



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

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 prepackaged 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.