2 of 3

- 44       ▪ Place the entity's certification in probationary status for a period not to exceed six (6) months; or  
 45       ▪ suspend, revoke, or deny renewal of the entity's certification;  
 46       ▪ Issue a fine;  
 47       ▪ Re-negotiate a compliance agreement with the contractor to include additional opportunities for  
 48       qualified trades workers or certified entities; and/or  
 49       ▪ Request the appropriate entity withdraw any licensing issued by the Nation.  
 50

51 **BE IT FURTHER RESOLVED**, the Indian Preference Office hereby sets forth the following fine schedule  
 52 to be used if it is determined that a fine is the appropriate action to take against an entity to resolve a  
 53 complaint:  
 54

<b>FINE SCHEDULE</b>				
<b>Violation</b>	<b>Reference</b>	<b>1<sup>st</sup> Offense</b>	<b>2<sup>nd</sup> Offense</b>	<b>3<sup>rd</sup> Offense and Up</b>
Beginning work prior to completing negotiations of the required compliance agreement	502.7-1	\$100	\$200	\$400
Failure to comply with the terms of any compliance agreement executed in accordance to this law	502.7-1 502.7-4	\$100	\$200	\$400
Failure to submit the qualified trades worker employee's work evaluation as required in the compliance agreement	502.7-1	\$100	\$200	\$400
Failure to submit certified weekly payroll and manpower report as required in the compliance agreement	502.7-1	\$100	\$200	\$400
Failure to hire qualified trades workers from the Skills Bank in accordance with the order of priority	502.8-3(a)	\$100	\$200	\$400
Failure to provide equal compensation and/or maintain equal work standards for qualified trades workers	502.8-6(a)	\$100	\$200	\$400
Failure to notify the Indian Preference Office of any layoffs or terminations of a qualified trades worker	502.8-6(b)	\$100	\$200	\$400
Termination of a qualified trades worker	502.8-6(b)(2)	\$100	\$200	\$400

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**Indian Preference in Contracting Law Fine and Penalty Schedule**  
 Page 3 of 3

without documented good cause				
Failure to notify Indian Preference Office of intent to call back laid off employees, and/or failure to call back qualified trades workers before other employees	502.8-6(b)(3)	\$100	\$200	\$400
Use of extraneous qualification criteria or other personnel requirements to prevent qualified trades workers from being employed	502.8-7(c)	\$100	\$200	\$400
Breach of contract due to violation of this law or compliance agreement	502.6-8	\$250	\$500	\$1,000
Non-compliance with contract or compliance agreement resulting in harm to the health, safety or welfare of the Nation and/or the community	502.6-8 and 502.7-1	\$1,500	\$3,000	\$6,000

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**BE IT FURTHER RESOLVED**, that a separate offense shall be deemed committed on each day during which a violation occurs or continues.

**BE IT FURTHER RESOLVED**, that all fines are required to be paid to the Indian Preference Office within thirty (30) days from the date of issuance.

**BE IT FURTHER RESOLVED**, failure to pay any fines issued within thirty (30) days from the date of issuance shall result in a late penalty of ten dollars (\$10) per day and may result in the Indian Preference Office suspending the violating contractor from the project with reinstatement available upon payment in full of all fines currently due.

**BE IT FURTHER RESOLVED**, any money received from fines collected for violations of this Law shall be contributed to the General Fund.

**BE IT FINALLY RESOLVED**, the Oneida Business Committee hereby adopts this resolution which shall become effective on May 8, 2020.



## Statement of Effect

### *Indian Preference in Contracting Law Fine and Penalty Schedule*

#### *Summary*

Through this resolution the Oneida Business Committee adopts a fine schedule for violations of the Indian Preference in Contracting law.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*

*Date: March 13, 2020*

#### *Analysis by the Legislative Reference Office*

The Indian Preference in Contracting law (“the Law”) was adopted by the Oneida Business Committee for the purpose of establishing an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation. [5 O.C. 502.1-1].

The Law allows the Indian Preference Office to take action to resolve a complaint if the Indian Preference Office determines that an alleged violation has merit and there is sufficient evidence of a genuine and material issue of non-compliance. [5 O.C. 502.9-5]. The Indian Preference Office is delegated the authority to take any of the following actions to resolve the complaint:

- informal or formal resolution of the alleged noncompliance;
- a notice of noncompliance by certified mail;
- placing the entity’s Indian preference certification in probationary status;
- suspension, denial, or revocation, of the entity’s Indian preference certification;
- issuance of fines;
- renegotiation of compliance agreement; and
- requests for withdrawal of licensing issued by the Nation.

[5 O.C. 502.9-5(a)(1)-(6)].

The Law then delegates authority to the Indian Preference Office to develop a fine and penalty schedule that may be imposed upon any person or entity violating provisions of this Law. [5 O.C. 502.9-5(a)(4)(A)]. The fine and penalty schedule is required to be adopted through resolution by the Oneida Business Committee. [5 O.C. 502.9-5(a)(4)(A)].

This resolution was developed by the Indian Preference Office and sets forth the fine and penalty schedule which includes the specific fine amounts for various violations of this Law. The resolution also clarifies the other actions the Indian Preference Office may utilize when it is determined that an alleged violation has merit and there is sufficient evidence of a genuine and material issue of non-compliance.

The resolution further provides that:

- a separate offense shall be deemed committed on each day during which a violation occurs or continues;
- all fines are required to be paid to the Indian Preference Office within thirty (30) days from the date of issuance;
- failure to pay any fines issued within thirty (30) days from the date of issuance shall result in a late penalty of ten dollars (\$10) per day and may result in the Indian Preference Office suspending the violating contractor from the project with reinstatement available upon payment in full of all fines currently due; and
- any money received from fines collected for violations of this Law shall be contributed to the General Fund.

***Conclusion***

Adoption of this resolution would not conflict with any of the Nation's laws.



Legislative Operating Committee  
March 18, 2020

# Children’s Burial Fund Policy Amendments

<b>Submission Date:</b> 8/7/19	<b>Public Meeting:</b> 2/13/20
<b>LOC Sponsor:</b> Kirby Metoxen	<b>Emergency Enacted:</b> 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.

**3/4/20 LOC:** Motion by Kirby Metoxen 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.

**3/4/20:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Clorissa N. Santiago. The purpose of this work meeting was to review and consider the public comments that were received. The Legislative Operating Committee directed that the draft be updated based on their decisions.

### **Next Steps:**

- Accept the updated public comment review memorandum, draft law and legislative analysis.
- Approve the Children's Burial Fund 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 April 1, 2020.



TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney *CNS*  
DATE: March 18, 2020  
RE: Children's Burial Fund Amendments: Public Meeting Comment Review

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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. On March 4, 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 during the public meeting and public comment period.

#### **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***

The Legislative Operating Committee determined that the Law should be revised to clarify that even if a deceased child meets the qualifications in section 129.4-1, the child shall not be eligible for assistance from the Nation's Children's Burial Fund if the child is enrolled in another tribe.

The Legislative Operating Committee understands handling the death of a child is a sensitive matter, and that the overall goal of this Law is 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]. Although the Legislative Operating Committee wants the Children's Burial Fund to be available to the most Oneida families, the Legislative Operating Committee believes that the Fund should only be available to the families of those deceased children who have not been enrolled in another tribe. The Legislative Operating Committee believes that if the deceased child was enrolled in another tribe then the family of that child should be ineligible from receiving assistance from the Children's Burial Fund. The Legislative Operating Committee determined that the purpose of this Law is really to provide financial assistance to those families of deceased children who would have likely been enrolled with the Nation at some point, but it had just not occurred before the child passed away.

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

#### **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; and
- (d) not enrolled with any other tribe.

### 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***

The Legislative Operating Committee determined that the Law should be revised to allow the greatest flexibility in requesting documentation to support the eligibility of enrollment of the deceased child. The Legislative Operating Committee directed the following revision be made to the Law based on these comments:

### **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.

### **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*

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

### 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 f~~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***

The Legislative Operating Committee determined that 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. The Legislative Operating Committee wants to ensure that the most flexibility is provided to the families in how they use the fund for funeral costs. The Legislative Operating Committee directed the following revision be made to the Law based on this comment:

#### **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.

### **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*

The Legislative Operating Committee determined that there is no revision to the Law needed based on this comment as the Law provides that funeral related costs are payable if identified on an invoice.

### 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*

The Legislative Operating Committee determined the Law should be revised to remove “for other burials” from the end of the sentence in section 129.6-4. The Legislative Operating Committee directed the following revision be made to the Law based on this comment:

## 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~~.

### 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*

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

### 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*

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

#### **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) days of receipt of the decision.**

**Title 1. Government and Finances – Chapter 129**  
**Kaya>takenh@la ashakotiya>t@ane> 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

129.2. Adoption, Amendment, Repeal

129.3. Definitions

129.4. Qualifications for Financial Assistance

129.5. Requesting Financial Assistance

129.6. Use of Funds

129.7. Appeals

**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.

36 **129.4. Qualifications for Financial Assistance**

37 129.4-1. In order to be eligible for financial assistance from the Children’s Burial Fund the  
38 deceased child shall be:

- 39 (a) six (6) years of age or younger;
- 40 (b) not enrolled with the Nation; ~~and~~
- 41 (c) eligible for enrollment with the Nation; and
- 42 (d) not enrolled with any other tribe.

43  
44 **129.5. Requesting Financial Assistance**

45 129.5-1. The Oneida Trust Enrollment Department shall process all requests for financial  
46 assistance from the Children’s Burial Fund.

47 129.5-2. Requests for financial assistance from the Children’s Burial Fund shall be made to the  
48 Oneida Trust Enrollment Department within three hundred and sixty-five (365) days from the date  
49 of death.

50 129.5-3. Upon making a request for financial assistance from the Children’s Burial Fund the  
51 following documentation shall be provided to the Oneida Trust Enrollment Department:

- 52 (a) all original invoices;
- 53 (b) birth certificate, death certificate, or fetal death report; ~~and~~
- 54 (c) voluntary paternity and/or maternity statement in situations where paternity and/or  
55 maternity needs to be determined; ~~and~~
- 56 (d) any other relevant documentation as requested by the Oneida Trust Enrollment  
57 Department to support the eligibility of enrollment of the deceased child.

58 129.5-4. Upon receipt and verification of invoices and other relevant documentation, the Oneida  
59 Trust Enrollment Department shall be responsible for processing the appropriate paper work for  
60 the payment to be made to the funeral home, monument company, casket or coffin company,  
61 cemetery, crematorium, churches, and/or catering or food vendors.

62  
63 **129.6. Use of Funds**

64 129.6-1. Financial assistance from the Children’s Burial Fund for funeral costs of a deceased  
65 child shall not exceed three thousand five hundred dollars (\$3,500).

66 129.6-2. ~~The following funeral~~Funeral related expenses are payable if identified on an invoice.  
67 Funeral related expenses may include, but are not limited to:

- 68 (a) monument and/or headstone costs;
- 69 (b) casket or coffin costs;
- 70 (c) cemetery costs;
- 71 (d) church costs; and/or
- 72 (e) food costs.

73 129.6-3. Under no circumstances shall there be any payments from the Children’s Burial Fund for  
74 reimbursements of:

- 75 (a) funeral costs to individuals; and/or
- 76 (b) travel and/or lodging for attending a funeral.

77 129.6-4. Any unexpended monies after payment(s) have been made shall remain in the Children’s  
78 Burial Fund ~~for other burials.~~

79 129.6-5. Any expenses over three thousand five hundred dollars (\$3,500) shall be the  
80 responsibility of the family or responsible party.

81

82 **129.7. Appeals**

83 129.7-1. An appeal of a decision of the Oneida Trust Enrollment Department as to the eligibility  
84 of a deceased child for financial assistance from the Children’s Burial Fund may be made to the  
85 Oneida Trust Enrollment Committee within fourteen (14) days of receipt of the decision.  
86

87 *End.*

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88 Emergency Adopted – BC-09-23-09-F

89 Permanently Adopted – BC-02-10-10-B

90 Amended – BC-\_\_-\_\_-\_\_-\_\_

**Title 1. Government and Finances – Chapter 129**  
**CHILDREN’S BURIAL FUND POLICY**  
**Kaya-takenh@la ashakotiya>t@ane> 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  
129.7. Appeals

**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 ~~Legislative~~ 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.

38 (ed) “Voluntary paternity/ and/or maternity statement” means the document created by the  
39 Oneida Trust Enrollment Department which requires the notarized signature(s) of Oneida  
40 parent(s) acknowledging paternity and/or maternity of a fetus, which is used to determine  
41 eligibility for enrollment.  
42

#### 43 **129.4. Qualifications for Financial Assistance**

44 129.4-1. ~~Except as provided in 129.4-2, In order~~ to be eligible for financial assistance from the  
45 Children’s Burial Fund the deceased child shall be ~~five (5);~~

46 (a) six (6) years of age or younger;

47 (b) not enrolled, ~~but~~ with the Nation;

48 (c) eligible for enrollment, ~~with the Nation; and~~

49 ~~129.4-2. In the event the deceased is six (6) years of age, not enrolled, but eligible for enrollment,~~  
50 ~~the deceased shall be eligible for assistance if the Oneida Trust/Enrollment Committee had~~  
51 ~~approved the enrollment of the deceased prior to his or her death.~~

52 (d) not enrolled with any other tribe.  
53

#### 54 **129.5. Procedures Requesting Financial Assistance**

55 129.5-1. The Oneida Trust Enrollment Department ~~is designated to~~ shall process all requests for  
56 financial assistance from the Children’s Burial Fund.

57 129.5-2. Requests for ~~payment~~ financial assistance from the Children’s Burial Fund shall be made  
58 to the Oneida Trust Enrollment Department within three hundred and sixty-five (365) days from  
59 the date of death.

60 129.5-3. ~~Original invoices~~ Upon making a request for financial assistance from the Children’s  
61 Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment  
62 Department ~~for payment.:~~

63 (a) all original invoices;

64 (b) birth certificate, death certificate, or fetal death report;

65 (c) voluntary paternity and/or maternity statement in situations where paternity and/or  
66 maternity needs to be determined; and

67 (d) any other relevant documentation as requested by the Oneida Trust Enrollment  
68 Department to support the eligibility of enrollment of the deceased child.

69 129.5-4. Upon receipt and verification of invoices and ~~the other~~ relevant ~~document(s) as required~~  
70 ~~under 129.5-5, the~~ documentation, the Oneida Trust Enrollment Department shall be responsible  
71 for processing the appropriate paper work for the payment to be made to the funeral home,  
72 monument company, casket or coffin company, cemetery, crematorium, churches, and/or catering/  
73 or food vendors.

74 ~~129.5-5. A birth certificate, death certificate, or fetal death report shall be submitted to the~~  
75 ~~Enrollment Department prior to payment. A voluntary paternity/maternity statement shall also be~~  
76 ~~submitted to the Enrollment Department prior to payment where paternity and/or maternity needs~~  
77 ~~to be determined.~~

78 ~~129.5-6. Food expenses are payable through a food voucher, added to the funeral home invoice,~~  
79 ~~or paid directly to the caterer/food vendor/restaurant, amount not to exceed \$200.00, which is~~  
80 ~~included under the \$3,500.00.~~

81 ~~129.5-7. Monument/headstone costs are payable directly to the vendor or may be added to the~~  
82 ~~funeral home invoice, amount not to exceed \$1,000.00, which is included under the \$3,500.00.~~

#### 83 **129.6. Use of Funds**

84 129.6-1. Financial assistance from the Children’s Burial Fund for funeral costs of a deceased  
85 child shall not exceed three thousand five hundred dollars (\$3,500).

86 129.6-2. Funeral related expenses are payable if identified on an invoice. Funeral related expenses  
87 may include, but are not limited to:

- 88 (a) monument and/or headstone costs;
- 89 (b) casket or coffin costs;
- 90 (c) cemetery costs;
- 91 (d) church costs; and/or
- 92 (e) food costs.

93 129.6-3

94 ~~129.5-8. Cemetery costs are payable directly to the vendor or may be added to the funeral home~~  
95 ~~invoice, amount to be included under the \$3,500.00.~~

96 ~~129.5-9. Church costs are payable directly to the vendor or may be added to the funeral home~~  
97 ~~invoice, amount to be included under the \$3,500.00.~~

98 ~~129.5-10. Under no circumstances will~~shall there be any payments from the Children's Burial  
99 Fund for reimbursements for of:

- 100 (a) funeral costs to individuals-; and/or
- 101 (b) travel and/or lodging for attending a funeral.

102 ~~129.5-11-6-4. Any unexpended monies after payment(s) have been made will~~shall remain in the  
103 ~~fund for other burials~~Children's Burial Fund.

104 ~~129.5-12. Under no circumstances will funding exceed \$3,500.00.~~

105 ~~129.5-13. Total~~129.6-5. Any expenses over \$3,500.00 or expenses over the designated amounts  
106 payable arethree thousand five hundred dollars (\$3,500) shall be the responsibility of the family  
107 or responsible party.

108  
109 **129.7. Appeals**

110 129.7-1. An appeal of a decision of the Oneida Trust Enrollment Department as to the eligibility  
111 of a deceased child for financial assistance from the Children's Burial Fund may be made to the  
112 Oneida Trust Enrollment Committee within fourteen (14) days of receipt of the decision.

113  
114 *End.*

115 ~~Emergency Adopted - BC-09-23-09-F~~

116 ~~Permanently Adopted - BC-02-10-10-B~~

117 ~~Amended - BC- - - -~~

**Title 1. Government and Finances – Chapter 129**  
**Kaya>takenh@la ashakotiya>t@ane> 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  
129.7. Appeals

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**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:

- 40 (a) six (6) years of age or younger;
- 41 (b) not enrolled with the Nation;
- 42 (c) eligible for enrollment with the Nation; and
- 43 (d) not enrolled with any other tribe.

44  
45 **129.5. Requesting Financial Assistance**

46 129.5-1. The Oneida Trust Enrollment Department shall process all requests for financial  
47 assistance from the Children’s Burial Fund.

48 129.5-2. Requests for financial assistance from the Children’s Burial Fund shall be made to the  
49 Oneida Trust Enrollment Department within three hundred and sixty-five (365) days from the  
50 date of death.

51 129.5-3. Upon making a request for financial assistance from the Children’s Burial Fund the  
52 following documentation shall be provided to the Oneida Trust Enrollment Department:

- 53 (a) all original invoices;
- 54 (b) birth certificate, death certificate, or fetal death report;
- 55 (c) voluntary paternity and/or maternity statement in situations where paternity and/or  
56 maternity needs to be determined; and
- 57 (d) any other relevant documentation as requested by the Oneida Trust Enrollment  
58 Department to support the eligibility of enrollment of the deceased child.

59 129.5-4. Upon receipt and verification of invoices and other relevant documentation, the Oneida  
60 Trust Enrollment Department shall be responsible for processing the appropriate paper work for  
61 the payment to be made to the funeral home, monument company, casket or coffin company,  
62 cemetery, crematorium, churches, and/or catering or food vendors.

63  
64 **129.6. Use of Funds**

65 129.6-1. Financial assistance from the Children’s Burial Fund for funeral costs of a deceased  
66 child shall not exceed three thousand five hundred dollars (\$3,500).

67 129.6-2. Funeral related expenses are payable if identified on an invoice. Funeral related  
68 expenses may include, but are not limited to:

- 69 (a) monument and/or headstone costs;
- 70 (b) casket or coffin costs;
- 71 (c) cemetery costs;
- 72 (d) church costs; and/or
- 73 (e) food costs.

74 129.6-3. Under no circumstances shall there be any payments from the Children’s Burial Fund  
75 for reimbursements of:

- 76 (a) funeral costs to individuals; and/or
- 77 (b) travel and/or lodging for attending a funeral.

78 129.6-4. Any unexpended monies after payment(s) have been made shall remain in the  
79 Children’s Burial Fund.

80 129.6-5. Any expenses over three thousand five hundred dollars (\$3,500) shall be the  
81 responsibility of the family or responsible party.

82  
83 **129.7. Appeals**

84 129.7-1. An appeal of a decision of the Oneida Trust Enrollment Department as to the eligibility  
85 of a deceased child for financial assistance from the Children’s Burial Fund may be made to the  
86 Oneida Trust Enrollment Committee within fourteen (14) days of receipt of the decision.  
87

88 End.  
89 Emergency Adopted – BC-09-23-09-F  
90 Permanently Adopted – BC-02-10-10-B  
91 Amended – BC-\_\_-\_\_-\_\_-\_\_

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**kaya>takenh@la ashakotiya>t@ane> latiksa>sh&ha**  
*It is helpful for them to bury them the children*  
**CHILDREN’S BURIAL FUND POLICY AMENDMENTS**  
**LEGISLATIVE ANALYSIS**

**SECTION 1. EXECUTIVE SUMMARY**

<i>Analysis by the Legislative Reference Office</i>	
<b>Intent of the Amendments</b>	<ul style="list-style-type: none"> <li>▪ Revise the eligibility qualifications for assistance from the Fund;</li> <li>▪ Add the requirement that a person provide the Oneida Trust Enrollment Department with any other relevant documentation as requested by the Department to support the eligibility of enrollment of the deceased child;</li> <li>▪ Allow the Fund to be used for any funeral related expenses as identified as an invoice, thus eliminating any specific requirements as to what types of expenses the Fund could be used for or caps on the use of the Fund for certain types of expenses;</li> <li>▪ Prohibit the use of the Funds for travel and/or lodging to attend a funeral;</li> <li>▪ Allow appeals of the Oneida Trust Enrollment Department’s decision as to the eligibility of a deceased child for financial assistance from the Fund to be made to the Oneida Trust Enrollment Committee.</li> </ul>
<b>Purpose</b>	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 [ <i>1 O.C. 129.1-1</i> ].
<b>Affected Entities</b>	Oneida Trust Enrollment Committee, Oneida Trust Enrollment Department
<b>Related Legislation</b>	Oneida Nation Constitution, Membership Ordinance
<b>Public Meeting</b>	A public meeting was held on February 13, 2020.
<b>Fiscal Impact</b>	A fiscal impact statement has not yet been requested.

**SECTION 2. LEGISLATIVE DEVELOPMENT**

A. **Background.** The Children’s Burial Fund Policy (“the Law”) provides three thousand and five hundred dollars (\$3,500) of 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*]. The Oneida Business Committee originally adopted this Law on September 23, 2009.

B. **History.** The following is a history of the development of this Law:

- *Resolution BC-01-04-95-A.* The Burial Endowment Fund Policy was established by this resolution to provide a burial benefit for enrolled members of the Nation and their children aged zero to five (0-5) if the child would have been eligible for enrollment in the Nation at the time of death [*Burial Endowment Fund Policy 2-2*].
- *Resolution BC-10-01-08-A.* The Oneida Business Committee and Oneida Trust Enrollment Committee jointly adopted this resolution approving the concept of the Oneida Life Insurance Plan Plus (OLIPP) to present to the General Tribal Council for approval. OLIPP is life insurance that provides a benefit to the designated beneficiary of the enrolled member of the Nation upon death. OLIPP does not help with burial and other funeral expenses for children that are eligible for enrollment in the Nation but not enrolled.
- *Resolution GTC-01-17-09-B.* The General Tribal Council approved OLIPP for implementation in fiscal year 2010 and directed that the Nation’s Burial Endowment Fund Policy be repealed.
- *Resolution BC-09-23-09-E.* This Burial Endowment Fund Policy was repealed by this resolution.
- *Resolution BC-09-23-09-F.* The Law was adopted on an emergency basis by this resolution to be effective on the date of implementation of the OLIPP. This included provisions

23 recommended by the Oneida Trust Enrollment Committee to maintain a burial benefit for  
24 children ages three (3) and under who are not enrolled but eligible for enrollment in the Nation  
25 at the time of death.

- 26 ■ *Resolution BC-02-10-10-B.* The Law was permanently adopted by this resolution to provide  
27 financial assistance towards funeral related expenses for children ages five (5) or younger that  
28 were eligible for enrollment in the Nation but not enrolled at the time of death. Additionally;  
29 children who were six (6) years of age at the time of death and approved for enrollment by the  
30 Oneida Trust Enrollment Committee, but not approved for enrollment by the Oneida Business  
31 Committee, were also eligible for financial assistance.

- 32 C. On August 7, 2019, the Oneida Trust Enrollment Committee submitted a request to the Legislative  
33 Operating Committee to consider amending the Law.

### 34 35 SECTION 3. CONSULTATION AND OUTREACH

- 36 A. Representatives from the following departments of the Nation participated in the development of this  
37 Law and legislative analysis:

- 38 ■ Oneida Trust Enrollment Department; and
- 39 ■ Oneida Trust Enrollment Committee.

- 40 B. The following laws of the Nation were reviewed in drafting this analysis:

- 41 ■ Membership Ordinance; and
- 42 ■ Oneida Nation Constitution.

- 43 C. The following tribal laws were reviewed in the development of this analysis:

- 44 ■ Wichita and Affiliated Tribes Burial Assistance Guidelines;
- 45 ■ Leech Lake Band of Ojibwe Funeral Assistance Program;
- 46 ■ Absentee Shawnee Tribe Burial Assistance Program; and
- 47 ■ Pawnee Nation of Oklahoma Burial Assistance Policy.

### 48 49 SECTION 4. PROCESS

- 50 A. Thus far, this Law has followed the process set forth by the Legislative Procedures Act.

- 51 ■ The Law was added to the Legislative Operating Committee's Active Files List on August 7,  
52 2019.
- 53 ■ A public meeting on the proposed amendments to the Law was held on February 13, 2020.
- 54 ■ The public comment period closed on February 20, 2020.
- 55 ■ The Legislative Operating Committee reviewed and considered all public comments received  
56 on March 4, 2020.

- 57 B. At the time this legislative analysis was developed the following work meetings had been held  
58 regarding the development of these amendments:

- 59 ■ December 2, 2019: Work meeting was held with Oneida Trust Enrollment Department Staff.
- 60 ■ December 4, 2019: Work meeting was held with the Legislative Operating Committee.
- 61 ■ March 4, 2020: Work meeting was held with the Legislative Operating Committee.

### 62 63 SECTION 5. CONTENTS OF THE LEGISLATION

- 64 A. *Qualifications for Financial Assistance.* The proposed amendments revise the qualifications for  
65 financial assistance from the Children's Burial Fund ("the Fund"). In order to be eligible for financial  
66 assistance from the Fund the deceased child shall be six (6) years of age or younger; not enrolled with  
67 the Nation; eligible for enrollment with the Nation; and not enrolled with any other tribe. [1 O.C. 129.4-  
68 1]. Previously, the Law provided that in order to be eligible for assistance from the Fund the deceased  
69 child must be five (5) years old or younger, not enrolled with the Nation, but eligible for enrollment.  
70 The current Law also allowed for a six (6) year old to be eligible for the Fund if the Oneida Trust  
71 Enrollment Committee had approved the enrollment of that deceased child prior to his or her death.

- 72 ■ *Effect.* The proposed amendments simplify the qualifications by removing the additional step  
73 of having an enrollment approved by the Oneida Trust Enrollment Committee for those  
74 deceased children who were six (6) years old. Having an enrollment approved by the Oneida

- 75 Trust Enrollment Committee did not ultimately affect whether a deceased child met the  
76 qualifications of enrollment with the Nation. The inclusion of the additional eligibility  
77 qualification of not being enrolled with a different tribe provides clarification as to how  
78 enrollment with another tribe affects a deceased child's eligibility for assistance from the Fund.
- 79 **B. Required Documentation to Prove Eligibility of Enrollment.** The proposed amendments provide that  
80 upon making a financial assistance from the Fund a person shall provide the Oneida Trust Enrollment  
81 Department any other relevant documentation as requested by the Oneida Trust Enrollment Department  
82 to support the eligibility of enrollment of the deceased child. [1 O.C. 129.5-3(d)]. Previously, the only  
83 required that a person provide the Oneida Trust Enrollment Department all original invoices; birth  
84 certificate, death certificate, or fetal death report; and a voluntary paternity and/or maternity statement  
85 in situations where paternity and/or maternity needs to be determined.
- 86 ■ *Effect.* The addition of the requirement to any other relevant documentation as requested by  
87 the Oneida Trust Enrollment Department to support the eligibility of enrollment of the deceased  
88 child, in addition to the documents that were already required by the Law recognizes that there  
89 may be situations that arise where the Oneida Trust Enrollment Department needs to request  
90 more documentation to support the eligibility of enrollment of the child, and provides the  
91 greatest flexibility in requesting documentation to support the eligibility of enrollment of the  
92 deceased child.
- 93 **C. Use of the Funds.** The proposed amendments provide that funeral related expenses are payable if  
94 identified on an invoice. [1 O.C. 129.6-2]. The Law provides that funeral related expenses may include,  
95 but are not limited to monument and/or headstone costs, casket or coffin costs, cemetery costs, church  
96 costs, and/or food costs. [1 O.C. 129.6-2(a)-(e)]. Previously, the Law provided specific types of uses  
97 for the Fund which included food costs, monument and/or headstone costs, cemetery costs, and church  
98 costs. The Law then further added restrictions as to how much of the Fund could be used for certain  
99 types of expenses. Two hundred dollars (\$200) of the three thousand and five hundred dollars (\$3,500)  
100 that was available as assistance was allowed to be used for food, and only one thousand dollars (\$1,000)  
101 was allowed to be used for monument or headstone costs. Cemetery or church costs did not have further  
102 restrictions.
- 103 ■ *Effect.* Removing the restrictions as to the types of costs that are able to be paid for by the  
104 Fund as well as any specific limitations on the cost of specific aspects of a funeral opens up the  
105 use of the Fund and provides the most flexibility to families to determine how to best use their  
106 assistance from the Fund for the funeral costs of a deceased child.
- 107 **D. Prohibition to Use Funds for Travel and/or Lodging.** The proposed amendments add a provision  
108 which prohibits payments from the Fund to be used for travel and/or lodging for attending a funeral. [1  
109 O.C. 129.6-3(b)]. Previously, the Law only provided that payments from the Fund could not be used to  
110 reimburse funeral costs to individuals. [1 O.C. 129.6-3(a)].
- 111 ■ *Effect.* This amendment clarifies that in addition to the Fund not being able to be used to  
112 reimburse costs to individuals, it cannot be used for travel and/or lodging for attending a  
113 funeral. This provides further clarification as to how the Fund may be used by a family.
- 114 **E. Appeals.** The amendments add a new appeal section. [1 O.C. 129.7]. This section provides that an  
115 appeal of a decision of the Oneida Trust Enrollment Department as to the eligibility of a deceased child  
116 for financial assistance from the Fund may be made to the Oneida Trust Enrollment Committee within  
117 fourteen (14) days of receipt of the decision. Previously, the Law was silent as to if appeals were  
118 allowed, or where those appeals would be made to.
- 119 ■ *Effect.* This amendment provides clarification that appeals of the Oneida Trust Enrollment  
120 Department's decisions are permitted, and should be made to the Oneida Trust Enrollment  
121 Committee. Allowing for appeals provides due process to those individuals who may have been  
122 denied assistance from the Fund due to not meeting the enrollment eligibility requirements.  
123 The Oneida Trust Enrollment Committee is given the authority to hear the appeals due to the  
124 fact that the Oneida Trust Enrollment Committee is the final hearing body for all matters related  
125 to enrollment.
- 126 **F. Minor Drafting Changes.** Additional minor drafting changes have been made throughout the law for  
127 clarification purposes and to update the drafting style of this Law.

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## SECTION 6. EFFECT ON EXISTING LEGISLATION

- A. **Related Legislation.** The following laws of the Nation are related to this Law:
- *Constitution and Bylaws of the Oneida Nation.* The Law provides that in order to be eligible for assistance from the Fund the child must be eligible for enrollment with the Nation. [1 O.C. 129.4-1].
    - The Constitution and Bylaws of the Oneida Nation provides the qualifications for membership in the Nation. [Article II, Section 1(a)-(c)].
    - The Oneida Trust Enrollment Department shall be required to use the Constitution and Bylaws of the Oneida Nation to determine if a deceased child is eligible for enrollment in the Nation.
  - *Membership Ordinance.* The Law provides that in order to be eligible for assistance from the Fund the child must be eligible for enrollment with the Nation. [1 O.C. 129.4-1].
    - The Membership Ordinance was drafted in accordance with Article II, Section 2 of the Constitution and Bylaws of the Oneida Nation and provides further details as to membership qualifications. [1 O.C. 124.4].
    - The Oneida Trust Enrollment Department shall be required to use the Membership Ordinance to determine if a deceased child is eligible for enrollment in the Nation.

## SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

- A. The Oneida Trust Enrollment Department is responsible for the implementation and operation of this Law. The Oneida Trust Enrollment Department is delegated the authority to process all requests for financial assistance from the Fund. [1 O.C. 129.5-1].
- B. If an individual does not agree with a decision of the Oneida Trust Enrollment Department as to the eligibility of a deceased child for financial assistance from the Fund, that individual may appeal the decision to the Oneida Trust Enrollment Committee within fourteen (14) days of receipt of the decision.
- This provides additional rights to an individual who may disagree with the decision of the Oneida Trust Enrollment Department, and allows the Oneida Trust Enrollment Committee to hold the Oneida Trust Enrollment Department accountable by reviewing the decisions made as to the eligibility of a deceased child to receive assistance from the Fund.

## SECTION 8. OTHER CONSIDERATIONS

- A. **Current Use of the Fund.** The Oneida Trust Enrollment Department indicated that the Fund has been used to assist with the expenses of a funeral for five (5) deceased children since 2015.
- If the full amount of the Fund was utilized by each family since 2015, then the total expense to the Nation for assisting with these funerals would be seventeen thousand and five hundred dollars (\$17,500).
- B. **Fiscal Impact.** A fiscal impact statement of the proposed amendments to the Law has not yet been developed.
- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation. [1 O.C. 109.6-1].
  - Oneida Business Committee resolution BC-09-25-19-A requires that when developing a fiscal impact statement for the adoption of proposed legislation by the Oneida Business Committee the Finance Department shall, within ten (10) business days of final approval of draft legislation by the Legislative Operating Committee, provide a fiscal impact statement to the Legislative Operating Committee.



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 18, 2020  
RE: Children's Burial Fund Policy Amendments Fiscal Impact Statement

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The Legislative Operating Committee (LOC) is currently developing amendments to the Children's Burial Fund Policy. 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 18, 2020, the Legislative Operating Committee approved the final draft of the proposed amendments to the Children's Burial Fund Policy. Therefore, the LOC is directing the Finance

Department to provide a fiscal impact statement on the proposed amendments to the Children's Burial Fund Policy by April 1, 2020.

A copy of the proposed amendments to the Children's Burial Fund Policy, 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 Children's Burial Fund Policy by April 1, 2020.



Legislative Operating Committee  
March 18, 2020

## Tobacco Law Amendments

<b>Submission Date:</b> 1/15/20	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> Kirby Metoxen	<b>Emergency Enacted:</b> 2/26/20

**Summary:** *This item was added to the AFL to pursue emergency amendments to comply with an amendment to the Federal Food, Drug, and Cosmetic Act. On December 20, 2019, President Trump signed into law an amendment to increase the minimum age of sale of tobacco products from eighteen (18) to twenty-one (21). The amendment was effective immediately. The Oneida Retail operations have been compliant with the minimum age change since January 1, 2020. This emergency amendment to the Law would change the minimum age provision from eighteen (18) to twenty-one (21) years of age. Emergency amendments were adopted by the Oneida Business Committee through resolution BC-02-26-20-A. The emergency amendments will expire on August 26, 2020.*

**1/15/20 LOC:** Motion by Daniel Guzman King to add the Tobacco Law Emergency Amendments to the active files list with Kirby Metoxen as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

For the record: Ernest Stevens III, “I support that motion, because we can’t have a conversation if we don’t bring it there. That’s the only reason I’m supporting it.”

**1/30/20:** *Work Meeting.* Present: Daniel Guzman King, Ernest Stevens III, Jennifer Webster, David P. Jordan, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker, Carl Artman, Maureen Perkins. The purpose of this work meeting was for Attorney Carl Artman to provide the LOC with more information on why the Nation is complying with the recent amendment to the Federal Food, Drug, and Cosmetic Act.

**2/19/20 LOC:** 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.

**2/26/20 OBC:** Motion by Brandon Stevens to adopt resolution 02-26-20-A Tobacco Law Emergency Amendments, seconded by Jennifer Webster. Motion carried. (Daniel Guzman King and Ernest Stevens III abstained).

**3/2/20:** *Work Meeting.* Present: Clorissa N. Santiago, Michelle Doxtator, Mollie Passon. The purpose of this work meeting was to go through the Law and discuss any additional amendments that should be sought when the emergency amendment is made permanent. The drafting attorney will update the Law and send it out for review by the work group before a legislative analysis is sought.

**3/4/20:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Clorissa N. Santiago. The purpose of this work meeting was to review the beginnings of a draft of

permanent amendments based on the work meeting with Retail and Community Health and decide if there were any other amendments the LOC wanted to pursue.

**Next Steps:**

- Accept the draft and legislative analysis and defer to a work meeting for further consideration.

**Title 1. Government and Finances - Chapter 115**  
**Oy&kwa> Olihw@ke**  
*matters concerning tobacco*  
**TOBACCO**

115.1. Purpose and Policy  
115.2. Adoption, Amendment, Repeal  
115.3. Definitions  
115.4. Oneida Retail Locations

115.5. Purchase of, Title to And Possession of Tobacco Products  
115.6. Restrictions on Sales  
115.7. Liability  
115.8. Violations

**115.1. Purpose and Policy**

115.1-1. *Purpose.* The purpose of this law is to regulate the sale, possession, and distribution of cigarettes within the Reservation.

115.1-2. *Policy.* It is the policy of the Nation to ensure that all cigarette sales on the Reservation are conducted in a lawful manner.

**115.2. Adoption, Amendment, Repeal**

115.2-1. This law was adopted by the Oneida Business Committee by resolution BC- 11-18-81-A and amended by resolution BC-10-10-07-A, BC-04-09-14-F, BC-01-25-17-B, ~~and BC-02-26-20-A,~~ and BC- - - - .

115.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

115.2-3. 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.

115.2-4. 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.

115.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**115.3. Definitions**

115.3-1. 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) “Cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size, shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(b) “Electronic cigarette” means a device that enables a person to ingest nicotine, or other chemicals or substances, by inhaling a vaporized liquid and shall include the cartridges and other products used to refill the device. “Electronic cigarette” shall not include any device that is prescribed by a healthcare professional.

(c) “Employee” means a person employed by the Oneida Nation working in an Oneida retail location.

(d) “Nation” means the Oneida Nation.

(e) “Oneida Retail Location” means an Oneida Nation retail sales business selling stamped cigarettes within the Oneida Nation Reservation.

(f) “Reservation” means all land within the exterior boundaries of the Reservation of the

39 Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and  
40 any land added thereto pursuant to federal law.

41 (g) “Stamped Cigarettes” means cigarettes bearing valid Wisconsin tax stamps.

42 (h) “Tobacco products” means cigars; cheroots; stogies; periques; granulated, plug cut,  
43 crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff  
44 flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts;  
45 refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of  
46 tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or  
47 otherwise, or both for chewing and smoking.

48  
49 **115.4. Oneida Retail Locations**  
50 115.4-1. The Nation shall maintain Oneida retail locations within the Reservation as it deems  
51 necessary to provide adequate service to consumers of stamped cigarettes.

52 115.4-2. Each Oneida retail location established hereunder shall be managed and operated by the  
53 Oneida Nation.

54  
55 **115.5. Purchase of, Title to and Possession of Tobacco Products**  
56 115.5-1. The Nation shall purchase stamped cigarettes from such suppliers as it may choose and  
57 shall take title and possession on delivery to an Oneida retail location on the Reservation ~~(the. The~~  
58 title shall be subject to any purchase money security interest~~).~~ Possession of the stamped  
59 cigarettes ~~(, but not title),~~ shall be transferred to the manager of the Oneida retail location to be  
60 held for sale to the consumers. The Nation shall retain title to stamped cigarettes until sold to a  
61 consumer.

62  
63 **115.6. Restrictions on Sales**  
64 115.6-1. The Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal  
65 Cigarette tax stamp within the Reservation. Furthermore, only the Nation may claim the tax  
66 refunds on cigarettes sold on the Reservation as provided for under state law.

67 115.6-2. The Nation reserves the right to restrict sales, volume, pricing, and profit margin of  
68 stamped cigarettes sold at an Oneida retail location.

69 115.6-3. Cigarettes ~~and,~~ electronic cigarettes, and/or other tobacco products shall not be sold to  
70 any person under the age of twenty-one (21)~~).~~ Cigarettes ~~and,~~ electronic cigarettes, and/or other  
71 tobacco products for sale at an Oneida retail location shall be on display behind a counter. No  
72 person other than an authorized employee shall sell cigarettes ~~and,~~ electronic cigarettes, and/or  
73 other tobacco products at an Oneida retail location.

74 115.6-4. No person may sell or offer for sale unstamped cigarettes on the Reservation.

75  
76 **115.7. Liability**  
77 115.7-1. The Nation shall be responsible for all risks to the stamped cigarettes and shall carry full  
78 insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary  
79 any person owning a purchase money security interest in the products to the extent his or her  
80 interest may appear.

81  
82 **115.8 Violations**  
83 115.8-1. Issuance of a Citation. An individual who violates a provision of this law may be issued  
84 a citation by the Oneida Police Department.

85 (a) A citation for a violation of this law and/or any orders issued pursuant to this law may  
86 include fines and other penalties, as well as conditional orders made by the Trial 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) The Oneida Business Committee shall hereby be delegated the authority to adopt through resolution a fine and penalty schedule for citations issued as a result of a violation of this law.

115.8-2. Additional Penalties. In addition to the issuance of a citation and the resulting fine and/or penalty, an individual who violates a provision of this law may be subject to the following:

(a) Seizure. All cigarettes acquired, owned, possessed, sold, or distributed in violation of this law are unlawful property and subject to seizure by ~~anythe~~ Oneida ~~law enforcement officer~~ Police Department.

~~(a) Violators subject to the jurisdiction of the Nation shall be subject to a fine of not more than ten dollars (\$10) per pack of un-stamped cigarettes to be issued by the Oneida Police Department and paid to the Nation.~~

(b) ~~Employees~~ Disciplinary Action. An employee who ~~violate~~ violates this law shall be subject to disciplinary action in accordance with the Nation’s laws, ~~rules,~~ and policies governing employment.-

~~115.8-2. All fines assessed under this section shall be paid within sixty (60) days of issuance of the citation, unless the person contests the citation with the Nation’s judicial system before the fine is to be paid.~~

End.

Adopted - BC-~~303~~-15-76-A

~~Adopted - BC-09-07-77-B~~

~~Adopted - BC-09-04-79-C~~

Adopted - BC-11-18-81-A

~~Amended - BC-10-10-07-A~~

~~Amended - BC-04-09-14-F~~

Amended - BC-01-25-17-B

~~Adopted BC 9 7 77 B~~ ~~Amended BC 10 10 07 A~~ Emergency Amended – BC-02-26-20-A

~~Adopted BC 9 4 79 C~~ ~~Amended BC 04 09 14 F~~ - - - -

**Title 1. Government and Finances - Chapter 115**  
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*matters concerning tobacco*  
**TOBACCO**

115.1. Purpose and Policy  
115.2. Adoption, Amendment, Repeal  
115.3. Definitions  
115.4. Oneida Retail Locations

115.5. Purchase of, Title to And Possession of Tobacco Products  
115.6. Restrictions on Sales  
115.7. Liability  
115.8. Violations

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**115.1. Purpose and Policy**

115.1-1. *Purpose.* The purpose of this law is to regulate the sale, possession, and distribution of cigarettes within the Reservation.

115.1-2. *Policy.* It is the policy of the Nation to ensure that all cigarette sales on the Reservation are conducted in a lawful manner.

**115.2. Adoption, Amendment, Repeal**

115.2-1. This law was adopted by the Oneida Business Committee by resolution BC- 11-18-81-A and amended by resolution BC-10-10-07-A, BC-04-09-14-F, BC-01-25-17-B, BC-02-26-20-A, and BC-\_\_-\_\_-\_\_-\_\_.

115.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

115.2-3. 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.

115.2-4. 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.

115.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**115.3. Definitions**

115.3-1. 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) “Cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size, shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(b) “Electronic cigarette” means a device that enables a person to ingest nicotine, or other chemicals or substances, by inhaling a vaporized liquid and shall include the cartridges and other products used to refill the device. “Electronic cigarette” shall not include any device that is prescribed by a healthcare professional.

(c) “Employee” means a person employed by the Oneida Nation working in an Oneida retail location.

(d) “Nation” means the Oneida Nation.

(e) “Oneida Retail Location” means an Oneida Nation retail sales business selling stamped cigarettes within the Oneida Nation Reservation.

(f) “Reservation” means all land within the exterior boundaries of the Reservation of the

39 Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and  
40 any land added thereto pursuant to federal law.

41 (g) “Stamped Cigarettes” means cigarettes bearing valid Wisconsin tax stamps.

42 (h) “Tobacco products” means cigars; cheroots; stogies; periques; granulated, plug cut,  
43 crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff  
44 flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts;  
45 refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of  
46 tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or  
47 otherwise, or both for chewing and smoking.

48

#### 49 **115.4. Oneida Retail Locations**

50 115.4-1. The Nation shall maintain Oneida retail locations within the Reservation as it deems  
51 necessary to provide adequate service to consumers of stamped cigarettes.

52 115.4-2. Each Oneida retail location established hereunder shall be managed and operated by the  
53 Oneida Nation.

54

#### 55 **115.5. Purchase of, Title to and Possession of Tobacco Products**

56 115.5-1. The Nation shall purchase stamped cigarettes from such suppliers as it may choose and  
57 shall take title and possession on delivery to an Oneida retail location on the Reservation. The title  
58 shall be subject to any purchase money security interest. Possession of the stamped cigarettes, but  
59 not title, shall be transferred to the manager of the Oneida retail location to be held for sale to the  
60 consumers. The Nation shall retain title to stamped cigarettes until sold to a consumer.

61

#### 62 **115.6. Restrictions on Sales**

63 115.6-1. The Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal  
64 Cigarette tax stamp within the Reservation. Furthermore, only the Nation may claim the tax  
65 refunds on cigarettes sold on the Reservation as provided for under state law.

66 115.6-2. The Nation reserves the right to restrict sales, volume, pricing, and profit margin of  
67 stamped cigarettes sold at an Oneida retail location.

68 115.6-3. Cigarettes, electronic cigarettes, and/or other tobacco products shall not be sold to any  
69 person under the age of twenty-one (21). Cigarettes, electronic cigarettes, and/or other tobacco  
70 products for sale at an Oneida retail location shall be on display behind a counter. No person other  
71 than an authorized employee shall sell cigarettes, electronic cigarettes, and/or other tobacco  
72 products at an Oneida retail location.

73 115.6-4. No person may sell or offer for sale unstamped cigarettes on the Reservation.

74

#### 75 **115.7. Liability**

76 115.7-1. The Nation shall be responsible for all risks to the stamped cigarettes and shall carry full  
77 insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary  
78 any person owning a purchase money security interest in the products to the extent his or her  
79 interest may appear.

80

#### 81 **115.8 Violations**

82 115.8-1. *Issuance of a Citation.* An individual who violates a provision of this law may be issued  
83 a citation by the Oneida Police Department.

84 (a) A citation for a violation of this law and/or any orders issued pursuant to this law may  
85 include fines and other penalties, as well as conditional orders made by the Trial Court.

86 (b) A citation for a violation of this law shall be processed in accordance with the

87 procedure contained in the Nation’s laws and policies governing citations.  
88 (c) The Oneida Business Committee shall hereby be delegated the authority to adopt  
89 through resolution a fine and penalty schedule for citations issued as a result of a violation  
90 of this law.

91 115.8-2. *Additional Penalties.* In addition to the issuance of a citation and the resulting fine and/or  
92 penalty, an individual who violates a provision of this law may be subject to the following:

93 (a) *Seizure.* All cigarettes acquired, owned, possessed, sold, or distributed in violation of  
94 this law are unlawful property and subject to seizure by the Oneida Police Department.

95 (b) *Disciplinary Action.* An employee who violates this law shall be subject to disciplinary  
96 action in accordance with the Nation’s laws and policies governing employment.

97  
98 *End.*

- 100  
101 \_\_\_\_\_  
102 Adopted - BC-03-15-76-A  
103 Adopted - BC-09-07-77-B  
104 Adopted - BC-09-04-79-C  
105 Adopted - BC-11-18-81-A  
106 Amended - BC-10-10-07-A  
107 Amended - BC-04-09-14-F  
108 Amended - BC-01-25-17-B  
109 Emergency Amended – BC-02-26-20-A  
110 Amended – BC-\_\_-\_\_-\_\_-\_\_  
111



**oyú·kwa? olihwá·ke**  
 Oh yoon gwa oh lee waa gay  
*matters concerning tobacco*

**AMENDMENTS TO THE TOBACCO LAW**  
**LEGISLATIVE ANALYSIS**

**SECTION 1. EXECUTIVE SUMMARY**

<i>Analysis by the Legislative Reference Office</i>	
<b>Intent of the Amendments</b>	<ul style="list-style-type: none"> <li>▪ Provide a definition for “tobacco products;”</li> <li>▪ Clarify that all tobacco products, and not just cigarettes and electronic cigarettes, shall not be sold to any person under the age of twenty-one (21) years;</li> <li>▪ Clarify that no person other than an authorized employee shall sell tobacco products, and not just cigarettes and electronic cigarettes, at an Oneida retail location;</li> <li>▪ Clarify that process and procedure contained in the Nation’s Citations law will govern citations issued under this Law; and</li> <li>▪ Provide authority to the Oneida Business Committee to adopt through resolution a fine and penalty schedule for citations issued as a result of a violation of this Law.</li> </ul>
<b>Purpose</b>	The purpose of this Law is to regulate the sale, possession and distribution of cigarettes within the Reservation [1 O.C. 115.1-1].
<b>Affected Entities</b>	Oneida Retail Enterprise, Oneida Judiciary, Oneida Police Department
<b>Related Legislation</b>	Oneida Personal Policies and Procedures, Citations law
<b>Public Meeting</b>	A public meeting has not yet been held.
<b>Fiscal Impact</b>	A fiscal impact statement has not yet been requested.

**SECTION 2. LEGISLATIVE DEVELOPMENT**

- 1
- 2 A. **Background.** The Tobacco law (“the Law”) regulates the sale, possession, and distribution of cigarettes
- 3 within the Reservation. [1 O.C. 115.1-1]. The Oneida Business Committee originally adopted this Law
- 4 on March 15, 1976. The Law was most recently amended on an emergency basis on February 26, 2020.
- 5 B. **Emergency Amendments.** On February 26, 2020, the Oneida Business Committee adopted emergency
- 6 amendments to the Law through resolution BC-02-26-20-A. The emergency amendment raised the
- 7 minimum age for the sale of cigarettes and electronic cigarettes from eighteen (18) to twenty-one (21).
- 8
  - The Oneida Business Committee is allowed to temporarily enact an emergency law where
  - 9 legislation is necessary for the immediate preservation of the public health, safety or general
  - 10 welfare of the reservation population and the enactment or amendment of legislation is required
  - 11 sooner than would be possible by utilizing the standard legislative process [1 O.C. 109.9-5].
  - 12
  - 13
  - 14
  - 15
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  - 17
  - 18
  - 19
  - 20
  - 21

- 22           ▪ The emergency amendment to the Law will expire on August 26, 2020. The Legislative  
23 Procedures Act allows a one-time emergency law extension of up to six (6) months. [1 O.C.  
24 109.9-5(b)].  
25

### 26 SECTION 3. CONSULTATION AND OUTREACH

- 27 A. Representatives from the following departments of the Nation participated in the development of this  
28 Law and legislative analysis:  
29           ▪ Oneida Retail Enterprise;  
30           ▪ Community Health Services Department; and  
31           ▪ Oneida Law Office.  
32 B. The following laws of the Nation were reviewed in drafting this analysis:  
33           ▪ Oneida Personnel Policies and Procedures; and  
34           ▪ Citations law.  
35

### 36 SECTION 4. PROCESS

- 37 A. Thus far, this Law has followed the process set forth in the Legislative Procedures Act.  
38           ▪ The Tobacco law emergency amendments was added to the Legislative Operating Committee's  
39 Active Files List on February 5, 2020.  
40           ▪ The Oneida Business Committee adopted the emergency amendments on February 26, 2020,  
41 through the adoption of resolution BC-02-26-20-A.  
42           ▪ The emergency amendments will expire on August 26, 2020.  
43 B. At the time this legislative analysis was developed the following work meetings had been held  
44 regarding the development of these amendments:  
45           ▪ January 30, 2020: Work meeting with LOC and Oneida Law Office.  
46           ▪ March 2, 2020: Work meeting with Oneida Retail Enterprise and Community Health Services  
47 Department.  
48           ▪ March 4, 2020: Work meeting with LOC.  
49

### 50 SECTION 5. CONTENTS OF THE AMENDMENTS

- 51 A. **Definition of Tobacco Products.** The proposed amendments add a definition for “tobacco products”  
52 to the Law. [1 O.C. 115.3-1(h)]. Previously, the Law only defined and referenced “cigarettes” and  
53 “electronic cigarettes” and was silent as to other tobacco products. The Oneida Retail Enterprise uses  
54 the same minimum age for the sale of tobacco products as cigarettes and electronic cigarettes, the Law  
55 just did not reflect this practice.  
56           ▪ *Effect.* The addition of the definition and reference to tobacco products better reflects the  
57 Oneida Retail Enterprise's current practices, and informs the reader that tobacco products are  
58 treated in the same manner as cigarettes and electronic cigarettes.  
59 B. **Minimum Age of Sale.** The proposed amendments provide that cigarettes, electronic cigarettes, and/or  
60 other tobacco products shall not be sold to any person under the age of twenty-one (21). [1 O.C. 115.6-  
61 3]. Prior to the adoption of the emergency amendments, the Law only stated that cigarettes and  
62 electronic cigarettes shall not be sold to any person under the age of eighteen (18).  
63           ▪ *Effect.* This proposed amendment permanently adopts the emergency amendment which raised  
64 the minimum age of sales of cigarettes and electronic cigarettes from eighteen (18) to twenty-  
65 one (21). This amendment also clarifies that the minimum age for the sale of tobacco products  
66 is twenty-one (21). Although the current version of the Law does not reference tobacco  
67 products other than cigarettes and electronic cigarettes, this amendment reflects the Oneida  
68 Retail Enterprise's current practice.  
69 C. **Sale by Authorized Employees Only.** The proposed amendments provide that no person other than an  
70 authorized employee shall sell cigarettes, electronic cigarettes, and/or other tobacco products at an

71 Oneida retail location. [1 O.C. 115.6-3]. Previously, the Law only referenced cigarettes and electronic  
72 cigarettes in this section.

- 73     ▪ *Effect.* This amendment clarifies that the restriction of sales to authorized employees applies  
74 to the sale of tobacco products at Oneida retail locations. Although the current version of the  
75 Law does not reference tobacco products other than cigarettes and electronic cigarettes, this  
76 amendment reflects the Oneida Retail Enterprise’s current practice.

77 D. **Citations Issued for Violations of this Law.** The proposed amendments provide that an individual who  
78 violates a provision of this Law may be issued a citation by the Oneida Police Department. [1 O.C.  
79 115.8-1]. The Law goes on to provide that citations, which may include fines and other penalties, shall  
80 be processed in accordance with the procedure contained in the Nation’s laws and policies governing  
81 citations. [1 O.C. 115.8-1(a)-(b)]. The proposed amendments also delegate authority to the Oneida  
82 Business Committee to adopt through resolution a fine and penalty schedule for citations issued as a  
83 result of a violation of this Law. [1 O.C. 115.8-1(c)]. Previously, the Law provided that violators subject  
84 to the jurisdiction of the Nation shall be subject to a fine of not more than ten dollars (\$10) per pack of  
85 unstamped cigarettes to be issued by the Oneida Police Department and paid to the Nation. The Law  
86 also previously provided that all fines assessed shall be paid within sixty (60) days of issuance of the  
87 citation, unless the person contests the citation with the Nation’s judicial system before the fine is to be  
88 paid.

- 89     ▪ *Adoption of a Citations Law.* In February 2020 the Oneida Business Committee adopted a  
90 Citations law for the purpose of providing a consistent process that governs all citations that  
91 fall under the jurisdiction of the Oneida Nation. [8 O.C. 807.1-1].
- 92     ▪ *Effect.* The proposed amendments better clarify that the process and procedure contained in  
93 the Nation’s Citations law will govern citations issued under this Law. The proposed  
94 amendment’s removal of language specific to fines and penalties from the Law to instead be  
95 placed into a resolution containing a fine and penalty schedule is also consistent with the  
96 Nation’s recent legislative drafting practices.

## 98 SECTION 6. EFFECT ON EXISTING LEGISLATION

99 A. **Reference to other Laws of the Nation.** The following laws of the Nation are referenced in this Law:

- 100     ▪ *Oneida Personnel Policies and Procedures.* This Law provides that an employee who violates  
101 this Law shall be subject to disciplinary action in accordance with the Nation’s laws and  
102 policies governing employment. [1 O.C. 115.8-2(b)].
  - 103         ▪ The Oneida Personnel Policies and Procedures is the Nation’s law which governs  
104 employment. The Oneida Personnel Policies and Procedures provides the process for  
105 handling complaints, disciplinary actions, and grievances. [Section V.D.].
  - 106         ▪ A supervisor would have to follow the disciplinary action procedure contained in the  
107 Oneida Personnel Policies and Procedures if holding an employee accountable for a  
108 violation of this Law.
- 109     ▪ *Citations law.* This Law provides that a citation for a violation of this Law shall be processed  
110 in accordance with the procedure contained in the Nation’s laws and policies governing  
111 citations.
  - 112         ▪ The Citations law is the Nation’s law governing citations. The Citations law provides  
113 how a citation action is started – such as who has the authority to issue a citation, the  
114 requirements of the form of the citation, and how a citation is served and filed;  
115 stipulations for the settlement of a citation; and the citation hearing procedures. [8 O.C.  
116 807].
  - 117         ▪ Any citations issued by the Oneida Police Department for a violation of this Law must  
118 comply with the requirements and procedures of the Citations law.

## 120 SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

- 121 A. **Enforcement.** This Law is enforced in the following ways:  
122     ▪ *Procedures and Policies.* The Oneida Retail enterprise is the entity responsible for carrying  
123 out the process, procedures, and responsibilities of this Law.  
124     ▪ *Issuance of a Citation.* The Oneida Police Department is authorized to issue a citation for a  
125 violation of this Law. [1 O.C. 115.8-1].  
126     ▪ *Seizure of Unstamped Cigarettes.* The Oneida Police Department is authorized to seize any  
127 cigarettes acquired, owned, possessed, sold, or distributed in violation of this Law. [1 O.C.  
128 115.8-2(a)].  
129     ▪ *Disciplinary Action.* A supervisor may utilize disciplinary action in accordance with the  
130 Oneida Personnel Policies and Procedures for any employee who violates this Law. [1 O.C.  
131 115.8-2(b)].  
132

## 133 SECTION 8. OTHER CONSIDERATIONS

- 134 A. **Timeframe for Permanent Adoption of Amendments.** The emergency amendment to this Law, as  
135 adopted by the Oneida Business Committee through resolution BC-02-26-20-A, will expire on August  
136 26, 2020. The Legislative Procedures Act allows a one-time extension of up to an additional six (6)  
137 months. [1 O.C. 109.9-5(b)]. This means that the Legislative Operating Committee has until February  
138 21, 2021, at the latest to adopt the permanent amendments to this Law before the emergency  
139 amendments expire.
- 140 B. **Fine and Penalty Schedule.** This Law provides that the Oneida Business Committee shall hereby be  
141 delegated the authority to adopt through resolution a fine and penalty schedule for citations issued as a  
142 result of a violation of this Law. [1 O.C. 115.8-1(c)]. The fine and penalty schedule resolution for the  
143 Tobacco law is currently under development. The Legislative Operating Committee intends to bring  
144 this proposed fine and penalty schedule resolution to the Oneida Business Committee at the time these  
145 amendments are up for adoption.
- 146 C. **Fiscal Impact.** A fiscal impact statement has not yet been requested.
- 147     ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation  
148 except emergency legislation [1 O.C. 109.6-1].
  - 149     ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative  
150 Operating Committee and may be prepared by any agency who may receive funding if the  
151 legislation is enacted; who may administer a program if the legislation is enacted; who may  
152 have financial information concerning the subject matter of the legislation; or by the Finance  
153 Office, upon request of the Legislative Operating Committee [1 O.C. 109.6-1(a and b)].

154  
155



Legislative Operating Committee  
 March 18, 2020

# Oneida Food Service Code

<b>Submission Date:</b> 9/19/18	<b>Public Meeting:</b> February 6, 2020
<b>LOC Sponsor:</b> Ernest Stevens III	<b>Emergency Enacted:</b> n/a <b>Expires:</b> 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.

**3/4/2020:** *LOC Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Clorissa Santiago, Kristen M. Hooker. The purpose of this meeting was for the LOC to review and consider the public comment that was received, and to determine whether revisions to the Law are necessary. Next step is for the drafting attorney to follow up with intergovernmental affairs regarding a question raised during the meeting and to update the draft for the next LOC packet so a fiscal analysis can be requested.

**Next Steps:**

- Accept the updated public comment review memorandum, draft law and legislative analysis.
- Approve the Oneida Food Service Code 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 April 1, 2020.



TO: Legislative Operating Committee (LOC)  
FROM: Kristen M. Hooker, Legislative Reference Office, Staff Attorney  
DATE: March 18, 2020  
RE: Oneida Food Service Code Amendments: Public Meeting Comment Review

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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. On March 4, 2020, the Legislative Operating Committee reviewed and considered the public comment that was received. This memorandum is submitted as the Legislative Operating Committee’s review of the written comment received within the public comment period.

### 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***

The Legislative Operating Committee determined that there is no revision to the Law needed based on this comment as the issue of diminishment was considered by the Legislative Operating Committee when it was considering whether to include a waiver provision within the Law. And, based on the reasons set forth above, the Legislative Operating Committee decided that the benefits outweighed the risk that a waiver of licensing fees could be viewed as a partial diminishment of the Law's primacy.

Prior to the public meeting, however, the Legislative Operating Committee did receive a similar comment regarding diminishment. In response, the Legislative Operating Committee decided to amend the Law to make clear that a waiver of the licensing fee to operate a food service business or prepacked restaurant did not constitute a waiver of the Nation's regulatory authority or a release of an applicant from any other compliancy provision set forth within the Law. Based on this decision, the Legislative Operating Committee directed the following revision be made to section 305.7 of the Law.

### **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.

(C) Exemption from a licensing fee under (A) or (B) of this section shall not be considered a waiver of any other compliancy requirement within this Law that is applicable to food service businesses and/or prepackaged restaurants, nor shall it be considered a waiver of the Nation's authority to regulate food service businesses or prepackaged restaurants operating within its jurisdiction.

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**Title 3. Health and Public Safety – Chapter 305**  
**Kahkwa’ó·ku**  
*about the food*  
**ONEIDA FOOD SERVICE**

305.1. Purpose and Policy	305.7. Licensing
305.2. Adoption, Amendment, Repeal	305.8. Exemptions
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305.4. Jurisdiction	305.10. Violations, Enforcement
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**305.1. Purpose and Policy**

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

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

**305.2. Adoption, Amendment, Repeal**

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

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

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

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

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

**305.3. Definitions**

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

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

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

- 50 (c) “Consumer” means an individual who is a member of the public; takes possession of  
51 food; is not functioning in the capacity of a food service business, a cottage food operator,  
52 a prepackaged restaurant, or a food processing plant; and does not offer the food for resale.  
53 (d) “Cottage food operator” means an individual who, exclusively within the home kitchen  
54 of his or her domestic residence, produces cottage food products for direct sale only.  
55 (e) “Cottage food products” mean foods, produced within the home kitchen of a domestic  
56 residence, that are non-potentially hazardous, including non-perishable baked goods such  
57 as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit;  
58 jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or  
59 salsa, pickled vegetables and hot sauces; and other non-potentially hazardous foods that  
60 the Department characterizes as cottage food products for purposes of this law.  
61 (f) “Department” means the Environmental, Health and Safety Department within the  
62 Nation’s Environmental, Health, Safety and Land Division.  
63 (g) “Direct sale” means a consumer’s face-to-face purchase of a cottage food product from  
64 a cottage food operator that does not include purchases through consignment, mail order,  
65 or the internet, though nothing herein shall be interpreted to prohibit a cottage food operator  
66 from using the internet for the sole purpose of advertising his or her cottage food products.  
67 (h) “Domestic residence” means the single-family house or unit in a multiunit residential  
68 structure located at the address that the applicant lists as being his or her primary residence  
69 when applying to the Department for a cottage food exemption under this law.  
70 (i) “Emergency” means the occurrence or discovery of an unforeseen event that requires  
71 immediate attention, the absence of which could endanger the health or safety of others.  
72 (j) “Federal Food Code” means the most current edition of the United States Public Health  
73 Service, Food and Drug Administration Food Code.  
74 (k) “Fine” means a monetary punishment issued to a person for violation of this law.  
75 (l) “Food” means a raw, cooked or processed edible substance; ice; beverage; or ingredient  
76 used or intended for use or for sale in whole or in part for human consumption or chewing  
77 gum.  
78 (m) “Food service business” means, whether individually or collectively, a permanent food  
79 service establishment; a temporary food service establishment; and/or an independent food  
80 service operator. The following shall not qualify as a food service business under this law:  
81 (1) Private rummage sales;  
82 (2) Community sponsored non-profit fundraising and/or charity events;  
83 (3) Cottage food operators who satisfy the requirements of this law; and/or  
84 (4) Prepackaged restaurants that satisfy the requirements of this law.  
85 (n) “Home-canned foods” means home-canned fruits and vegetables that are naturally  
86 acidic or have been acidified by pickling or fermenting and have an equilibrium pH of 4.6  
87 or lower.  
88 (o) “Independent food service operator” means a person, other than one who qualifies as a  
89 cottage food operator, who sells, for profit, food that is prepared off-site, independent of a  
90 permanent establishment, at or within a location approved by the Department.  
91 (p) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was  
92 established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer  
93 the judicial authorities and responsibilities of the Nation.

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

97 (r) “Nation” means the Oneida Nation.

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

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

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

105 (2) A market or grocery store;

106 (3) A catering business;

107 (4) A bakery or confectionary;

108 (5) A convenience store or gas station store;

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

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

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

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

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

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

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

#### 125 305.4. Application

126 305.4-1. This law shall apply to all food service businesses, prepackaged restaurants and cottage  
127 food operators located or operating within the Reservation.

128 305.4-2. *Liberal Construction.* The provisions of this law shall apply to the fullest extent of the  
129 sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the  
130 objectives and purposes for which it was enacted.

#### 131 305.5. Compliance

132 305.5-1. No person shall operate a food service business without a valid, unexpired license from  
133 the Department.

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

135 (b) Unless otherwise provided herein, strict compliance with this law is required before a  
136 license may be issued or renewed.  
137  
138

139 305.5-2. *Federal Food Code*. The Nation finds that the Federal Food Code establishes a high level  
140 of stringent food and beverage handling safety standards that should govern all food service  
141 businesses to which this law applies.

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

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

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

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

152

### 153 **305.6. Authority**

154 305.6-1. *Authority of the Department*. Subject to all applicable provisions and/or restrictions  
155 contained in this or any other governing law of the Nation, the Department shall be responsible for  
156 the administration and enforcement of this law, including, but not limited to, that the Department  
157 shall have the power to:

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

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

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

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

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

167

### 168 **305.7. Licensing**

169 305.7-1. *Licenses*. The following shall govern the process for obtaining and renewing a license to  
170 operate a food service business:

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

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

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

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

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

188 (b) *License Period.*

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

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

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

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

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

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

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

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

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

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

220 (3) *Exemptions.*

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

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

228 (C) Exemption from a licensing fee under (A) or (B) of this section shall  
229 not be considered a waiver of any other compliancy requirement within this  
230 law that is applicable to food service businesses and/or prepackaged

restaurants, nor shall it be considered a waiver of the Nation’s authority to regulate food service businesses or prepackaged restaurants operating within its jurisdiction.

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.

275 (b) *Independent Food Service Operators*. A valid license shall, at all times, be prominently  
276 displayed on the body of the license holder whenever functioning as an independent food  
277 service operator.  
278

### 279 **305.8. Exemptions**

280 305.8-1. *Cottage Food Sales*. Cottage food operators are exempt from the requirements of this  
281 law, except as follows:

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

- 284 (1) Full name;  
285 (2) Address of domestic residence; and  
286 (3) Any additional information required by a standard operating procedure that the  
287 Department may establish, consistent with this law, to govern cottage food sales.

288 (A) By registering as a cottage food operator, the individual is confirming  
289 that the information he or she provided is correct and agreeing to operate  
290 within the confines of the exemption.

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

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

297 (c) *Home-canned Foods*. Individuals who intend to sell home-canned foods under the  
298 cottage food sales exemption must first complete the food safety training relating to  
299 canning that is approved by the ———Department.

300 305.8-2. *Prepackaged Restaurants*. Prepackaged restaurants are exempt from the requirements of  
301 this law, except as follows:

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

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

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

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

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

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

324 305.8-3. *Enforcement.* Violations of this section shall be enforced pursuant to section 305.10 of  
325 this law.

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

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

333 (c) This section does not limit the liability of the owner of a prepackaged restaurant or a  
334 cottage food operator for damages that arise out of their sale or service of food hereunder.  
335

### 336 **305.9. Inspections**

337 305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two  
338 (2) times per license term, the Department may, for any reason, enter a food service business to  
339 conduct an inspection, so long as at a reasonable hour.

340 305.9-2. The Department may, at any time during the term of a license, enter a food service  
341 business to conduct an unscheduled inspection based on the following:

342 (a) Receipt of a complaint;

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

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

345 305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of  
346 this law, will result in an additional fee as set forth in the license fee schedule.  
347

### 348 **305.10. Violations, Enforcement**

349 305.10-1. *Non-compliance.* Violations of this law may result in any one or more of the following  
350 as determined by the Department:

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

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

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

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

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

361 305.10-2. In addition to satisfying any other mandate issued by the Department hereunder, a food  
362 service business, cottage food operator or prepackaged restaurant that has been closed-down due  
363 to a violation of this law must further pass a reinspection by the Department before being eligible  
364 for operation.

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

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

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

374 305.10-3. *Emergency.* The Department may order a close-down of a food service business, cottage  
375 food operation and/or prepackaged restaurant immediately on an emergency basis upon evidence  
376 of a serious health and/or safety threat to the community.

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

380

### 381 **305.11. Appeal Rights**

382 305.11-1. *Decisions Not Issued Pursuant to a Citation.* Decisions of the Department that are not  
383 issued pursuant to a citation may be appealed, in writing, to the Department's Area Manager.

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

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

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

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

393 (1) That, the decision is contrary to law;

394 (2) That, the decision is without any reasonable factual basis; and/or

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

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

398 305.11-2. *Decisions Issued Pursuant to a Citation.* Decisions of the Department that are issued  
399 pursuant to a citation may be contested in accordance with the procedures contained in the Nation's  
400 laws and policies governing citations.

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

403

404 *End.*

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406 Adopted – BC-06-13-01-B

407 Amended – BC-02-25-15-C

408 Amended – BC-\_\_-\_\_-\_\_-\_\_

409

**Title 3. Health and Public Safety – Chapter 305**

~~ONEIDA FOOD SERVICE CODE~~

**Kahkwa’ó·ku**

*about the food*

**ONEIDA FOOD SERVICE**

305.1 <del>+</del> Purpose <u>and Policy</u>	305.7. <u>Licensing</u> <del>8 +</del> <u>Inspections</u>
305.2 <del>+</del> Adoption, Amendment, Repeal	305.8. <u>Exemptions</u> <del>9 - 1</del> <u>Fees</u>
305.3 <del>+</del> Definitions	305.9. <u>Inspections</u> <del>10 - 1</del> <u>Independent</u> <del>Food</del>
	<u>Service Vendors Badge</u>
305.4 <del>1</del> Responsibilities and Duties	305.10. <u>Exemptions</u>
	305.11 <del>1</del> Exceptions and <u>Jurisdiction</u>
<del>305.5</del> <del>1</del> Compliance	305.12 <del>1</del> Violations, Enforcement
305.6 <del>1</del> Requirements for registering	305.13 <del>1</del> <u>11.</u> Appeal Rights
305.7 <del>1</del> Insurance	

**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.

51 305.1-2. Policy. It is the policy of the Nation to protect the health, welfare and safety of the  
52 community and to strengthen the Nation’s self-governance by ensuring, through the exercise of its  
53 inherent sovereignty over the Nation’s resources and membership, that food provided at retail or  
54 through an Oneida Nation Food Service Program is unadulterated, prepared in a clean environment  
55 and honestly presented.

56  
57 **305.2. — Adoption, Amendment, Repeal**

58 305.2-1.— ~~This Code is law was~~ adopted by the Oneida Business Committee by ~~Resolution#~~  
59 ~~6resolution BC-06-13-01-B~~ and amended by ~~resolution~~resolutions BC-02-25-15-C and ~~is effective~~  
60 ~~ten (10) business days after adoption.~~BC- - - - .

61 305.2-2.— ~~This Code law~~ may be amended or repealed by the Oneida Business Committee and/or  
62 Oneida General Tribal Council pursuant to the procedures set out in the Oneida  
63 Administrative~~Legislative~~ Procedures Act ~~by the Oneida Business Committee or by the Oneida~~  
64 General Tribal Council.

65 305.2-3.— ~~Should a provision of this Code law~~ or the application thereof to any person or  
66 circumstances be held as invalid, such invalidity shall not affect other provisions of this law which  
67 ~~will continue~~are considered to have legal force without the invalid portions.

68 ~~305.2-4. All previously enacted or adopted Oneida laws, ordinances, policies or other~~  
69 ~~regulations that are inconsistent or conflict with this Code are hereby repealed unless re-enacted~~  
70 ~~after adoption of this Code.~~

71  
72 305.2-4. In the event of a conflict between a provision of this law and a provision of another law,  
73 the provisions of this law shall control.

74 305.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

75  
76 **305.3. — Definitions**

77 305.3-1.— ~~This section shall govern the definitions of words and phrases used within the~~this law.  
78 All words not defined herein shall be used in their ordinary and everyday sense.—

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

80 ~~(b) —“Tribal Property” means property that is owned by (a)~~ “Citation” means a legal  
81 document that serves as a notice or summons to appear in a court of the Nation in response to a  
82 charge against a person of a violation of law.

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

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

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

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

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

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

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

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

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

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

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

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

117 (1) Private rummage sales;

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

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

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

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

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

127 (p) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was  
128 established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer  
129 the judicial authorities and responsibilities of the Nation.

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

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

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

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

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

141 (2) A market or grocery store;

142 (3) A catering business;

143 (4) A bakery or confectionary;  
144 (5) A convenience store or gas station store;  
145 (6) An Oneida Nation by the United States of America. Food Service Program;

146 and/or

147 ~~(e) —~~ (7) A mobile food truck that requires a Department approved service base  
148 to operate.

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

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

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

156 (x) “Reservation” means that area in Wisconsin all land within the exterior boundaries as  
157 set out in the of the Reservation of the Oneida Nation, as created pursuant to the 1838  
158 Treaty with the United States of America. Oneida 7 Stat. 566, and any lands added thereto  
159 pursuant to federal law.

160 ~~(d) “Federal Food Code” means the most current United States Public Health Service~~  
161 ~~Model Food Code.~~

162 ~~(e) “Food Service Establishment” means a permanent unit or location on tribal property~~  
163 ~~which food is processed on site and intended for individual consumption usually for retail~~  
164 ~~sale. The term includes any such place whether consumption is on or off premises,~~  
165 ~~including, but not limited to the following:~~

166 ~~(1) A restaurant or eating/drinking establishment~~

167 ~~(2) A market or grocery~~

168 ~~(3) A catering business~~

169 ~~(4) A bakery or confectionary~~

170 ~~(5) A convenience store or gas station store~~

171 ~~(f) “Independent Food Service Vendors” are those individuals who sell food on tribal~~  
172 ~~property for profit that prepare food off site independent of a permanent establishment~~  
173 ~~such as a restaurant, at a source that has been approved by the Environment Health and~~  
174 ~~Safety Department.~~

175 ~~(g) —~~ (y) “Temporary Food Service” means a food service establishment” means a non-  
176 permanent food service establishment that operates at a fixed location for a limited number  
177 of consecutive days in conjunction with a single event.

#### 179 305.4. Application

180 305.4-1. This law shall apply to all food service businesses, prepackaged restaurants and cottage  
181 food operators located or operating within the Reservation.

182 305.4-2. Liberal Construction. The provisions of this law shall apply to the fullest extent of the  
183 sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the  
184 objectives and purposes for which it was enacted.

#### 186 305.5. Compliance

187 305.5-1. No person shall operate a food service business without a valid, unexpired license from  
188 the Department.

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

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

192 305.5-2. *Federal Food Code.* The Nation finds that the Federal Food Code establishes a high level  
193 of stringent food and beverage handling safety standards that should govern all food service  
194 businesses to which this law applies.

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

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

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

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

205  
206 **305.6. Authority**

207 305.6-1. *Authority of the Department.* Subject to all applicable provisions and/or restrictions  
208 contained in this or any other governing law of the Nation, the Department shall be responsible for  
209 the administration and enforcement of this law, including, but not limited to, that the Department  
210 shall have the power to:

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

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

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

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

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

220  
221 **305.7. Licensing on tribal property**

222 305.7-1. *Licenses.* The following shall govern the process for obtaining and renewing a license to  
223 operate a food service business:

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

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

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

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

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

241 ~~(b) License Period.~~

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

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

248 ~~(h) "Environmental Department" means the Oneida Environment Health and Safety~~  
249 ~~Department, hereinafter, EHS.~~

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

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

258 ~~(k) "The Business Committee" means the Oneida Business Committee~~

259 ~~(l) "Risk Management" means the Oneida Risk Management Department.~~

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

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

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

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

271  
272 **305.4. Responsibilities and Duties**

273 ~~305.4 1. The EHS Department shall administer and regulate the requirements of this Code~~  
274 ~~and the Federal Food Code pursuant to their updated Standard Operating Procedures, hereinafter,~~  
275 ~~"SOP's", for Food Service Vendors.~~~~be~~

276 ~~305.4 2. The EHS Department shall conduct food handling classes that are required for~~~~to set a~~  
277 ~~licensing of independent and temporary food vendors. Food service establishment vendors are~~  
278 ~~exempt from this requirement but are to uphold other requirements per the Federal Food Code.~~

279 ~~305.4 3.— The EHS Department shall have a copy of the most current Federal Food Code~~  
280 ~~available for inspection at the EHS offices by any and all food service vendors during regular~~  
281 ~~business hours.~~

282 ~~305.4 4.— The EHS Department shall have a copy of their SOP's for Food Service Vendors~~  
283 ~~available for inspection at the EHS offices by any and all food service vendors during regular~~  
284 ~~business hours.~~

285 ~~305.4 5.— Risk Management shall make the determination to ensure that the vendor has adequate~~  
286 ~~insurance coverage.~~

287 ~~305.4 6.— The fee schedule, subject to Licensing Department shall issue a Food Service License,~~  
288 ~~Temporary Food Service License, and a badge for Independent Food Vendors upon successful~~  
289 ~~compliance of the requirements of this Code and the Federal Food Code.~~

290 ~~305.4 7.— The Licensing Department, in conjunction with the EHS Department, shall determine~~  
291 ~~the fees for the Food Service Licenses annually and post these prominently in the EHS a Licensing~~  
292 ~~Department.~~

293 ~~305.4 8.— The Licensing Department shall determine the monetary fines for noncompliance with~~  
294 ~~this Code as approved by the Business Committee.~~

295  
296 ~~**305.5.— Compliance**~~

297 ~~305.5 1.— Strict compliance with the specific laws found in this Code and the Federal Food Code~~  
298 ~~are required.~~

299 ~~305.5 2.— Additions or modifications to the Federal Food Code found in this Code are designed~~  
300 ~~to be Oneida specific.~~

301 ~~305.5 3.— Non-compliance with this Code or the Federal Food Code will be addressed by the~~  
302 ~~License Department of the Compliance Division upon written complaint and or recommendation~~  
303 ~~from the EHS or Risk Management Departments.~~

304  
305 ~~**305.6.— Requirements for Licensing**~~

306 ~~305.6 1.— No person or person, corporation or firm shall operate a food service establishment~~  
307 ~~either permanent or temporary, or sell food as an independent food service vendor on tribal~~  
308 ~~property, who does not have a valid, unsuspended, unrevoked Oneida Food Vendors License~~  
309 ~~issued by the License Department.~~

310 ~~305.6 2.— Only a person or persons, corporation or firm that complies with the requirements of~~  
311 ~~this Code and the Federal Food Code shall be entitled to receive and retain an Oneida Food~~  
312 ~~Vendors License.~~

313 ~~305.6 3.— A valid license shall be posted in every food service establishment or temporary food~~  
314 ~~service premises; and every independent food vendor shall prominently display the valid badge~~  
315 ~~issued by the EHS Department.~~

316 ~~305.6 4.— A Food Service License will be issued as follows:~~

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

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

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

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

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

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

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

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

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

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

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

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

349 ~~305.6-5.— Oneida Tribal Enterprise Units and Oneida Tribal Business Units shall be required to~~  
350 ~~adhere to the requirements of this code when selling food for profit on tribal property.~~

351 ~~305.6-6.— Food Service Licenses are non-transferable.~~

### 352 ~~305.7. Insurance~~

354 ~~305.7-1.— Food Service Establishments and Independent Vendors are required to have adequate~~  
355 ~~insurance as determined by the Risk Management Department's Standard Operating Procedures.~~

356 ~~305.7-2.— Upon satisfying the requirements of the EHS Department, Food Service Establishments~~  
357 ~~and Independent Food Service Vendors must provide the necessary documents of insurance to~~  
358 ~~Risk Management Department.~~

359 ~~305.7-3.— At any time during the term of the food service license, if the vendor loses his or her~~  
360 ~~insurance coverage, this must be reported immediately by the vendor to Risk Management and/or~~  
361 ~~the License Department.~~

362 ~~305.7-4.— Temporary Food Service vendors are exempt from the requirement for additional~~  
363 ~~insurance under this section.~~

### 364 ~~305.8.— Inspections~~

367 ~~305.8 1.— Food Establishment Vendors and Temporary Food Service Vendors who apply for a~~  
368 ~~license must undergo a pre-inspection of the permanent or temporary establishment by the EHS~~  
369 ~~Department inspector that results in a satisfactory score under the Federal Food Guidelines.~~

370 ~~305.8 2.— Independent Food Service Vendors who apply for a license must undergo a pre-~~  
371 ~~inspection of the kitchen or original food preparation premises by the EHS Department inspector~~  
372 ~~that results in a satisfactory score under the Federal Guidelines.~~

373 ~~305.8 3.— Inspections of the food service premises by the EHS Department will be scheduled~~  
374 ~~twice a year.~~

375 ~~305.8 4.— At any time during the term of the license, either upon receipt of a complaint or upon~~  
376 ~~their own volition, the EHS Department may conduct an unscheduled inspection of a vendors food~~  
377 ~~preparation site.~~

378 ~~305.8 5.— A reinspection conducted as a result of a prior violation of this code or the Federal Food~~  
379 ~~Code, will be an additional fee to the vendor and must achieve a satisfactory score under the~~  
380 ~~Federal guidelines to cure the violation.~~

381  
382 ~~**305.9.— Fees**~~

383 ~~305.9 1.— The Food Service license fees shall cover a twelve (12) month period and shall be paid~~  
384 ~~in advance with the application for licensure.~~

385 ~~305.9 2.— The fee shall be paid annually at the beginning of each fiscal year which is October~~  
386 ~~1 Committee through September 30 of the following year adoption of a resolution, that is~~  
387 ~~applicable to all food service businesses.~~

388 ~~305.9 3.— The license fees will be prorated for those applicants who start up their business prior~~  
389 ~~to the beginning of the fiscal year.~~

390 ~~305.9 4.— The fee shall be returned in full if the application is denied.~~

391 ~~305.9 5.— The licensing agent shall keep fee records.~~

392 ~~305.9 6.— Food Service vendors that have had their license suspended or their businesses closed~~  
393 ~~will not be entitled to a refund of their fees.~~

394 ~~305.9 7.— The fee for a food service license shall be pursuant to an equitable fee schedule as~~  
395 ~~established by the EHS and License Department as reviewed and approved by the Business~~  
396 ~~Committee and shall be available in the Licensing and EHS Departments for review.~~

397 ~~305.9 8.— The fee schedules may be adjusted annually.~~

398 ~~305.9 9.— Food Service vendor fees shall be used for the operational budget of the EHS (80%)~~  
399 ~~and administrative budget of the License Department (20%).~~

400 ~~305.9 10.— Oneida Tribal Enterprise Units are required to pay the license fees under this code.~~

401 ~~305.9 11.— Oneida Tribal Business Units are exempt from the fee requirements.~~

402  
403 ~~**305.10.— Independent Food Service Vendors Badge**~~

404 ~~305.10 1.— Upon compliance with the requirements of this Code and the Federal Food Code, the~~  
405 ~~Independent Food Service Vendors and their employees, if any, will be issued a badge by EHS~~  
406 ~~with the vendors/employee's photograph and license number clearly visible.~~

407 ~~305.10 2.— The badge must be worn by the licensed Independent Food Service Vendor and~~  
408 ~~employees in a manner that is clearly visible to the public at all times while engaging in the sale~~  
409 ~~of their food product.~~

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

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

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

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

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

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

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

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

432 (3) ~~305.10-3. Independent Food Service vendor badges are non-~~  
433 ~~transferable and must be worn only by the individual to whom it was issued.~~

434  
435  
436 **305.11. Exceptions and Exemptions.**

437 ~~305.11-1.~~ (A) The following Oneida Nation Food Service Programs  
438 and other non-profit service programs of the Nation shall not be required  
439 to pay a licensing fee to obtain a license under this law.

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

445 (C) Exemption from a licensing fee under (A) or (B) of this section shall  
446 not be considered a waiver of any other compliancy requirement within this  
447 law that is applicable to food service businesses and/or prepackaged  
448 restaurants, nor shall it be considered a waiver of the Nation's authority to  
449 regulate food service businesses or prepackaged restaurants operating  
450 within its jurisdiction.

451 **305.7-2. License Eligibility.**

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

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

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

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

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

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

462 (2) Submit proof of having undergone either:

463 (A) Certification under the applicable food safety training offered through  
464 the Department; or

465 (B) Certification or training that the Department, in its discretion, deems  
466 equivalent to the corresponding food safety training offered through the  
467 Department.

468 (3) Pass an inspection by the Department of the proposed premises for the  
469 temporary food service establishment; and

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

472 (c) *Independent Food Service Operators.* To be eligible to receive a license to function as  
473 an independent food service operator, applicants must:

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

475 (2) Submit proof of having undergone either:

476 (A) Certification under the applicable food safety training offered through  
477 the Department; or

478 (B) Certification or training that the Department, in its discretion, deems  
479 equivalent to the corresponding food safety training offered through the  
480 Department.

481 (3) Pass an inspection by the Department of the proposed premises designated in  
482 writing by the applicant as the food preparation site; and

483 (4) Satisfy any other provision within or arising out of this law that is a prerequisite  
484 for licensure to function as an independent food service operator.

485 (d) *Training.* The Department shall provide reasonable opportunities for persons to  
486 undergo the food safety training that is referenced in section 305.7-2(b)(2)(A) and (c)(2)(A)  
487 of this law.

488 **305.7-3. License Placement.**

489 (a) *Permanent and Temporary Food Service Establishments.* A valid license shall, at all  
490 times, be posted in a conspicuous area within the premises of every permanent food service  
491 establishment and every temporary food service establishment.

492 (b) *Independent Food Service Operators.* A valid license shall, at all times, be prominently  
493 displayed on the body of the license holder whenever functioning as an independent food  
494 service operator.

495  
496 **305.8. Exemptions**

497 **305.8-1. Cottage Food Sales.** Cottage food operators are exempt from the requirements of this  
498 Code law, except as follows:

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

501 (1) Full name;

502 (2) Address of domestic residence; and

503 (3) Any additional information required by a standard operating procedure that the  
504 Department may establish, consistent with this law, to govern cottage food sales.

505 (A) By registering as a cottage food operator, the individual is confirming  
506 that the information he or she provided is correct and agreeing to operate  
507 within the confines of the exemption.

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

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

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

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

514 (c) Home-canned Foods. Individuals who intend to sell home-canned foods under the  
515 cottage food sales exemption must first complete the food safety training relating to  
516 canning that is approved by the Department.

517 305.8-2. Prepackaged Restaurants. Prepackaged restaurants are exempt from the requirements of  
518 this law, except as follows:

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

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

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

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

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

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

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

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

541 305.8-3. Enforcement. Violations of this section shall be enforced pursuant to section 305.10 of  
542 this law.

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

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

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

552  
553 **305.9. Inspections**

554 305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two  
555 (2) times per license term, the Department may, for any reason, enter a food service business to  
556 conduct an inspection, so long as at a reasonable hour.

557 ~~305.9-2.(a) Private rummage sales.~~

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

560 (a) Receipt of a complaint;

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

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

564 305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of  
565 this law, will result in an additional fee as set forth in the license fee schedule.

566  
567 ~~305.10.(e) Official Tribal meetings such as GTC Meetings.~~

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

569  
570 **305.12. ——— Violations, Enforcement**

571 ~~305.10-1, 305.12-1. — Selling food or food products on tribal property without a license is strictly~~  
572 ~~prohibited and will result in a fine and/or the suspension of the vendor's right to continue to sell~~  
573 ~~food, i.e., the business will be closed down.~~

574 ~~305.12-2. — A food service vendor's license will be suspended and the food service closed down if~~  
575 ~~the licensed vendor is in non-compliance with the requirements of this Code, the Federal Food~~  
576 ~~Code or for any other reasons related to the protection of the Oneida Nation's community public~~  
577 ~~health, safety or welfare.~~

578 ~~305.12-3. — A food service vendor's loss of insurance coverage or inadequate coverage for their~~  
579 ~~entity will be cause for a suspension of license and the business will be closed down until the~~  
580 ~~vendor procures adequate coverage and provides the documents thereof to the Risk Management~~  
581 ~~Department.~~

582 305.12-4. ——— Non-compliance. Violations of this law may result in any one or more of the  
583 following as determined by the Department:

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

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

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

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

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

596 ~~305.10-2. 305.12-5.~~ The vendor's food service business may be closed down by the License In  
597 addition to satisfying any other mandate issued by the Department in conjunction with the Oneida  
598 Police Department for an uncorrected, critical hereunder, a food service business, cottage food  
599 operator or prepackaged restaurant that has been closed-down due to a violation of this Code or  
600 the Federal Food Code law must further pass a reinspection by the Department before being eligible  
601 for operation.

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

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

608 ~~305.12-6.~~ The EHS may close down a business (b) A food service business or prepackaged  
609 restaurant that has had its license or license exemption status suspended or has become subject to  
610 a close-down order shall not be entitled to a reimbursement of all or any portion of the fee or  
611 fees submitted in accordance with the licensing fee schedule.

612 ~~305.10-3. Emergency.~~ The Department may order a close-down of a food service business, cottage  
613 food operation and/or prepackaged restaurant immediately on an emergency basis upon evidence  
614 of a serious health and/or safety threat to the community due to the imminent nature of the food  
615 service violation.

616 ~~305.12-7.~~ Any food service vendor that has been closed- (a) Persons issued a close-down order  
617 by EHS the Department as an emergency measure due to the evidence of a serious health or safety  
618 threat hereunder must provide evidence of satisfactorily corrected compliance to the  
619 EHS Department and pass an inspection by the Department prior to being allowed to re-open  
620 the business.

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

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

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

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

635  
636 **305.13.—11. Appeal Rights**

637 ~~305.13-11-1.~~ Parties who disagree with the decisions *Decisions Not Issued Pursuant to a*  
638 *Citation. Decisions* of the EHS, Licensing or Risk Management Departments, regarding issues of

639 ~~licensing, inspections, or insurance~~ Department that are not issued pursuant to a citation may be  
640 appealed, in writing, to the Department's Area Manager.

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

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

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

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

650 ~~305.13-~~ (1) That, the decision is contrary to law;

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

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

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

657 ~~305.11-2. Decisions Issued Pursuant to a Citation. Decisions of the Department that are issued~~  
658 ~~pursuant to a citation may be contested in accordance with the procedures contained in the Nation's~~  
659 ~~laws and policies governing citations.~~

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

662 *End.*

664 \_\_\_\_\_  
665 \_\_\_\_\_  
666 Adopted ~~BC-10-03~~06-13-01-DB

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

668

~~Attachment A.~~

~~Food Service License Fees for 2001-2002~~

~~(To be adjusted annually)~~

- 669  
670  
671  
672  
673  
674 1. ~~Food Service Establishment License~~  
675     a. ~~Restaurants and Eating/Drinking Establishments~~  
676  
677             1. ~~With 0-49 seats~~ ~~\$100.00~~  
678             2. ~~With 50-100 seats~~ ~~\$150.00~~  
679             3. ~~With 101+ seats~~ ~~\$350.00~~  
680  
681     b. ~~Retail Food Market, Grocery Store~~ ~~\$175.00~~  
682  
683     c. ~~Retail Food Market, Grocery Store~~  
684         ~~With restaurant~~ ~~\$225.00~~  
685  
686     d. ~~Bakery/Confectionary~~ ~~\$100.00~~  
687  
688     e. ~~Convenience Store/Gas Station~~ ~~\$100.00~~  
689  
690     f. ~~Catering Business~~ ~~\$100.00~~  
691  
692 2. ~~Independent Food Service License~~  
693     a. ~~\$75.00 annually~~  
694  
695 3. ~~Temporary Food Service License~~  
696     a. ~~\$25.00 for each event, not to exceed fourteen consecutive days~~  
697  
698 4. ~~Tribal Schools~~ ~~No Fee~~  
699  
700

~~**THIS LICENSE IS NOT TRANSFERABLE**~~

701  
702 ~~All licenses expire on September 30<sup>th</sup> annually. A penalty of \$50.00 will be applied to renewal~~  
703 ~~applications postmarked after October 15<sup>th</sup>. Operation in any fiscal year requires a licence.~~  
704

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

-

1  
2 **Title 3. Health and Public Safety – Chapter 305**  
3 **Kahkwa’ó·ku**  
4 *about the food*  
5 **ONEIDA FOOD SERVICE**  
6

7 305.1. Purpose and Policy	305.7. Licensing
8 305.2. Adoption, Amendment, Repeal	305.8. Exemptions
9 305.3. Definitions	305.9. Inspections
10 305.4. Jurisdiction	305.10. Violations, Enforcement
11 305.5. Compliance	305.11. Appeal Rights
12 305.6. Authority	

---

13  
14  
15 **305.1. Purpose and Policy**

16 305.1-1. *Purpose.* The purpose of this law is to ensure the safety of food that is provided to  
17 consumers at retail or through an Oneida Nation Food Service Program by establishing a system  
18 of overlapping safeguards designed to minimize foodborne illness; ensure employee health,  
19 industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable  
20 levels of sanitation on the premises of food service businesses; and promote fair dealings with  
21 members of the community through adoption of licensing requirements, exemptions, regulation,  
22 control, supervision and enforcement procedures that govern food service businesses within the  
23 jurisdiction of the Nation.

24 305.1-2. *Policy.* It is the policy of the Nation to protect the health, welfare and safety of the  
25 community and to strengthen the Nation’s self-governance by ensuring, through the exercise of its  
26 inherent sovereignty over the Nation’s resources and membership, that food provided at retail or  
27 through an Oneida Nation Food Service Program is unadulterated, prepared in a clean environment  
28 and honestly presented.  
29

30 **305.2. Adoption, Amendment, Repeal**

31 305.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-13-01-B  
32 and amended by resolutions BC-02-25-15-C and BC-\_\_-\_\_-\_\_-\_\_.

33 305.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida  
34 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

35 305.2-3. Should a provision of this law or the application thereof to any person or circumstances  
36 be held as invalid, such invalidity shall not affect other provisions of this law which are considered  
37 to have legal force without the invalid portions.

38 305.2-4. In the event of a conflict between a provision of this law and a provision of another law,  
39 the provisions of this law shall control.

40 305.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.  
41

42 **305.3. Definitions**

43 305.3-1. This section shall govern the definitions of words and phrases used within this law. All  
44 words not defined herein shall be used in their ordinary and everyday sense.

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

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

- 50 (c) “Consumer” means an individual who is a member of the public; takes possession of  
51 food; is not functioning in the capacity of a food service business, a cottage food operator,  
52 a prepackaged restaurant, or a food processing plant; and does not offer the food for resale.  
53 (d) “Cottage food operator” means an individual who, exclusively within the home kitchen  
54 of his or her domestic residence, produces cottage food products for direct sale only.  
55 (e) “Cottage food products” mean foods, produced within the home kitchen of a domestic  
56 residence, that are non-potentially hazardous, including non-perishable baked goods such  
57 as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit;  
58 jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or  
59 salsa, pickled vegetables and hot sauces; and other non-potentially hazardous foods that  
60 the Department characterizes as cottage food products for purposes of this law.  
61 (f) “Department” means the Environmental, Health and Safety Department within the  
62 Nation’s Environmental, Health, Safety and Land Division.  
63 (g) “Direct sale” means a consumer’s face-to-face purchase of a cottage food product from  
64 a cottage food operator that does not include purchases through consignment, mail order,  
65 or the internet, though nothing herein shall be interpreted to prohibit a cottage food operator  
66 from using the internet for the sole purpose of advertising his or her cottage food products.  
67 (h) “Domestic residence” means the single-family house or unit in a multiunit residential  
68 structure located at the address that the applicant lists as being his or her primary residence  
69 when applying to the Department for a cottage food exemption under this law.  
70 (i) “Emergency” means the occurrence or discovery of an unforeseen event that requires  
71 immediate attention, the absence of which could endanger the health or safety of others.  
72 (j) “Federal Food Code” means the most current edition of the United States Public Health  
73 Service, Food and Drug Administration Food Code.  
74 (k) “Fine” means a monetary punishment issued to a person for violation of this law.  
75 (l) “Food” means a raw, cooked or processed edible substance; ice; beverage; or ingredient  
76 used or intended for use or for sale in whole or in part for human consumption or chewing  
77 gum.  
78 (m) “Food service business” means, whether individually or collectively, a permanent food  
79 service establishment; a temporary food service establishment; and/or an independent food  
80 service operator. The following shall not qualify as a food service business under this law:  
81 (1) Private rummage sales;  
82 (2) Community sponsored non-profit fundraising and/or charity events;  
83 (3) Cottage food operators who satisfy the requirements of this law; and/or  
84 (4) Prepackaged restaurants that satisfy the requirements of this law.  
85 (n) “Home-canned foods” means home-canned fruits and vegetables that are naturally  
86 acidic or have been acidified by pickling or fermenting and have an equilibrium pH of 4.6  
87 or lower.  
88 (o) “Independent food service operator” means a person, other than one who qualifies as a  
89 cottage food operator, who sells, for profit, food that is prepared off-site, independent of a  
90 permanent establishment, at or within a location approved by the Department.  
91 (p) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was  
92 established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer  
93 the judicial authorities and responsibilities of the Nation.

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

97 (r) “Nation” means the Oneida Nation.

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

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

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

105 (2) A market or grocery store;

106 (3) A catering business;

107 (4) A bakery or confectionary;

108 (5) A convenience store or gas station store;

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

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

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

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

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

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

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

#### 125 126 **305.4. Application**

127 305.4-1. This law shall apply to all food service businesses, prepackaged restaurants and cottage  
128 food operators located or operating within the Reservation.

129 305.4-2. *Liberal Construction.* The provisions of this law shall apply to the fullest extent of the  
130 sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the  
131 objectives and purposes for which it was enacted.

#### 132 133 **305.5. Compliance**

134 305.5-1. No person shall operate a food service business without a valid, unexpired license from  
135 the Department.

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

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

139 305.5-2. *Federal Food Code*. The Nation finds that the Federal Food Code establishes a high level  
140 of stringent food and beverage handling safety standards that should govern all food service  
141 businesses to which this law applies.

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

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

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

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

152

### 153 **305.6. Authority**

154 305.6-1. *Authority of the Department*. Subject to all applicable provisions and/or restrictions  
155 contained in this or any other governing law of the Nation, the Department shall be responsible for  
156 the administration and enforcement of this law, including, but not limited to, that the Department  
157 shall have the power to:

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

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

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

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

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

167

### 168 **305.7. Licensing**

169 305.7-1. *Licenses*. The following shall govern the process for obtaining and renewing a license to  
170 operate a food service business:

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

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

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

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

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

188 (b) *License Period.*

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

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

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

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

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

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

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

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

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

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

220 (3) *Exemptions.*

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

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

228 (C) Exemption from a licensing fee under (A) or (B) of this section shall  
229 not be considered a waiver of any other compliancy requirement within this  
230 law that is applicable to food service businesses and/or prepackaged

231 restaurants, nor shall it be considered a waiver of the Nation's authority to  
232 regulate food service businesses or prepackaged restaurants operating  
233 within its jurisdiction.

234 305.7-2. *License Eligibility.*

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

- 237 (1) Submit the appropriate licensing fee with their application;  
238 (2) Pass an inspection by the Department of the proposed premises for the  
239 permanent food service establishment; and  
240 (3) Satisfy any other provision within or arising out of this law that is a prerequisite  
241 for licensure to operate a permanent food service establishment.

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

- 244 (1) Submit the appropriate licensing fee with their application;  
245 (2) Submit proof of having undergone either:  
246 (A) Certification under the applicable food safety training offered through  
247 the Department; or  
248 (B) Certification or training that the Department, in its discretion, deems  
249 equivalent to the corresponding food safety training offered through the  
250 Department.

251 (3) Pass an inspection by the Department of the proposed premises for the  
252 temporary food service establishment; and

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

255 (c) *Independent Food Service Operators.* To be eligible to receive a license to function as  
256 an independent food service operator, applicants must:

- 257 (1) Submit the appropriate licensing fee with their application;  
258 (2) Submit proof of having undergone either:  
259 (A) Certification under the applicable food safety training offered through  
260 the Department; or  
261 (B) Certification or training that the Department, in its discretion, deems  
262 equivalent to the corresponding food safety training offered through the  
263 Department.

264 (3) Pass an inspection by the Department of the proposed premises designated in  
265 writing by the applicant as the food preparation site; and

266 (4) Satisfy any other provision within or arising out of this law that is a prerequisite  
267 for licensure to function as an independent food service operator.

268 (d) *Training.* The Department shall provide reasonable opportunities for persons to  
269 undergo the food safety training that is referenced in section 305.7-2(b)(2)(A) and (c)(2)(A)  
270 of this law.

271 305.7-3. *License Placement.*

272 (a) *Permanent and Temporary Food Service Establishments.* A valid license shall, at all  
273 times, be posted in a conspicuous area within the premises of every permanent food service  
274 establishment and every temporary food service establishment.

275 (b) *Independent Food Service Operators*. A valid license shall, at all times, be prominently  
276 displayed on the body of the license holder whenever functioning as an independent food  
277 service operator.  
278

279 **305.8. Exemptions**

280 305.8-1. *Cottage Food Sales*. Cottage food operators are exempt from the requirements of this  
281 law, except as follows:

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

- 284 (1) Full name;  
285 (2) Address of domestic residence; and  
286 (3) Any additional information required by a standard operating procedure that the  
287 Department may establish, consistent with this law, to govern cottage food sales.

288 (A) By registering as a cottage food operator, the individual is confirming  
289 that the information he or she provided is correct and agreeing to operate  
290 within the confines of the exemption.

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

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

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

300 305.8-2. *Prepackaged Restaurants*. Prepackaged restaurants are exempt from the requirements of  
301 this law, except as follows:

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

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

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

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

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

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

324 305.8-3. *Enforcement.* Violations of this section shall be enforced pursuant to section 305.10 of  
325 this law.

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

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

333 (c) This section does not limit the liability of the owner of a prepackaged restaurant or a  
334 cottage food operator for damages that arise out of their sale or service of food hereunder.  
335

### 336 **305.9. Inspections**

337 305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two  
338 (2) times per license term, the Department may, for any reason, enter a food service business to  
339 conduct an inspection, so long as at a reasonable hour.

340 305.9-2. The Department may, at any time during the term of a license, enter a food service  
341 business to conduct an unscheduled inspection based on the following:

342 (a) Receipt of a complaint;

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

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

345 305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of  
346 this law, will result in an additional fee as set forth in the license fee schedule.  
347

### 348 **305.10. Violations, Enforcement**

349 305.10-1. *Non-compliance.* Violations of this law may result in any one or more of the following  
350 as determined by the Department:

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

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

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

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

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

361 305.10-2. In addition to satisfying any other mandate issued by the Department hereunder, a food  
362 service business, cottage food operator or prepackaged restaurant that has been closed-down due  
363 to a violation of this law must further pass a reinspection by the Department before being eligible  
364 for operation.

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

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

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

374 305.10-3. *Emergency.* The Department may order a close-down of a food service business, cottage  
375 food operation and/or prepackaged restaurant immediately on an emergency basis upon evidence  
376 of a serious health and/or safety threat to the community.

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

380

### 381 **305.11. Appeal Rights**

382 305.11-1. *Decisions Not Issued Pursuant to a Citation.* Decisions of the Department that are not  
383 issued pursuant to a citation may be appealed, in writing, to the Department's Area Manager.

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

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

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

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

393 (1) That, the decision is contrary to law;

394 (2) That, the decision is without any reasonable factual basis; and/or

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

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

398 305.11-2. *Decisions Issued Pursuant to a Citation.* Decisions of the Department that are issued  
399 pursuant to a citation may be contested in accordance with the procedures contained in the Nation's  
400 laws and policies governing citations.

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

403

404 *End.*

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406 Adopted – BC-06-13-01-B

407 Amended – BC-02-25-15-C

408 Amended – BC-\_\_-\_\_-\_\_-\_\_

409



**kahkwa?ó·ku**  
**(gah kwa oh goo)**  
*about the food*

**ONEIDA FOOD SERVICE CODE AMENDMENTS  
 LEGISLATIVE ANALYSIS**

**SECTION 1. EXECUTIVE SUMMARY**

<b>REQUESTER:</b> Environmental, Health and Safety and Licensing Departments	<b>SPONSOR:</b> Ernest Stevens III	<b>DRAFTER:</b> Kristen M. Hooker	<b>ANALYST:</b> Maureen Perkins
<b>Intent of the Amendments</b>	<p>The proposed amendments to the Oneida Food Service Code (Law) intend to:</p> <ul style="list-style-type: none"> <li>▪ update the outdated Oneida Food Service Code including formatting required by the Legislative Procedures Act;</li> <li>▪ update the exclusive authority of the Environmental, Health and Safety (EHS) Department to develop license fee and penalty schedules; both adopted by OBC resolution. The EHS Department is within the Environmental, Health, Safety and Land Division (EHSLD);</li> <li>▪ include exemptions for cottage food sales and prepackaged restaurants;</li> <li>▪ include mobile food trucks in the definition of permanent food service operators;</li> <li>▪ include a waiver of license fees by the EHS Department when an applicant provides proof of payment to a governmental unit within the Reservation boundaries for the same term;</li> <li>▪ include a thirty (30) day response time for EHS to make determinations regarding eligibility;</li> <li>▪ require the EHS Department to provide applicants who have been denied licensure or license renewal a written explanation of the denial and an explanation of the appeals process;</li> <li>▪ allow the EHS Department the discretion to accept alternate training options;</li> <li>▪ include an internal appeal process at the division level (EHSLD) for certain decisions of the EHS Department; and</li> <li>▪ update the title to Oneida Food Service.</li> </ul>		
<b>Purpose</b>	<p>To ensure the safety of food that is provided at retail or through Oneida Nation Food Service Programs to members of the community by establishing a system of overlapping safeguards designed to minimize foodborne illness; ensure employee health, industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable levels of sanitation on the premises of food service businesses; and promote fair dealings with consumers through adoption of licensing requirements, exemptions, regulation, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation [1 O.C. 305.1-1].</p>		
<b>Affected Entities and Individuals</b>	<p>Environmental, Health and Safety Department, Environmental, Health, Safety and Land Division, Oneida Nation Judiciary, Oneida Business Committee (OBC), Oneida Nation Members, Oneida Nation Food Service Programs, Cottage Food Operators, Independent Food Service Operators, Permanent Food Service Establishments, Prepackaged Restaurants, Licensing Department, Oneida Police Department, Risk Management Department</p>		
<b>Related Legislation</b>	<p>Judiciary law, Oneida Judiciary Rules of Civil Procedure, Rules of Appellate Procedure, Legislative Procedures Act</p>		
<b>Public Meeting</b>	<p>A public meeting was held on February 6, 2020.</p>		
<b>Fiscal Impact</b>	<p>A fiscal impact statement has not yet been requested.</p>		

## 1 SECTION 2. LEGISLATIVE DEVELOPMENT

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

10  
11 B. **Expected Benefits.** The amendments comprehensively update the Oneida Food Service law with  
12 current food service standards and provides members of the Nation the opportunity to register for an  
13 exemption to sell cottage food products from their residence. The Oneida Nation is one of the first  
14 tribes in the country to offer cottage food exemptions [3 O.C. 305.8-1]. The cottage food amendments  
15 can be viewed as an act of food sovereignty exercised by the Nation because the amendments deviate  
16 from the model Federal Food Code intended to be used as guidance to develop state or tribal food codes  
17 [3 O.C. 305.5-2(a)(2)].

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

## 21 SECTION 3. CONSULTATION AND OUTREACH

22  
23 A. **Departments.** Representatives from the following departments participated in the development of  
24 this Law:

- 25 ▪ Environmental, Health and Safety Department
- 26 ▪ Licensing Department
- 27 ▪ Risk Management Department
- 28 ▪ Community Health Nursing
- 29 ▪ Oneida Cannery Department

30  
31 B. **Laws of the Nation.** The drafting of this legislative analysis included a review of the following laws  
32 of the Nation: Judiciary [8 O.C. 801], Oneida Judiciary Rules of Civil Procedure [8 O.C. 803], Rules  
33 of Appellate Procedure [8 O.C. 805] and Legislative Procedures Act [1 O.C. 109].

34  
35 C. **Area and Tribal Laws.** The following state and tribal laws were reviewed in the development of this  
36 legislative analysis:

- 37 ▪ 2009 Wisconsin Act 101
- 38 ▪ University of Arkansas Model Tribal Cottage Food Law
- 39 ▪ Minnesota Cottage Foods Law
- 40 ▪ Stockbridge-Munsee Food Service Code
- 41 ▪ Jamestown S’Klallam Tribe Tribal Food Code
- 42 ▪ Montana Code 50-50-101-403

43  
44 D. **Current Licenses Issued by the Nation**

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

## 49 SECTION 4. PROCESS

50  
51 A. The Oneida Food Service Code amendments have thus far followed the required process contained in  
52 the Legislative Procedures Act.

- 53 B. On September 19, 2018, the LOC added the Oneida Food Service Code Amendments to the active files  
54 list and assigned Ernest Stevens III as the sponsor.
- 55 C. A public meeting on the proposed amendments to the Law was held on February 6, 2020.  
56     ▪ The public comment period closed on February 13, 2020.  
57     ▪ The Legislative Operating Committee reviewed and considered the public comment received  
58 on March 4, 2020.
- 59 D. The following work meetings were held by Legislative Reference Office staff in the development of  
60 the amendments to the Law:  
61     ▪ October 4, 2018, a work meeting was held with EHS Department staff, Cannery Department  
62 staff and Community Health Nursing Program staff.  
63     ▪ November 29, 2018, a work meeting was held with EHS Department staff and Licensing  
64 Department staff.  
65     ▪ January 25, 2019, a work meeting was held with EHS Department staff.  
66     ▪ February 28, 2019, a work meeting was held with EHS Department staff and Licensing  
67 Department staff.  
68     ▪ June 6, 2019, a work meeting was held with EHS Department staff.  
69     ▪ November 6, 2019, a work meeting was held with the LOC.  
70     ▪ November 15, 2019, a work meeting was held with the LOC.  
71     ▪ December 18, 2019, a work meeting was held with the LOC.  
72     ▪ February 13, 2020, a work meeting was held with the LOC.  
73     ▪ March 4, 2020, a work meeting was held with the LOC.

## 74 75 SECTION 5. CONTENTS OF THE LEGISLATION

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

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

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

- 100  
101     ▪ The terms consumer, food and person were added and used in the Law to provide clarity.  
102  
103     ▪ The following definitions were added to reflect the addition of the cottage foods exemption [3  
104 O.C. 305.8-1]: cottage food operator, cottage food products, direct sale, domestic residence,  
105 home-canned foods, and potentially hazardous food.

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- The definition for prepackaged restaurant was added to reflect the prepackaged restaurant exemption [3 O.C. 305.8-2].
- Definitions were added for citation, fine and penalty.
- Definitions for Licensing Department and Risk Management were removed from the Law because these departments are no longer referenced in the Law. The Oneida Business Committee and the Oneida Police Department were removed from the definition of close down because these two entities are no longer involved in the decision or act of closing a food service business down. The term tribal property was removed as it is not used in the amended Law. The term compliance was removed as this word is used in the everyday sense and does not require a definition.

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

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

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

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

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

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

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

A process was added requiring the EHS Department to make a determination to issue or deny an application for a license or license renewal within thirty (30) days following the submission of a

159 complete application including the payment of all applicable fees and any information contained in the  
160 standard operating procedure created by the EHS Department [3 O.C. 305.7-1(a)].

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

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

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

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

173 The prorated formula used by the EHS Department related to a reduction of a license fee when the  
174 application is received after October 1<sup>st</sup> will be added to the required standard operating procedure [3  
175 O.C. 305.7-1(c)(1)(B)]. A provision was added that grants the EHS Department discretion to approve  
176 equivalent training to satisfy the Temporary Food Service establishment requirements [3 O.C. 305.7-  
177 2(b)(2)(B)] and the Independent Food Service Operator requirements [3 O.C. 305.7-2(c)(2)(B)].

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

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

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

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

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

### 196 **Licensing Timeframes**

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

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

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202  
203 G. **Exemptions** [3 O.C. 305.8]. This section was amended. The amended Law provides exemptions to  
204 cottage food operators and prepackaged restaurants if certain requirements contained in the Law are  
205 met. The meaning of exemption in an everyday sense is the process of freeing from an obligation  
206 imposed on others.

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

- 208 • The private rummage sales, community sponsored non-profit fund raising and/or charity events  
209 in the exemption section of the current Law [3 O.C. 305.11 of Current Law] were moved to the  
210 definition section of the amended Law [3 O.C. 305.3-1(m)] as an example of what does not  
211

- 212 qualify as a food service business and is therefore; although not explicitly stated in the Law, not  
 213 governed by the Law.
- 214 • Food sold at GTC meetings was removed from the Law because this practice is not allowed.
  - 215 • Food sold on land other than tribally owned land was removed because it is not necessary under  
 216 the amended Law.

217 **Chart 1: Explanation of Exemptions**

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

- 219 • Private rummage sales, community sponsored non-profit fundraising and/or charity events were  
 220 moved to the definition section as examples of events that do not qualify as a food service  
 221 business because these events are not governed by the amended Law.
- 222 • Cottage food operators and prepackaged restaurants do not qualify as a food service business  
 223 under the Law and are eligible for an exemption if specific requirements contained in the Law  
 224 are met. The purpose of the exemption in the amended Law is to remove much of the  
 225 requirements of the Law for these particular entities. The Nation is still afforded the opportunity  
 226 to have some oversight over these entities in certain circumstances such as inspection of an entity  
 227 if an outbreak of a foodborne illness occurs that can be tied back to the exempted entity.  
 228

*Cottage Food Sales [3 O.C. 305.8-1].* The EHS Department has the authority under the amended Law to add or subtract any additional qualifying foods from the list of cottage foods [3 O.C. 305.3-1(e)] that are processed or packaged at a person’s home kitchen of a domestic residence and only for direct sale to the consumer [3 O.C. 305.3-1(d)]. Cottage food operators are exempt from the requirements of the Law upon registering with the EHS Department, which requires that they disclose the cottage food operator’s name and domestic address where products will be produced. Additionally, the cottage food operator is required to package and label their cottage food products with the name and address of the operator, date processed, name of food product, and display a sign that states that the products are homemade and not subject to inspection by the Nation [3 O.C. 305.8-1]. Home canned foods require a food safety training approved by the EHS Department [3 O.C 308.8-1(c)]. The EHS Department has the authority to inspect the cottage food operator’s domestic residence, if a complaint is received or event giving rise to the EHS Department’s reasonable suspicion of noncompliance of the cottage food exemption [3 O.C. 305.8-3].

**Cottage Food Sales**  
 What Are Cottage Food Products?  
 Cottage food products are foods produced in a home kitchen of a domestic residence that are non-potentially hazardous which means that it does not require any type of temperature control to prevent it from going bad. Cottage food products include:

1. Home baked goods such as cakes, most fruit pies, breads, brownies, cookies and muffins, dry mixes, dried fruit;
2. Home canned naturally acidic fruits and vegetables or with a pH of 4.6 or lower such as apples, peaches and lemons;
3. Acidified by pickling or fermenting home canned salsas, pickled vegetables and hot sauces with a pH of 4.6 or lower;
4. Jams, jellies and applesauce; and
5. Other non-potentially hazardous foods the EHS department characterizes as cottage food products for purposes of this law.

Cottage food products have a low risk to health and most states in the country have exempted these products with varying levels of oversight, permit, license, or inspection requirements. Cottage food laws function as an exemption to general food safety laws and allow small processors to sell their products directly to consumers on a small scale [University of Arkansas Cottage Foods Model Food Code]. Some states have implemented a requirement to register an address and the name of the individual preparing cottage foods [Montana Code 50-50-116, page 10] to conduct some type of inspection should an outbreak occur directly linked to cottage food products [Montana Code 50-50-301(3), page 18].

229 **Chart 2: Cottage Foods License Exemptions Comparison**

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

230 Although cottage food producers are exempt from the requirements of the Law, there will be some  
 231 oversight to protect the Nation from potential foodborne illness that may arise from the production of  
 232 cottage foods. The LOC decided that some oversight for cottage food producers would be in the best  
 233 interest of the Nation. The Law will require home bakers and canners to label their products, register  
 234 with their name and address of domestic residence where cottage foods are produced and undergo  
 235 inspections if a complaint is made or if the EHS Department has reasonable suspicion of noncompliance  
 236 with the requirements for a cottage food sales exemption [3 O.C. 305.8-3]. For comparison; the State  
 237 of Wisconsin exemption requires labeling of cottage food products but does not require a license,  
 238 registration or training for cottage food producers that make less than \$5,000 from the sale of cottage  
 239 foods per year. Inspections are limited to certain circumstances. The State of Minnesota requires the  
 240

241 labeling of cottage food products, registration of cottage foods producers with the local health authority  
242 in the county where the domestic residence is located, training requirements related to the production  
243 of cottage foods and inspections under certain circumstances.  
244

245 Prepackaged Restaurants [3 O.C. 305.8-2]. Prepackaged restaurants are establishments that serve  
246 and/or sell only prepackaged foods with preparation on site limited to heating and serving [3 O.C.  
247 305.3-1(w)]. The LOC added an exemption to the Law for prepackaged restaurants with the following  
248 criteria: a reduced fee, fewer inspections and no training requirement [LOC Work Meeting 11/15/19].  
249 Prepackaged restaurants are exempt from the requirements of the Law except that they must apply with  
250 the EHS Department which includes a requirement for an inspection and agree to sell only prepackaged  
251 foods approved by the Department [3 O.C. 305.8-2]. The EHS Department has discretion to draft a  
252 standard operating procedure for the application process and will determine how the EHS Department  
253 will keep track of prepackaged restaurants [3 O.C. 305.8-2(a)]. The Food safety training or  
254 certification is not required but can be ordered by the EHS Department by the issuance of a corrective  
255 order [3 O.C. 305.8-2(b)]. The reason the training requirement was removed for prepackaged  
256 restaurants is because these establishments are limited to heating precooked foods according to  
257 directions on the package and the LOC determined this doesn't require food handling training due to  
258 low risk to public health. The EHS Department will provide written notice to the public of prepackaged  
259 foods allowed under this exemption [3 O.C. 305.8-2(a)(3)(A)]. The EHS Department may inspect  
260 prepackaged restaurants as often as deemed necessary for cause; but only once per year without cause  
261 [3 O.C. 305.8-2(c)].  
262

263 Enforcement of cottage food operations and prepackaged restaurants includes an inspection by the EHS  
264 Department based on a receipt of a complaint or reasonable suspicion by the EHS Department [3 O.C.  
265 305.8-3(a)] which may result in an action by the EHS Department according to the Violations,  
266 Enforcement section detailed below [3 O.C. 305.10]. Exemption status does not limit the liability of  
267 the owner of a cottage food operator or a prepackaged restaurant from damages that may happen due  
268 to the sale of their products [3 O.C. 305.8-3(c)].  
269

270 H. **Inspections** [3 O.C. 305.9]. This section has been clarified. The EHS Department is authorized to  
271 conduct two (2) inspections at any time during reasonable hours per license term for any reason; in  
272 addition to any inspections required for the issuance of a license under section 305.7 of this Law [3 O.C.  
273 305.9-1]. Additionally; the amendments clarify that the EHS Department may conduct an unscheduled  
274 inspection based on the receipt of a complaint, an outbreak of a foodborne illness or reasonable suspicion  
275 of a violation of this Law or an emergency [3 O.C. 305.9-2]. Any reinspection as a result of a violation  
276 of this Law requires additional fees [3 O.C. 305.9-3].  
277

278 I. **Violations, Enforcement** [3 O.C. 305.10]. This section has been amended. The amendments authorize  
279 EHS Department as the sole entity to issue and enforce violations of this Law. Non-compliance with  
280 the Law may result in the EHS Department issuing the following: a license suspension or revocation, a  
281 corrective order which may include an order to close down, and/or a citation [3 O.C. 305.10-1]. Any  
282 food service business or prepackaged restaurant ordered to close down must comply with the corrective  
283 order issued, pass a reinspection and pay any applicable fees by the EHS Department before being  
284 eligible for operation. Citations were added to the Law and include fines, penalties and/or corrective  
285 orders as set forth in the fine and penalty schedule established by the EHS Department, subject to  
286 approval by the OBC resolution [3 O.C. 305.10-1(c)]. Any food service business or prepackaged  
287 restaurant ordered to close down will only be eligible for a probationary license for six (6) months which  
288 is the same as the current Law [3 O.C. 305.10-2(a)]. Food services business ordered to close down are  
289 not entitled to a reimbursement of any portion of the licensing fee or fees [3 O.C. 305.10-2(b)].  
290

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

294  
295 J. **Appeal Rights** [2 O.C. 305.11]. Persons who disagree with the decisions of the EHS Department  
296 regarding anything other than a citation can appeal the decision to the Area Manager of the  
297 Environmental, Health, Safety and Land Division [3 O.C. 305.11-1].

- 298     ▪ The appeal must be made within ten (10) business days of receiving the decision from the  
299 EHS Department. The Area Manager has five (5) business days to make a determination  
300 and will send the decision in writing by registered mail (return receipt requested) or deliver  
301 the written determination in person to the person who filed the appeal. The Area Manager  
302 may suspend the time frames if an investigation is necessary [3 O.C. 305.11-1(b)(1)]. The  
303 Area Manager’s decision is final unless appealed to the Trial Court of the Judiciary if it is  
304 believed that the decision was:
- 305         ○ contrary to law;
  - 306         ○ without any reasonable basis; and/or
  - 307         ○ an abuse of power.
- 308     ▪ This Law authorizes the Trial Court to exercise jurisdiction over appeals  
309 of the Area Manager’s decision [8 O.C. 801.5-2] when the above exist;  
310 following the Oneida Judiciary Rules of Civil Procedure [8 O.C. 803].
- 311     ▪ Decisions of the Trial Court are appealable to the Court of Appeals [8 O.C. 801.8-2(a)(1)]  
312 following the Rules of Appellate Procedure [8 O.C. 805]. Decisions of the Court of  
313 Appeals are final.

314 Persons who wish to contest the issuance of a citation for violation of this Law must appear in person  
315 and will follow the procedure contained in the Nation’s laws and policies governing citations [3 O.C.  
316 305.11-2].

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

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

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

## 326 SECTION 6. RELATED LEGISLATION

328 A. **Reference to Other Laws.** The following laws of the Nation are referenced in this Law and legislative  
329 analysis and are required to be followed:

- 330     • Judiciary [8 O.C. 801]. The Trial Court of the Judiciary has subject matter jurisdiction  
331 where laws of the Nation specifically authorize the Trial Court to exercise jurisdiction [8  
332 O.C. 801.5-2]. The Oneida Food Service law authorizes the Trial Court to hear appeals of  
333 EHSLD Area Manager decisions related to anything not issued by citation and when the  
334 Area Manager’s decision is believed to be contrary to law, without any reasonable basis or  
335 an abuse of power [3 O.C. 305.11]. The Judiciary law authorizes the Court of Appeals to  
336 review final orders and judgments of the Trial Court [8 O.C. 801.8-2(a)(1)].
- 337     • Oneida Judiciary Rules of Civil Procedure [8 O.C. 803]. This Law governs the procedure  
338 used when filing an action with the Oneida Judiciary.
- 339     • Rules of Appellate Procedure [8 O.C. 805]. This Law governs the procedure used when filing  
340 an action with the Court of Appeals and is used in conjunction with the Oneida Judiciary Rules  
341 of Civil Procedure.
- 342     • Legislative Procedures Act [1 O.C. 109]. This Law governs the format that will be followed  
343 for all Laws of the Nation. The format of the amended law was updated to meet requirements  
344 in this Law.

345 B. There are no conflicts between the proposed amendments and the Oneida Code of Laws.

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## SECTION 7. IMPLEMENTATION

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

## SECTION 8. OTHER CONSIDERATIONS

- A. **Citations Law.** A citation for a violation of this Law will be processed in accordance with the procedure contained in the Nation’s laws and policies governing citations [3 O.C. 305.10-1(c)(2)].
  - There are currently no laws of the Nation governing citations. There is a Citations law on the LOC’s active files list that is currently being developed.
- B. **Fiscal Impact.** Please refer to the fiscal impact statement for any fiscal impacts.
  - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation.
    - i. A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee [1 O.C. 109.6-1].
    - ii. Fiscal impact statements may be prepared by any agency who may receive funding if the legislation is enacted, any agency who may administer a program if the legislation is enacted, any agency who may have financial information concerning the subject 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)].
    - iii. The fiscal impact statement is important in the decision-making process related to legislation developed by the Legislative Operating Committee. When a fiscal impact statement is requested from the Finance Department; the Chief Financial Officer will submit a Fiscal Impact Statement to the LOC within ten (10) days of final approval of the draft legislation [Resolution BC-09-25-19].

### Research Citations

- Cottage Food Exemption, 2019 Minnesota Statutes. <https://www.revisor.mn.gov/statutes/cite/28A.152>
- FDA Food Code <https://www.fda.gov/food/retail-food-protection/fda-food-code>
- Montana Code Annotated Statute for: Retail Food, Temporary Event Permitting and Cottage Foods <https://dphhs.mt.gov/Portals/85/publichealth/documents/FCS/Retail%20food%20MCAs.pdf>
- 2009 Wisconsin Act 101 <http://docs.legis.wisconsin.gov/2009/related/acts/101>
- University of Arkansas Cottage Foods Model Food Code. <https://www.tribalfoodcode.com/>



Oneida Nation  
Oneida Business Committee  
Legislative Operating Committee  
PO Box 365 • Oneida, WI 54155-0365  
Oneida-nsn.gov



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 18, 2020  
RE: Oneida Food Service Code Amendments Fiscal Impact Statement

The Legislative Operating Committee (LOC) is currently developing amendments to the Oneida Food Service Code. 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 18, 2020, the Legislative Operating Committee approved the final draft of the proposed amendments to the Oneida Food Service Code. Therefore, the LOC is directing the Finance

Department to provide a fiscal impact statement on the proposed amendments to the Oneida Food Service Code by April 1, 2020.

A copy of the proposed amendments to the Oneida Food Service Code, 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 Oneida Food Service Code by April 1, 2020.