

# Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



#### LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center August 19, 2020 9:00 a.m.

This Legislative Operating Committee meeting will be closed to the public due to the Public Health State of Emergency. This is preventative measure as a result of the COVID-19 pandemic. An audio recording of the meeting will be made available on the Nation's website.

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

#### II. Minutes to be Approved

#### **Current Business** III.

- 1. Emergency Management and Homeland Security Law Emergency Amendments (pg. 4)
- 2. Oneida Nation School Board Bylaws (pg. 19)

#### IV. **New Submissions**

#### V. **Additions**

#### VI. **Administrative Updates**

- 1. E-Poll Results: Materials for the Adoption of Emergency Amendments to the Election Law (pg. 60)
- 2. E-Poll Results: Materials for the Adoption of Emergency Amendments to the Boards, Committees, and Commissions Law (pg. 104)
- 3. E-Poll Results: Materials for the Adoption of Emergency Amendments to the Emergency Management and Homeland Security Law (pg. 161)
- 4. E-Poll Results: Approval of the Oneida Personnel Policies and Procedures Emergency Adoption Packet (pg. 198)
- 5. E-Poll Results: Approval of the March 18, 2020, LOC Meeting Minutes (pg. 265)
- 6. E-Poll Results: Rescission of the March 25, 2020, LOC Approval of the Oneida Personnel Policies and Procedures Emergency Adoption Packet (pg. 269)
- 7. E-Poll Results: Approval of Vehicle Driver Certification and Fleet Management Law Amendments Adoption Packet (pg. 274)
- 8. E-Poll Results: Approval of the Tobacco Law Amendments Public Comment Period (pg. 327)
- 9. E-Poll Results: Approval of Children's Burial Fund Policy Amendments Adoption Packet (pg. 341)
- 10. E-Poll Results: Approval of the Children's Code Six Month Review Memorandum (pg. 361)

- 11. E-Poll Results: GTC Stipend Payment Policy (pg. 368)
- 12. E-Poll Results: Add General Tribal Council Meeting Stipend Payment Policy Emergency Amendments to the Active Files List (pg. 394)
- 13. E-Poll Results: Approval of the Curfew Law Amendments Materials and Fiscal Impact Request Memorandum (pg. 399)
- 14. E-Poll Results: Approval of the Domestic Animals Law Amendments Materials and Fiscal Impact Request Memorandum (pg. 425)
- 15. E-Poll Results: Approval of the Oneida Food Service Code Amendments Adoption Packet and the Oneida Food Service Law Fine, Penalty and Licensing Fee Schedule Resolution (pg. 487)
- 16. E-Poll Results: Approval of the Curfew Law Amendments Adoption Packet (pg. 538)
- 17. E-Poll Results: Approval of the Domestic Animals Law Amendments Adoption Packet and the Amended Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule Resolution (pg. 563)
- 18. E-Poll Results: Adoption of Election Law Emergency Amendments Adoption Packet (pg. 612)
- 19. E-Poll Results: Approval of the Tobacco Law Amendments Materials and Fiscal Impact Request Memorandum (pg. 657)
- 20. E-Poll Results: Approval of the Boards, Committees, and Commissions Law Amendments Materials and Public Comment Period (pg. 679)
- 21. E-Poll Results: Approval of the LOC's FY20 Second Quarter Report (pg. 728)
- 22. E-Poll Results: Approval of the Tobacco Law Amendments Adoption Packet and the Tobacco Law Penalty and Fine Resolution (pg. 740)
- 23. E-Poll Results: Approval of the Boards, Committees, and Commissions Law Amendments Updated Public Comment Period (pg. 764)
- 24. E-Poll Results: Approval of the Industrial Hemp Law Public Comment Period Notice Packet (pg. 815)
- 25. E-Poll Results: Approval of the Oneida Election Board's Request for Emergency Amendments to the Election Law (pg. 842)
- 26. E-Poll Results: Approval of the Election Law Emergency Amendments Adoption Packet (pg. 845)
- 27. E-Poll Results: Certification of the Leasing Law Rule No. 4 Home Building Opportunities Residential Leasing (pg. 888)
- 28. E-Poll Results: Approval of the Extension of the Real Property Law Emergency Amendments (pg. 921)
- 29. E-Poll Results: Approval of the Boards, Committees, and Commissions Law Amendments Public Comments Materials, and FIS Request Memorandum (pg. 938)
- 30. E-Poll Results: Approval of the Boards, Committees, and Commissions Law Amendments Adoption Packet (pg. 1069)
- 31. E-Poll Results: Approval of the Boards, Committees, and Commissions Law Amendments Adoption Packet (pg. 1141)
- 32. E-Poll Results: Approval of the LOC's FY2020 Third Quarter Report (pg. 1213)
- 33. E-Poll Results: Approval of the Oneida General Welfare Law and the Oneida Higher Education Pandemic Relief Fund Law (pg. 1224)
- 34. E-Poll Results: Approval of the Industrial Hemp Law Public Comments Materials and FIS Request Memorandum (pg. 1263)

35. LOC 2017-2020 End of Term Report (pg. 1360)

VII. Executive Session

VIII. Recess/Adjourn





Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



## Legislative Operating Committee August 19, 2020

# **Emergency Management and Homeland Security Law Emergency Amendments**

<b>Submission Date:</b> 3/17/20	<b>Public Meeting:</b> N/A
<b>LOC Sponsor:</b> David P. Jordan	Emergency Enacted: 3/17/20

**Summary:** This item was added to the Active Files List in response to the COVID-19 pandemic. On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" in response to the COVID-19 pandemic. As a result, the Oneida Business Committee decided to pursue emergency amendments to the Emergency Management and Homeland Security law. The emergency amendments create and delegate authority to a COVID-19 Core Decision Making Team - which will allow the COVID-19 Team to make changes to internal operations and laws in a more efficient manner. The Oneida Business Committee adopted the emergency amendments through resolution BC-03-17-20-E. These emergency amendments expire on September 17, 2020.

#### 3/17/20:

E-Poll Conducted. This e-poll was titled, "Materials for the Adoption of Emergency Amendments to the Emergency Management and Homeland Security Law." The requested action of this e-poll was to approve the following actions: (1) Add the Emergency Management and Homeland Security law emergency amendments to the Active Files List with David P. Jordan as the sponsor; and (2) Approve the Emergency Management and Homeland Security law emergency adoption packet and forward to the Oneida Business Committee for consideration. This e-poll was approved by Jennifer Webster, Daniel Guzman King, David P. Jordan, and Kirby Metoxen.

3/17/20 OBC: Motion by Lisa Summers to adopt resolution 03-17-20-E Emergency Amendments to the Emergency Management and Homeland Security Law Adding Section Identifying COVID-19 Core Decision-Making Team and Delegating Authority, seconded by Brandon Stevens. Motion carried.

#### 6/2/20:

Work Meeting. Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Daniel Guzman King, Clorissa N. Santiago, Kristen Hooker. This was a work meeting held through a call on Microsoft Teams. The purpose of this work meeting was to discuss potential next steps for this legislative matter.

6/10/20 OBC: Motion by Brandon Stevens to defer this discussion [Discuss next steps regarding legal review Emergency Resolutions and Declarations – COVID-19 Pandemic to the June 24, 2020, regular Business Committee meeting agenda, seconded by Kirby Metoxen. Motion not voted.

Motion by David P. Jordan to defer this discussion [Discuss next steps regarding legal review – Emergency Resolutions and Declarations – COVID-19 Pandemic] to next week's regularly scheduled Business Committee work session agenda, seconded by Lisa Summers. Motion carried.

6/16/20:

Oneida Business Committee Work Session. Present: Tehassi Hill, Brandon Yellowbird Stevens, Lisa Summers, Patricia King, David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Clorissa N. Santiago, Deborah Thundercloud, Lisa Liggins, Jessica Wallenfang, Jameson Wilson, Laura Laitinen-Warren, Danelle Wilson, Jo Anne House. The purpose of this work meeting was to discuss with the Business Committee the LOC's plan on how to move forward and address COVID-19 related legislative matters based on a review of Chief Counsel's May 26, 2020, memorandum that reviewed the resolutions adopted by the Oneida Business Committee and the declarations adopted by the COVID-19 Core Decision Making Team.

7/30/20:

Work Meeting. Present: David P. Jordan, Jenny Webster, Kirby Metoxen, Ernest Stevens III, Clorissa N. Santiago. This was a work meeting held through a call on Microsoft Teams. The purpose of this work meeting was to discuss the LOC's schedule as we close out this term and transition into the next term. The Emergency Management and Homeland Security Law Emergency Amendments expire on 9/17/20. Discussed that the OBC will not hold a meeting on 9/9 due to that week being dedicated to strategic planning. LOC determined that we will need to bring a request for a six (6) month extension of the emergency amendments to the 8/26 OBC meeting.

8/13/20:

Work Meeting. Present: Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Clorissa N. Santiago, Kristen Hooker. This was a work meeting held through a call on Microsoft Teams. The purpose of this work meeting was to review and discuss the materials for the Extension of the Emergency Amendments to the Emergency Management and Homeland Security law.

## **Next Steps:**

 Approve the Extension of the Emergency Management and Homeland Secuirty law Emergency Amendments packet and forward to the Oneida Business Committee for consideration







# Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson 🔯

DATE: August 26, 2020

RE: Extension of the Emergency Management and Homeland Security Law Emergency

Amendments

Please find the following attached backup documentation for your consideration of the extension of the Emergency Management and Homeland Security Law Emergency Amendments:

- 1. Resolution: Extension of the Emergency Amendments to the Emergency Management and Homeland Security Law
- 2. Statement of Effect: Extension of the Emergency Amendments to the Emergency Management and Homeland Security Law
- 3. Emergency Management and Homeland Security Law

#### Overview

Emergency amendments to the Emergency Management and Homeland Security law (the "Law") were adopted by the Oneida Business Committee through resolution BC-03-17-20-E for the purpose of creating and delegating authority to a COVID-19 Core Decision Making Team. The emergency amendments to the Law:

- Created a COVID-19 Core Decision Making Team (COVID-19 Team) [3 O.C. 302.10-1];
- Identified what positions of the Nation serve on the COVID-19 Team [3 O.C. 302.10-1];
- Described the authority delegated to the COVID-19 Team to declare exceptions to any law, policy, procedure, regulation, or standard operating procedure of the Nation [3 O.C. 302.10-2];
- Provided for the duration of authority for exceptions declared by the COVID-19 Team [3 O.C. 302.10-3]; and
- Described how the COVID-19 Team will make its declarations [3 O.C. 302.10-4].

The Oneida Business Committee is delegated the authority to temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5].

The emergency amendments to this Law were necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendments were needed to create the COVID-19 Team and provide the COVID-19 Team the ability to act on behalf of the Nation on a daily, or even hourly basis, to best protect the Reservation population against the public health crisis that is the COVID-19 pandemic.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these emergency amendments was contrary to public interest. The process and requirements of the Legislative Procedures Act could not have been completed in time to allow the Nation the ability to adequately address the issues regarding internal operations and laws that arose during the COVID-19 pandemic.

The emergency amendments to the Law will expire on September 17, 2020. The Legislative Procedures Act allows the Oneida Business Committee to extend emergency amendments for a six (6) month time period. [1 O.C. 109.9-5(b)]. A six (6) month extension of the emergency amendments to the Law is being requested because the Nation is still experiencing the effects of the COVID-19 pandemic. Since the March 12, 2020, "Declaration of Public Health State of Emergency" the Nation's Public Health State of Emergency has been extended until September 11, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, and BC-08-06-20-A.

On March 24, 2020, the Nation's COVID-19 Team made a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. On April 21, 2020, the COVID-19 Team issued an "Updated Safer at Home" declaration which allowed for gaming and golf operations to resume. On May 19, 2020, the COVID-19 Team issued a "Safer at Home Declaration, Amendment, Open for Business" which directs that individuals within the Oneida Reservation should continue to stay at home, businesses can re-open under certain safer business practices, and social distancing should be practiced by all persons. Then on June 10, 2020, the COVID-19 Team issued a "Stay Safer at Home" declaration which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.

The six (6) month extension of the emergency amendments to the Law are also being requested to provide additional time for the Legislative Operating Committee to process permanent amendments to the Law.

The extension of the emergency amendments to the Law will become effective on September 17, 2020, when the emergency amendments as adopted through BC-03-17-20-E expire, and will remain in effect for an additional six (6) month term which will end on March 17, 2021.

#### **Requested Action**

Approve the Resolution: Extension of the Emergency Amendments to the Emergency Management and Homeland Security Law



# **Oneida Nation**

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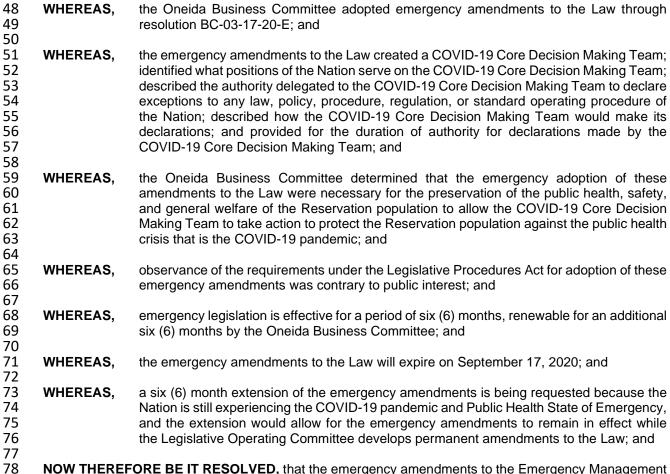


Oneida, WI 54155

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1 2 3 4	Extension of	BC Resolution # the Emergency Amendments to the Emergency Management and Homeland Security Law
5 6 7	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
8 9	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and
10 11 12	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
13 14 15 16 17	WHEREAS,	the Emergency Management and Homeland Security law ("the Law") was adopted by the Oneida Business Committee through resolution BC-07-15-98-A, amended by resolutions BC-12-20-06-G, BC-05-13-09-F, and most recently amended on an emergency basis by resolution BC-03-17-20-E; and
17 18 19 20 21 22 23 24	WHEREAS,	the Law provides for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; provides for the direction of emergency management, response, and recovery on the Reservation, as well as coordination with other agencies, victims, businesses, and organizations; establishes the use of the National Incident Management System; and designates authority and responsibilities for public health preparedness; and
24 25 26 27 28 29 30	WHEREAS,	on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, which was then subsequently extended through September 11, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, and BC-08-06-20-A; and
31 32 33 34 35	WHEREAS,	on March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration prohibiting all public gatherings of any number of people and ordering all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed; and
36 37 38 39 40 41	WHEREAS,	the Nation's COVID-19 Core Decision Making Team modified the "Safer at Home" declaration on April 21, 2020, with the issuance of the "Updated Safer at Home" declaration, on May 19, 2020, with the "Safer at Home Declaration, Amendment, Open for Business" declaration, and then again on June 10, 2020, with the issuance of the "Stay Safer at Home" declaration; and
42 43 44	WHEREAS,	the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required appear than would be possible under the

and the amendment of the legislation is required sooner than would be possible under the

Legislative Procedures Act; and



**NOW THEREFORE BE IT RESOLVED,** that the emergency amendments to the Emergency Management and Homeland Security law are hereby extended for an additional six (6) month period, effective September 17, 2020, and shall expire on March 17, 2021.

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## Oneida Nation Oneida Business Committee

Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



#### Statement of Effect

Extension of the Emergency Amendments to the Emergency Management and Homeland Security Law

#### Summary

This resolution extends the emergency amendments to the Emergency Management and Homeland Security law adopted through resolution BC-03-17-20-E for an additional six (6) months in accordance with the Legislative Procedures Act.

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

*Date: August 4, 2020* 

## Analysis by the Legislative Reference Office

This resolution extends the emergency amendments to the Emergency Management and Homeland Security law ("the Law") for an additional six (6) month term. The purpose of the Law is to provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; provide for the direction of emergency management, response, and recovery on the Reservation, as well as coordination with other agencies, victims, businesses, and organizations; establish the use of the National Incident Management System; designate authority and responsibilities for public health preparedness. [1 O.C. 302.1-1].

Emergency amendments to the Law were adopted by the Oneida Business Committee through resolution BC-03-17-20-E for the purpose of:

- Creating a COVID-19 Core Decision Making Team (COVID-19 Team) [3 O.C. 302.10-11;
- Identifying what positions of the Nation serve on the COVID-19 Team [3 O.C. 302.10-1];
- Describing the authority delegated to the COVID-19 Team to declare exceptions to any law, policy, procedure, regulation, or standard operating procedure of the Nation [3 O.C. 302.10-21;
- Providing for the duration of authority for exceptions declared by the COVID-19 Team [3] O.C. 302.10-31; and
- Describing how the COVID-19 Team will make its declarations [3 O.C. 302.10-4].

The Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [1 O.C. 109.9-5].

On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. [3 O.C. 302.8-1]. The Public Health State of Emergency for the Nation

has since been extended until September 11, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, and BC-08-06-20-A.

On March 24, 2020, the Nation's COVID-19 Team made a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. On April 21, 2020, the COVID-19 Team issued an "Updated Safer at Home" declaration which allowed for gaming and golf operations to resume. On May 19, 2020, the COVID-19 Team issued a "Safer at Home Declaration, Amendment, Open for Business" which directs that individuals within the Oneida Reservation should continue to stay at home, businesses can re-open under certain safer business practices, and social distancing should be practiced by all persons. Then on June 10, 2020, the COVID-19 Team issued a "Stay Safer at Home" declaration which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.

The Oneida Business Committee determined that the emergency amendments to the Law were necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendments to the Law were needed to allow the COVID-19 Team the ability to act on behalf of the Nation on a daily, or even hourly basis, in order to protect the Reservation population against the public health crisis that is the COVID-19 pandemic.

Additionally, the Oneida Business Committee determined that observance of the requirements under the LPA for adoption of this amendment would be contrary to public interest. The process and requirements of the LPA could not be completed in time to allow the Nation the ability to adequately address the issues regarding internal operations and laws that arose during the COVID-19 pandemic.

The emergency amendments to the Law became effective immediately upon adoption by the Oneida Business Committee and were set to be effective for six (6) months. The emergency amendments to the Law will expire on September 17, 2020.

The Legislative Procedures Act authorizes the Oneida Business Committee to extend the adoption of emergency amendments for an additional six (6) month period. [1 O.C. 109.9-5(b)]. An extension of the emergency amendments is being requested because the Nation is still experiencing the effects of the COVID-19 pandemic., and the Legislative Operating Committee needs additional time to develop the permanent amendments to the Law.

Through this resolution the extension of the emergency amendments to the Law will become effective on September 17, 2020, when the emergency amendments as adopted through BC-03-17-20-E expire, and will remain in effect for an additional six (6) month term which will end on March 17, 2021.

#### Conclusion

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



## Title 3. Health and Public Safety – Chapter 302 Yotlihokté Olihwá ke

Matters that are concerning immediate attention

#### EMERGENCY MANAGEMENT AND HOMELAND SECURITY

302.1. Purpose and Policy 302.2. Adoption, Amendment, Conflicts 302.3. Definitions 302.4. Emergency Management/Hopeland Security	302.6. Tribal Cooperation 302.7. Public Health Emergencies and Communicable Disease 302.8. When an Emergency is Proclaimed 302.9. Enforcement and Penalties
302.4. Emergency Management/Homeland Security	302.9. Enforcement and Penalties
302.5. Oneida Nation Emergency Planning Committee (ONEPC)	302.10. COVID-19 Core Decision Making Team

#### **302.1.** Purpose and Policy

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- 302.1-1. The purposes of this law are to:
  - (a) provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; and
  - (b) provide for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; and
  - (c) establish the use of the National Incident Management System (NIMS); and
  - (d) designate authority and responsibilities for public health preparedness.
- 302.1-2. It is the policy of this law to provide:
  - (a) a description of the emergency management network of the Nation; and
  - (b) authorization for specialized activities to mitigate hazardous conditions and for the preparation of Tribal emergency response management plans, as well as to address concerns related to isolation and/or quarantine orders, emergency care, and mutual aid; and
  - (c) for all expenditures made in connection with such emergency management activities to be deemed specifically for the protection and benefit of the inhabitants, property, and environment of the Reservation.

#### 302.2. Adoption, Amendment, Conflicts

- 22 302.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-15-98-23 A and amended by BC-12-20-06-G, BC-05-13-09-F, and emergency amended by BC-03-17-20-24 E.
- 302.2-2. 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.
- 27 302.2-3. 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
- 29 to have legal force without the invalid portions.
- 30 302.2-4. 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.
- 32 302.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

### 302.3. Definitions

- 35 302.3-1. This section shall govern the definitions of words or phrases as used within this law.
- 36 All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Biological Agent" means an infectious disease or toxin that has the ability to adversely

- affect human health in a variety of ways, from mild allergic reactions to serious medical conditions, and including death.
  - (b) "Communicable Disease" means any disease transmitted from one person or animal to another directly by contact with excreta or other discharges from the body, or indirectly via substances or inanimate objects that may cause a public health emergency.
  - (c) "Community/Public Health Officer" means an agent of the OCHS, or his or her designee(s), who is responsible for taking the appropriate actions in order to prevent a public health emergency from occurring on the Reservation.
  - (d) "COVID-19" means a mild to severe respiratory illness that is caused by a coronavirus, is transmitted chiefly by contact with infectious material, and is characterized especially by fever, cough and shortness of breath and may progress to pneumonia and respiratory failure.
  - (e) "Director" means the Director of the Nation's Emergency Management/Homeland Security Agency.
  - (f) "Emergency Management Network" means the entities, volunteers, consultants, contractors, outside agencies, and any other resources the Nation may use to facilitate interagency collaboration, identify and share resources, and better prepare for local incidents and large-scale disasters.
  - (g) "Emergency Operations Plan" means the plan established to coordinate mitigation, preparedness, response, and recovery activities for all emergency or disaster situations within the Reservation.
  - (h) "Entity" means any Tribal agency, board, committee, commission, or department.
  - (i) "Fair Market Value" means the everyday cost of a product in an ordinary market, absent of a disaster.
  - (j) "Isolation" means the separation of persons or animals presumably or actually infected with a communicable disease, or that are disease carriers, for the usual period of communicability of that disease in such places and under such conditions as will prevent the direct or indirect transmission of an infectious agent to susceptible people or to those who may spread the agent to others.
  - (k) "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
  - (1) "Nation" means the Oneida Nation.

- (m) "National Incident Management System" or "NIMS" means the system mandated by Homeland Security Presidential Directive 5 (HSPD 5) that provides a consistent nationwide approach for federal, state, local, and tribal governments to work effectively and efficiently together to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.
- (n) "OCHS" means the Oneida Community Health Services, which is authorized to issue compulsory vaccinations, require isolation, and quarantine individuals in order to protect the public health.
- (o) "Oneida Nation Emergency Planning Committee" or "ONEPC" means the committee that assists the Director in the implementation of this law.
- (p) "Proclaim" means to announce officially and publicly.
- (q) "Public Health Emergency" means the occurrence or imminent threat of an illness or health condition which:

84	(1) is a quarantinable disease, or is believed to be caused by bioterrorism or a
85	biological agent; and
86	(2) poses a high probability of any of the following:
87	(A) a large number of deaths or serious or long-term disability among
88	humans; or
89	(B) widespread exposure to a biological, chemical, or radiological agent
90	that creates a significant risk of substantial future harm to a large number of
91	people.
92	(r) "Quarantine" means the limitation of freedom of movement of persons or animals that
93	have been exposed to a communicable disease or chemical, biological, or radiological
94	agent, for a period of time equal to the longest usual incubation period of the disease or
95	until there is no risk of spreading the chemical, biological, or radiological agent. The
96	limitation of movement shall be in such manner as to prevent the spread of a communicable
97	disease or chemical, biological, or radiological agent.
98	(s) "Reservation" means all land within the exterior boundaries of the Reservation of the
99	Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and
100	any lands added thereto pursuant to federal law.
101	(t) "Vital Resources" means food, water, equipment, sand, wood, or other materials
102	obtained for the protection of life, property, and/or the environment during a proclaimed
103	emergency.
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105	302.4. Emergency Management/Homeland Security
106	302.4-1. There is hereby created an Emergency Management/Homeland Security Agency
107	which is responsible for planning and coordinating the response to a disaster or emergency that
108	occurs within the boundaries of the Reservation.
109	302.4-2. The Director shall be responsible for coordinating and planning the operational
110	response to an emergency and is hereby empowered to:
111 112	(a) organize and coordinate efforts of the emergency management network of the Nation.
	(b) implement the Emergency Operations Plan as adopted by the Oneida Business Committee.
113 114	(c) facilitate coordination and cooperation between entities and resolve questions that may
115	arise among them.
116	(d) incorporate the HSPD 5, issued on February 28, 2003 which requires all Federal, state,
117	local, and tribal governments to administer the best practices contained in the NIMS.
118	(e) coordinate the development and implementation of the NIMS within the Nation.
119	(f) ensure that the following occurs:
120	(1) an Emergency Operations Plan is developed and maintained, and includes
121	training provisions for applicable personnel.
122	(2) emergency resources, equipment, and communications systems are developed,
123	procured, supplied, inventoried, and accounted for.
124	(g) establish the line of authority as recorded in the Emergency Operations Plan as adopted
125	by the Oneida Business Committee.
126	(h) enter into mutual aid and service agreements with tribal, local, state, and federal
127	governments, subject to Oneida Business Committee approval.
128	302.4-3. In the event of a proclamation of an emergency on the Reservation, the Director is

(a) to obtain vital resources and to bind the Nation for the fair market value thereof, upon

3 O.C. 302 – Page 3

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hereby empowered:

- approval of the Emergency Management/Homeland Security purchasing agent, who is identified in the Emergency Operations Plan. If a person or business refuses to provide the resource(s) required, the Director may commandeer resources for public use and bind the Nation for the fair market value thereof. In the event the purchasing agent is unavailable, the chain of command, as approved by the Oneida Business Committee, shall be followed.

  (b) to require emergency activities of as many Tribal members and/or employees as deemed necessary.
  - (c) to execute all of the ordinary powers of the Director, all of the special powers conferred by this law or by resolution adopted pursuant thereto, all powers conferred on the Director by any agreement approved by the Oneida Business Committee, and to exercise complete emergency authority over the Reservation.
  - (d) to coordinate with tribal, federal, state, and local authorities.

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## **302.5.** Oneida Nation Emergency Planning Committee (ONEPC)

- 302.5-1. The ONEPC shall consist of representatives from entities and a community representative as identified in the ONEPC bylaws as approved by the Oneida Business Committee.
- 147 302.5-2. The ONEPC shall meet as necessary to assist the Director in drafting and maintaining the Emergency Operations Plan.
- 302.5-3. At the request of the Director, the ONEPC shall provide assistance to the Director in the implementation of the provisions of this law or any plan issued thereunder.

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## **302.6.** Tribal Cooperation

- 302.6-1. All entities shall comply with reasonable requests from the Director relating to emergency planning, emergency operations, and federal mandate compliance.
- 302.6-2. A person who is disabled or dies while serving as a public safety officer, as defined in the Public Safety Officers' Benefits Program, the spouse of that person and/or any children of
- that person may be eligible for benefits as determined by the Bureau of Justice Assistance under
- the Public Safety Officers' Benefits Program, 42 U.S.C. ch. 46, subch. XII.

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#### **302.7.** Public Health Emergencies and Communicable Disease

- 302.7-1. In order to prevent a public health emergency, the Director and the Community/Public Health Officer shall take action to limit the spread of any communicable disease, in accordance with this law.
- 164 302.7-2. If the Community/Public Health Officer suspects or is informed of the existence of any communicable disease, the Community/Public Health Officer shall investigate and make or cause examinations to be made, as are deemed necessary.
- 302.7-3. The Community/Public Health Officer may quarantine, isolate, require restrictions, or take other communicable disease control measures as necessary. Any individual, including an authorized individual, who enters an isolation or quarantine premises may be subject to isolation or quarantine under this law.
  - (a) The list of quarantinable diseases shall be specified in a resolution adopted by the Oneida Business Committee as recommended by the Community/Public Health Officer.
  - (b) The Community/Public Health Officer shall immediately quarantine, isolate, or take other communicable disease control measures upon an individual if the Community/Public Health Officer receives a diagnostic report from a physician or a written or verbal notification from an individual or his or her parent or caretaker that gives the

- 177 Community/Public Health Officer a reasonable belief that the individual has a communicable disease that is likely to cause a public health emergency.
  - (c) When the Community/Public Health Officer deems it necessary that an individual be quarantined or otherwise restricted in a separate place, the Community/Public Health Officer shall have that individual removed to such a designated place, if it can be done without danger to the individual's health.

**Cross-reference:** See also Resolution Identifying Quarantinable Diseases BC-05-13-09-G.

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- 302.7-4. The Community/Public Health Officer shall act as necessary to protect the public, including requesting the Director to take steps to have a public health emergency proclaimed, as identified in 302.8.
- 302.7-5. If an individual is infected with a communicable disease and the Community/Public Health Officer determines it is necessary to limit contact with the individual, all persons may be forbidden from being in direct contact with the infected individual, except for those persons having a special written permit from the Community/Public Health Officer.
- 302.7-6. The Nation's law enforcement agency shall work with the Community/Public Health Officer to execute the Community/Public Health Officer's orders and properly guard any place if quarantine or other restrictions on communicable disease are violated or intent to violate is manifested.
  - 302.7-7. Expenses for necessary medical care, food, and other articles needed for an infected individual shall be charged against the individual or whoever is liable for the individual's support. The OCHS is responsible for the following costs accruing under this section unless the costs are payable through third party liability or through any benefit system:
    - (a) the expense for law enforcement assistance under 302.7-4.
    - (b) the expense of maintaining quarantine and isolation of the quarantined area.
    - (c) the expense of conducting examinations and tests made under the direction of the Community/Public Health Officer.
    - (d) the expense of care for dependent persons of the infected individual.
  - 302.7-8. When a public health emergency is proclaimed, the Community/Public Health Officer may do all of the following, as necessary:
    - (a) order an individual to receive a vaccination, unless the vaccination is reasonably likely to lead to serious harm to the individual or the individual, for reason of religion or conscience, refuses to obtain the vaccination.
    - (b) isolate or quarantine individuals, including those who are unable or unwilling to receive the vaccination under (a).
    - (c) prevent any individual, except for those individuals authorized by the Community/Public Health Officer, from entering an isolation or quarantine premises.

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#### 302.8. When an Emergency is Proclaimed

- 302.8-1. The Oneida Business Committee shall be responsible for proclaiming or ratifying the existence of an emergency and for requesting a gubernatorial or presidential declaration.
- 302.8-2. The Director may request that the Oneida Business Committee proclaim the existence of an emergency. In the event the Oneida Business Committee is unable to proclaim or ratify the
- existence of an emergency, the Director may proclaim an emergency which shall be in effect until
- such time the Oneida Business Committee can officially ratify this declaration. The Oneida
- Business Committee may proclaim the existence of an emergency without a request from the
- 223 Director, if warranted.

- 224 302.8-3. The emergency management network of the Reservation shall be as specified in the
- Emergency Operations Plan, as adopted by the Oneida Business Committee.
- 226 302.8-4. The provisions of Chapter 34, Oneida Tribal Regulation of Domestic Animals
- 227 Ordinance, shall not apply during a proclaimed emergency. During a proclaimed emergency, the
- 228 Conservation Department shall be responsible for the care, disposal, and sheltering of all
- abandoned domestic animals and livestock.
- 230 302.8-5. No proclamation of an emergency by the Oneida Business Committee or the Director
- 231 may last for longer than thirty (30) days, unless renewed by the Oneida Business Committee. After
- an emergency has subsided, the Director shall prepare, or shall work in conjunction with the
- 233 appropriate entity to prepare, an after-action report to be presented to the Oneida Business
- Committee, any interested entity, and the public. This report shall be presented to the required
- parties no longer than sixty (60) days after the emergency has subsided, unless an extension is
- granted by the Oneida Business Committee.

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#### **302.9.** Enforcement and Penalties

- 302.9-1. It shall be a violation of this law for any person to willfully obstruct, hinder, or delay the implementation or enforcement of the provisions of this law or any plan issued thereunder, whether or not an emergency has been proclaimed.
  - (a) Violators of this law may be subject to a fine of not more than \$200 per violation to be issued by the Oneida Police Department and paid to the Nation. Employees of the Nation who violate this law during their work hours or who refuse to follow the Emergency Operations Plan may be subject to disciplinary action instead of a fine.
- 302.9-2. All fines assessed under this section shall be paid within sixty (60) days of issuance of the citation, unless the person files an appeal with the Judiciary before the fine is to be paid.
- 302.9-3. Employees of the Nation who are disciplined under this law may appeal the disciplinary action in accordance with the personnel policies and procedures of the Nation.

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#### 302.10. COVID-19 Core Decision Making Team

- 302.10-1. *Creation of Core Decision Making Team.* There is hereby created a COVID-19 Core Decision Making Team *(COVID-19 Team)* which shall exist by declaration of a public health emergency under this law. The COVID-19 Team shall be made up of the following persons:
  - (a) Oneida Business Committee Officers which includes the Chairperson, Vice Chairperson, Treasurer, Secretary;
  - (b) Legislative Operating Committee Chairperson;
  - (c) General Manager;
  - (d) Gaming General Manager;
  - (e) Gaming Assistant Chief Financial Officer;
  - (f) Chief Financial Officer;
  - (g) Intergovernmental Affairs and Communications Director; and
  - (h) Public Relations Director.
- 302.10-2. *Delegation of Authority*. The COVID-19 Team shall have emergency authority to take the following actions.
  - (a) Notwithstanding any requirements of the Legislative Procedures Act, declare exceptions to the Nation's laws during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees.

- 270 (b) Notwithstanding any requirements in any policy, procedure, regulation, or standard operating procedures, declare exceptions to any policy, procedure, regulation, or standard 271 operating procedure during the emergency period which will be of immediate impact for 272 273 the purposes of protecting the health, safety, and general welfare of the the Nation's 274 community, members, and employees. 275 302.10-3. Duration of Authority for Exceptions Declared by the COVID-19 Team. Any actions 276 taken under authority granted in this section shall be effective upon the date declared by the 277 COVID-19 Team and shall be effective for the duration of any declared emergency, or for a shorter 278 time period if identified. 279 (a) The Oneida Business Committee may change or extend any emergency actions taken 280
  - by the COVID-19 Team.
  - 302.10-4. *Declarations*. All declarations made by the COVID-19 Team shall:
- 282 (a) be written on the Nation's letterhead;
  - (b) provide the date the declaration was issued;
    - (c) contain a clear statement of the directives;
- 285 (d) provide the date the directive shall go into effect;
- 286 (e) be signed by the Oneida Business Committee Chairperson, or Vice Chairperson in the 287 Chairperson's absence; and
  - (f) be posted on the Nation's COVID-19 web site.

290 End.

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292 Adopted - BC-07-15-98-A

- 293 Amended -BC-12-20-06-G
- 294 Emergency Amended –BC-04-30-09-A (Influenza A (H1N1))
- 295 Amended-BC-05-13-09-F
- 296 Emergency Amended – BC-03-17-20-E
- 297 Extension of Emergency – BC- - - -



#### Oneida Nation **Oneida Business Committee** Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



# Legislative Operating Committee August 19, 2020

# Oneida Nation School Board Bylaws **Amendments**

Submission Date: 10/03/18	Public Meeting: n/a
LOC Sponsor: David P. Jordan	Emergency Enacted: n/a Expires: n/a

**Summary:** On September 26, 2018, the Oneida Business Committee ("OBC") adopted the Boards, Committees and Commissions law ("Law") through resolution BC-09-26 -18-C, titled Amendments to the Comprehensive Policy Governing Boards, Committees and Commissions. Per Section 105.10-1(a) of the Law, within a reasonable time after its adoption, all existing boards, committees and commissions of the Nation must present bylaws for adoption that comply with the format and contain the minimal amount of information prescribed in the Law. In resolution BC-09-26-18-C, the OBC gave the Nation's boards, committees and commissions six (6) months from the date of the Law's adoption to present their bylaws. The OBC further directed that, within thirty (30) days of the Law's adoption, the Legislative Reference Office hold at least two (2) informational bylaws meetings with the boards, committees and commissions for purposes of: (1) providing them with an update on the revised bylaws requirements that resulted from the Law's adoption; (2) providing them with a template for the development of their revised bylaws; and (3) offering them any assistance in the development and drafting of their revised bylaws.

10/3/18 LOC: Motion by Ernest Stevens III to add Oneida Nation School Board By-Laws Amendments to the active files list; Seconded by Kirby Metoxen. Motion carried.

**10/17/18:** 

Informational Meeting. Present: Jennifer Falck, Kristen M. Hooker, Maureen Perkins, Jennifer Webster, Dale Webster (ONCOA), Marlene Summers (ONCOA), Lois Strong (ONCOA), Sandra Reveles (OPC), Carol Silva (OPC), Brooke Doxtator (OBCSO), Bonnie Pigman (OTEC), Chad Wilson (ERB), Dylan Benton (OTEC/ Library), Chris Cornelius (OLC). Per resolution BC-09-26-18-C, adopting the amendments to the Comprehensive Policy Governing Boards, Committees and Commissions (n/k/a Boards, Committees and Commissions law), the LRO was directed to hold two (2) informational meetings for the Nation's boards, committees and commissions to provide them with: (1) an update on the new bylaws requirements mandated by the Boards, Committees and Commissions law; (2) a template for the boards, committees and commissions to use when revising their respective bylaws; and (3) assistance to the boards, committees and commissions in the development and drafting of their bylaws. This was the first of the two informational meetings.

#### 10/24/18:

Informational Meeting. Present: Jennifer Falck, Kristen M. Hooker, Maureen Perkins, Clorissa Santiago, Donald McLester (OLC), Chris Cornelius (OLC), Ronald King, Jr. (PFSC), Jeanette Ninham (PFSC), Vicki Cornelius (OEB & Pow-wow), Bonnie Pigman (OTEC), Lisa Liggins (School Board & OTEC), Rochelle Powless (ONCOA), Terry Hetzel (HRD), Patty Hoeft (Oneida Law Office), Brooke Doxtator (OBCSO), Arthur Elm (SEOTS), Diane Hill (SEOTS). Per resolution BC-09-26-18-C, adopting the amendments to the Comprehensive Policy Governing Boards, Committees and Commissions (n/k/a Boards, Committees and Commissions law), the LRO was directed to hold two (2) informational meetings for the Nation's boards, committees and commissions to provide them with: (1) an update on the new bylaws requirements mandated by the Boards, Committees and Commissions law; (2) a template for the boards, committees and commissions to use when revising their respective bylaws; and (3) assistance to the boards, committees and commissions in the development and drafting of their bylaws. This was the second of the two informational meetings.

#### 1/31/19:

LOC Work Meeting. Present: Jennifer Falck, Kristen M. Hooker, Maureen Perkins, David P. Jordan, Daniel Guzman-King, Kirby Metoxen, Jennifer Webster. The purpose of this meeting was to discuss the progress, in general, of the Nation's boards, committees and commissions on getting their bylaws amended and their likelihood of meeting the March 26, 2019 deadline set forth in resolution BC-09-26-18-C to present their bylaws to the Oneida Business Committee for adoption. Based on the discussion, a decision was made to have the LOC draft a memorandum to the Oneida Business Committee seeking an extension of the March 26, 2019 deadline for all boards, committees and commissions to present their bylaws amendments to the Oneida Business Committee for adoption.

2/6/19 LOC: Motion by Jennifer Webster to approve the memorandum from Chairman David P. Jordan to the Oneida Business Committee seeking an extension of the March 26, 2019 bylaws amendments deadline and to forward the memorandum to the Oneida Business Committee to be placed on the February 13, 2019 Oneida Business Committee meeting agenda for consideration; Seconded by Kirby Metoxen. Motion carried.

#### 2/22/19:

OBC Work Session. Present: Jennifer Falck, Kristen M. Hooker, Lisa Summers, Daniel Guzman-King, Jennifer Webster, Tehassi Hill, Brandon Stevens, Trish King, David P. Jordan, Kirby Metoxen. The purpose of this meeting was to discuss the February 13, 2019 memo from the LOC Chairman to the OBC regarding Amendments to Boards, Committees and Commissions By-Laws Timeline in which it requested an extension of the deadline for submitting bylaws to the OBC for adoption. During the meeting, the LRO Staff Attorney assigned this item provided a status update on the progress of the boards, committees and commissions on the amending of their bylaws to comply with the Boards, Committees and Commissions law within the six (6) month deadline imposed by resolution BC-09-26-18-C. The OBC decided not to grant an extension of the six (6) month deadline. Instead, the OBC directed the LRO to continue pushing the bylaws forward and to return to the March 19, 2019 OBC work



session to provide a progress report on the boards, committees and commissions' bylaws amendments.

#### 3/19/19:

OBC Work Session. Present: Lisa Summers, Patricia King, Brandon Stevens, David P. Jordan, Daniel Guzman-King, Jo Anne House, Jennifer Falck, Clorissa Santiago, Kristen M. Hooker, Lisa Liggins, Cathy Bachhuber. The purpose of this OBC work session was for the Legislative Reference Office Staff Attorney to provide the OBC with a status update on the progress made by the boards, committees and commissions on the amending of their bylaws to conform to the Boards, Committees and Commissions law. Based on the update and the discussion that followed, the OBC: (1) decided to grant an exception to the March 26, 2019 deadline set forth in resolution BC-09-26-19-C for the Nation's boards, committees and commissions to present their bylaws to the OBC for adoption; and (2) directed the LRO to draft a memo for the next LOC meeting to be forwarded to the OBC indicating the same.

\*During its subsequent review of the Oneida Gaming Commission's proposed bylaws amendments, the OBC decided to add the following requirements to all of the boards, committees and commissions' bylaws amendments: (1) that, the recommendations for termination be by a majority vote of the members in attendance at a meeting of the entity's established quorum; (2) that, notice of meetings be provided to all members of the entity without exception (per request of LOC that all meetings be duly called); (3) that, the sign-off level for all entities, not assigned a specific level therein, be the same as the Area Director/Enterprise Director level set forth in the Nation's purchasing manual, and that, two (2) of the entity's Officers be required to sign-off on all such purchases; (4) that, under the "Selection of Officers" section, a provision be added (as its own separate subsection) to allow members to be dismissed (not removed as initially proposed) from their Officer positions by a simple majority vote of the entity; (5) that, the entities review their bylaws each time a vacancy is filled by a new member; (6) that, stipend amounts not be listed in the entity's bylaws; and (7) that, assuming its adoption, the resolution governing joint meetings be referenced in the joint meeting section of the entity's bylaws.

<u>3/20/19 LOC:</u> Motion by Ernest Stevens III to approve the Boards, Committees and Commissions Bylaws Update Memo and forward to the Oneida Business Committee; Seconded by Daniel Guzman-King. Motion carried.

<u>3/27/19 OBC</u>: Motion by Lisa Summers to grant the seventeen (17) entities that have begun the process of amending their bylaws to conform to the Boards, Committees and Commissions law, an exception to the March 26, 2019, deadline set forth in resolution BC-09-26-18-C for presenting bylaws amendments to the Business Committee for adoption; Seconded by David P. Jordan. Motion carried.

<u>4/16/19:</u>

*OBC Work Session.* Present: Daniel Guzman-King, David P. Jordan, Trish King, Brandon Stevens, Ernest Stevens III, Lisa Summers, Jo Anne House, Lisa Liggins, Kristen M. Hooker, Clorissa Santiago. The purpose of this OBC work session was to review the Election Board's bylaws amendments. During this meeting, the OBC also decided that <u>all boards</u>, <u>committees and commissions</u> must add the word "titled" next

to the name of the purchasing manual they are required to reference in the "sign-off" section of their bylaws to provide clarification on why the term "Oneida Tribe of Indians" is being used instead of the "Nation".

LOC Work Meeting. Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Jennifer Webster, Kristen M. Hooker, Brandon Wisneski, Jennifer Falck, Clorissa Santiago, Maureen Perkins. The purpose of this meeting was to discuss some of the hurdles the LRO has encountered under the current bylaws amendments process and to consider whether a more efficient process should be implemented to get the Nation's boards, committees and commissions' bylaws amendments before the

Oneida Business Committee for adoption.

7/29/19-7/30/19: OBC Work Session. Present: Daniel Guzman-King, David P. Jordan, Trish King, Brandon Stevens (7/29 only), Ernest Stevens III, Kirby Metoxen, Jennifer Webster, Tehassi Hill (7/29 only), Kristen Hooker, Jennifer Falck, Maureen Perkins, Brooke Doxtator, Laura Laitinen-Warren. The purpose of this work session was to provide the OBC an opportunity to review and consider all drafts of the Boards, Committees and Commissions' bylaws amendments in advance of being added to the OBC agenda for formal consideration and possible adoption.

<u>10/2/19 LOC:</u> Motion by Daniel Guzman King to accept the Oneida Nation School Board Bylaws Amendments and forward to the Oneida Business Committee for consideration; seconded by Kirby Metoxen. Motion carried unanimously.

<u>10/9/19 OBC:</u> Motion by Brandon Stevens to approve the Oneida Nation School Board bylaws, seconded by Ernie Stevens III. Motion withdrawn.

Motion by Jennifer Webster to defer the Oneida Nation School Board bylaws to the November 26, 2019, regular Business Committee meeting agenda, seconded by Kirby Metoxen. Motion carried:

Ayes: Daniel Guzman King, David P. Jordan, Kirby Metoxen, Brandon Stevens, Ernie Stevens III, Lisa Summers, Jennifer Webster

Not Present: Trish King

Work Group Meeting (via Microsoft Teams). Present: Lisa Liggins and Kristen Hooker. The purpose of this meeting was to discuss the status of the School Board's bylaws amendments and the process moving forward. The next step is for the School Board to send its responses to the most current draft of the amendments to the drafting attorney for review and further discussion with the LOC.

<u>08/13/20:</u> LOC Work Session (via Microsoft Teams). Present: Clorissa Santiago, Kristen Hooker, Jennifer Webster, Kirby Metoxen, Daniel Guzman King. The purpose of this meeting was to go through the updated draft of the amendments to the Oneida Nation School Board Bylaws, which reflect the changes requested by the School Board, as well as the changes made pursuant to the most current version of the Boards, Committees and Commissions law.



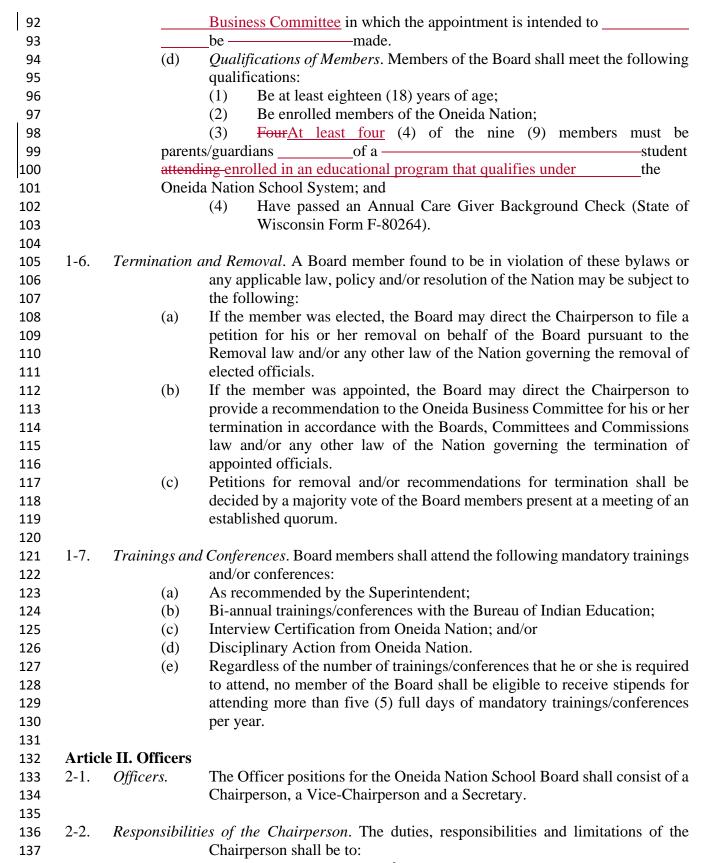
## **Next Steps:**

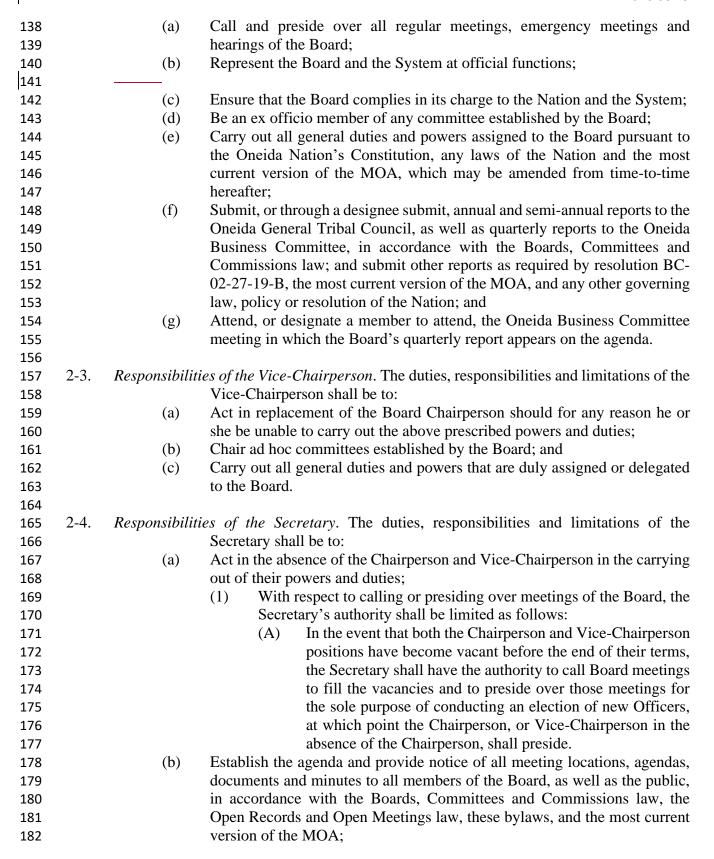
- Accept the Oneida Nation School Board Bylaws Amendments.
- Forward the Oneida Nation School Board Bylaws Amendments to the Oneida Business Committee for consideration.

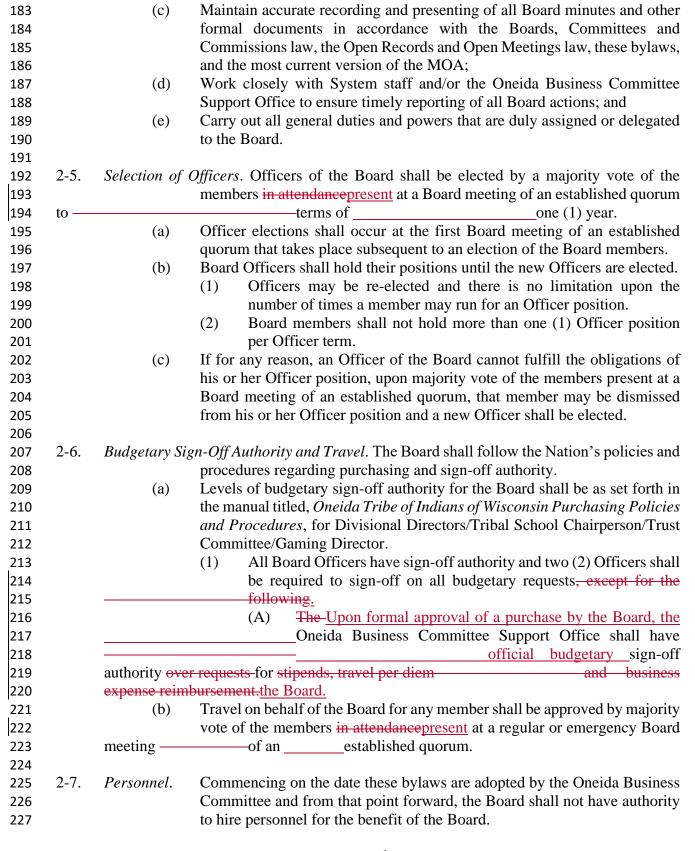


1			ONEI	DA NATION SCHOOL BOARD BYLAWS
2				
3		le I. Authority	<b>77</b> 1	
4 5	1-1.	Name.		ame of this entity shall be the Oneida Nation School Board and may after be referred to as the Board.
6 7 8 9	1-2.	Establishment		Oneida Nation School Board was established in 1977 by the Oneida ral Tribal Council.
10	1-3.	Authority.		
11		(a)	Purpo	ose. The Board was established to coordinate existing and future
12		(33)	-	tion programs of the Oneida Nation; per directive of the Oneida
13				ral Tribal Council, to be an autonomous administrator of the Oneida
14				n School System ("System") under a Memorandum of Agreement
15				he Oneida Business Committee; and to administer the Oneida Nation
16			Schoo	ol System Endowment in accordance with the Nation's Endowments
17			law as	authorized under resolution BC-02-27-19-B.
18		(b)	Power	rs and Duties. In accordance with the Oneida General Tribal Council's
19			directi	ive, on March 21, 1988, the Board entered into a Memorandum of
20			_	ment ("MOA") with the Oneida Business Committee, delegating
21				n powers and duties to the Board, which, subject to amendment from
22				o-time hereafter, include, but are not limited to:
23			(1)	Overseeing and planning, in coordination with the Oneida Business
24				Committee, for the academic and cultural growth of the students
25				within the System;
26			(2)	Monitoring school operations and development, ensuring their
27				compliance with sound academic practice and consistency with
28				community priorities, as well as the Nation's initiatives and
29			(2)	planning;
30			(3)	Approving all curriculum developed and implemented for use
31				within the System, ensuring quality academic instruction that
32			(4)	incorporates Oneida cultural tenets;
33 24			(4)	Providing direct involvement in the process of personnel matters, as
34 35				prescribed in the MOA, to be consistent with the Nation's Personnel Policies and Procedures so as to ensure the maintenance of quality
36				staff and policy benefiting the harmony of the staff and ultimately
30 37				the students within the System;
3 <i>7</i> 38			(5)	Reviewing, endorsing and submitting all contracts, grants, and
39			(3)	proposals relative to the System's operation and planning consistent
40				with the Nation's policies and procedures, as well as the System's
41				funding cycles, by ensuring a level of funding that corresponds with
42				the System's developmental and operational needs;
43			(6)	Meeting with the Oneida Business Committee to negotiate any
44			` /	disputes which may arise between the Oneida Business Committee
45				and the Board;

46 47			(7) Monitoring long and short-range educational programming for the students attending Nation-specific programs of study; and
+7 48			(8) Developing and maintaining consistent procedures to be employed
+6 49			as it carries out its charge to the Oneida General Tribal Council and
50			the Oneida Nation School System.
51		(c)	The Board shall adhere to the laws of the Nation when exercising the
52		(C)	authority delegated it under the MOA, as may be amended from time-to-
53			time hereafter, and shall further exercise any other powers and duties
54			delegated to the Board through the laws, policies, rules and resolutions of
55			the Nation in a manner consistent therewith.
56			the Patron in a mainer consistent therewith.
57	1-4.	Office.	The official mailing address of the Oneida Nation School Board is:
58	1 7.	Office.	Oneida Nation School Board
59			P.O. Box 365
60			Oneida, WI 54155-0365
61			Cholda, W15 1155 0505
62	1-5.	Membership.	
63		(a)	Number of Members. The Oneida Nation School Board shall be comprised
64		()	of nine (9) members.
65		(b)	Elected. Members of the Board shall be chosen by election to three (3) year
66		` '	staggered terms in accordance with any laws and/or policies of the Nation
67			governing elections.
68			(1) Members of the Board shall hold office until their term expires, they
69			resign, or they are terminated/removed from office.
70			(A) A member whose term has expired may remain in office
71			until his or her successor is sworn in by the Oneida Business
72			Committee.
73			(B) A member may resign at any time either verbally during a
74			Board meeting or by delivering written notice to the Oneida
75			Business Committee Support Office and the Board Chair-
76			person or Chairperson's designee.
77			(i) A resignation is deemed effective upon acceptance
78			by Board motion of the member's verbal resignation
79			or upon delivery of the written notices.
80		(c)	Vacancies. Vacancies of the Board shall be filled as follows:
81			(1) Expired Terms. Vacancies caused by term expiration shall be filled
82			by election in accordance with any laws and/or policies of the Nation
83			governing elections to office.
84			(2) Unexpired Terms. Vacancies that occur before the end of a term
85			shall be filled by appointment of the Oneida Business Committee
86			pursuant to the Boards, Committees and Commissions law.
87			(A) The Board Chairperson shall provide the Oneida Business
88			Committee with recommendations on all applications for
89			appointment to fill a vacancy of an unexpired term byin
90			accordance with the —
91			executive session submission deadline for the Oneida







The Board shall have authority to be involved in the hiring of personnel for 228 (a) the System so long as conducted in accordance with the most current 229 version of the MOA, the Nation's Personnel Policies and Procedures, and 230 any applicable accounting policies/procedures of the Nation. 231 The Board shall have authority, at its discretion, to hire consultants and 232 (b) other resource persons to help carry out the stated purposes and goals of the 233 System, subject to the following: 234 (1) The Superintendent shall assist the Board with establishing criteria 235 for the hiring of consultants/resource persons and, when appropriate, 236 provide selection recommendations to the Board. 237 238 (2) Consultants/resource persons shall be hired under formal contract per the process set forth in the most current version of the MOA and 239 consistent with the policies and procedures of the Nation. 240 Where issues arise between the Board and individuals/entities other than the 241 (c) Oneida Business Committee, the Board shall have the authority to avail 242 itself of legal counsel per the Request for Proposal ("RFP") process set by 243 the Nation's competitive bidding/purchasing policies and procedures, to 244 protect the powers and responsibilities delegated to the Board by the Oneida 245 General Tribal Council. 246 247 (1) Prior to commencing with the RFP process to retain outside counsel, the Board shall be required to avail itself of counsel through the 248 Oneida Law Office; provided, it is capable and willing to supply the 249 Board with the necessary legal services. 250 251 252 **Article III. Meetings** 253 Regular Meetings. Meetings of the Board shall be held at 5:00 p.m. on the first and third each month in the Oneida Nation Elementary Monday of — 254 \_N7125 —— 255 School, located at -Seminary Road in Oneida, Wisconsin. Meetings may be attended in person, by telephone, 256 through videoconferencing, or through other 257 telecommunications so long as presence is demonstrated in accordance with 258 the Boards, Committees and Commissions law. 259 The meetings date, time and/or location may change from time-to-time as 260 (a) determined by a majority vote of the members present at a Board meeting 261 of an established quorum; provided, notice is given to all members in 262 writing and, along with the public, in accordance with the Nation's Open 263 Records and Open Meetings law, prior to the implementation of a new date, 264 time and/or location. 265 266 (b) The agenda for regular meetings shall be established by the Secretary, or Secretary's designee, in accordance with these bylaws. 267 Board members and other persons wishing to have items placed on 268 (1) the agenda should submit the item to the Secretary, or Secretary's 269 270 designee. Items should be submitted at least ten (10) days prior to the next (2) 271 272 regular meeting. Action items shall be incorporated into the School Superintendent's report.

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273

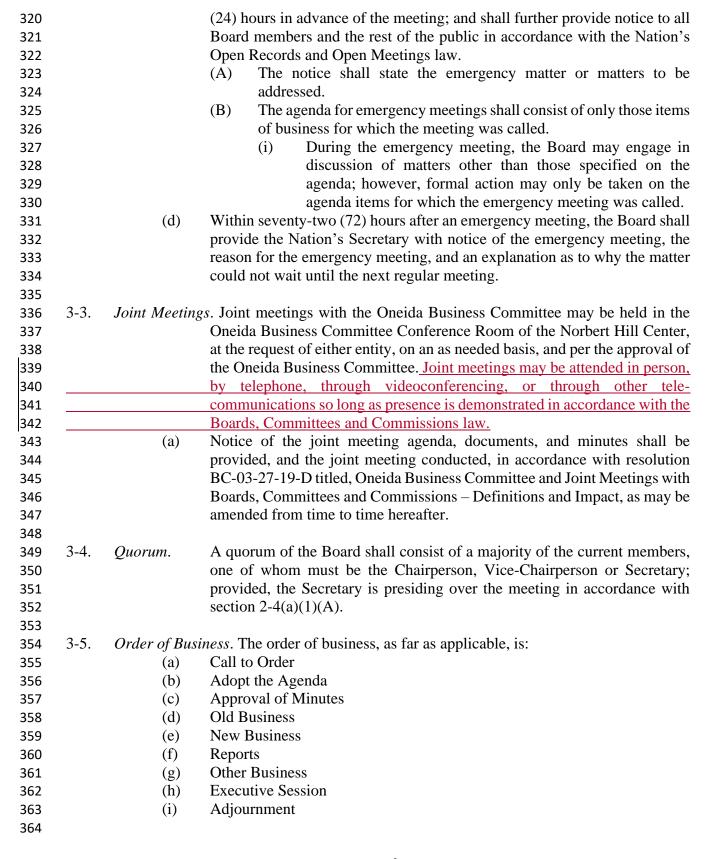
(c)

- (d) The Secretary or Secretary's designee shall prepare the meeting agenda, minutes and other appropriate documentation for action items; mail or email them to each Board member, along with the Superintendent, at least seven (7) days before a regular meeting date; and further provide them to all members, as well as the public, in accordance with the Nation's Open Records and Open Meetings law.
  - (1) Any email correspondence to Board members must be sent to the official Oneida Nation email address that was provided to them to conduct business electronically on behalf of the Board ("Official Email").

## 3-2. *Emergency Meetings*.

- (a) An emergency meeting may be called when there is an imminent issue that needs to be addressed by the Board before its next scheduled meeting.

  Emergency meetings may be attended in person, by telephone, through videoconferencing, or through other telecommunications so long as presence is demonstrated in accordance with the Boards, Committees and Commissions law.
  - (1) The Board is delegated the authority to represent the parents and the Oneida General Tribal Council in the conducting of System related business. Under certain governmental and other System related agreements, some contractors require periodic meetings that require parent representation. This constitutes an imminent issue for which an emergency meeting may be called when necessary to satisfy the Board's contractual obligations.
    - (A) Meetings to fulfill contractual obligations may be held on the evenings of regular Board meetings or may be separately scheduled. In either case, along with the notice required in subsection (c) of this section if the meeting was called as an emergency or in section 3-1(d) if called as part of a regular meeting, the Secretary or Secretary's designee must provide notice to all groups identified by the contractor as set forth within the contract, or in writing if not set by contract, and to all parents through the school newsletter, as well as the Kalihwisaks.
- (b) Emergency meetings may be called by the Chairperson and upon request of a Board member or System administrator.
  - (1) Board members or System administrators shall contact the Board's Chairperson or Vice-Chairperson to request an emergency meeting.
    - (A) The Chairperson, or when he or she cannot be reached, the Vice-Chairperson shall determine whether the basis for the Board member's or System administrator's request justifies scheduling an emergency meeting.
- (c) The Chairperson or Chairperson's designee shall provide notice of emergency meetings to all Board members by telephone call, as well as via their Official Email, and to the System administration at least twenty-four Page 7 of 13



3-6.	Voting.	Decisions of the Board shall be based on a majority vote of members in attendance present at a regular or emergency meeting or
an est	tablished quori	<u> </u>
	(a) (b)	<ul> <li>All members of the Board shall have one equal vote.</li> <li>(1) In all matters requiring a vote of the Board, the Chairperson, or in the absence of the Chairperson, the presiding Officer, shall call for a vote of the membership.</li> <li>(A) All members, excluding the presiding Officer, shall vote or enter an abstention.</li> <li>(B) In the event of a deadlock, the Chairperson, or the presiding Officer acting in his or her place, shall vote to break the deadlock.</li> <li>E-polls are permissible so long as conducted in accordance with the Boards Committees and Commissions law.</li> </ul>
		(1) The Chairperson shall appoint either the Vice-Chairperson of Secretary to serve as the designee responsible for conducting e-polls in lieu of the Chairperson.
A rtic	le IV. Expecta	ations
4-1.	-	Members. The Board has a moral duty and responsibility to the System, the
	,	community, and the students. In the carrying-out of that responsibility members of the Board are expected to adhere to the following principles of conduct:
	(a)	Individual Board members shall not intervene in the orderly process of System administration and governance. Concerns over policy or personne matters shall be addressed through the application of the principles set ou in the most current version of the MOA and consistent with the Nation's Personnel Policies and Procedures.
	(b)	The Board shall act only at duly authorized meetings with at least a quorum present to conduct business and develop policy for the System. All the Board's actions shall be within the charge granted to the Board by the
		Oneida General Tribal Council, the most current version of the MOA, and any other applicable laws, polices and/or resolutions of the Nation.
		(1) Members of the Board shall not speak or act on behalf of the Board unless the Board has specifically authorized a member to speak or act on its behalf by majority vote of the members present at a Board meeting of an established quorum.
	(c)	In any issues before the Board involving a Board member's immediate family member and potential nepotism, that Board member shall decline comment and abstain from voting.
		(1) Immediate family member shall be as defined in the Nation'

Conflict of Interest law.

408

- Board members must be apolitical in their charge to the community and the 409 (d) students. Board members shall take no action to endorse or otherwise 410 support any candidate for any Tribal office or position. 411 While acting on behalf of the Board, members shall faithfully maintain the 412 (e) principles of due process and assure that all sides have a legitimate hearing 413 in any issue brought before the Board. 414 Members of the Board will bargain in good faith with all employees of the (f) 415 System. 416 Board members shall strictly adhere to the policies and procedures of the 417 (g) System, the most current version of the MOA, as well as any other 418 applicable the laws, policies and resolutions of the Nation, and shall work 419 in consort for the positive growth of the System and for all of its students. 420 Board members shall notify a Board Officer of an absence and reason for (h) 421 absence prior to the start of a meeting. 422 Board members shall not accrue three (3) consecutive unexcused (1) 423 absences from meetings in a one (1) year period. 424 (A) A member who fails to notify a Board Officer, in writing, of 425 his or her pending absence at least thirty (30) minutes before 426 the missed meeting shall be deemed unexcused. 427 428 (i) Enforcement. Any member of the Board found to be in violation of this section of the bylaws, another section of these bylaws or any other laws, 429 policies and/or resolutions of the Nation may be subject to the following: 430 Disciplinary action in accordance with any laws or policies of the (1) 431 Nation governing sanctions and/or penalties for elected or appointed 432 officials. 433 (2) If the member was appointed, the Board may make a 434 recommendation to the Oneida Business Committee for termination 435 of his or her appointment in accordance with the Boards, 436 Committees and Commissions law and/or any other law of the 437 Nation governing termination of appointed officials. 438 If the member was elected, the Board may direct the Chairperson to 439 (3) file a petition for his or her removal in accordance with the Removal 440 441 law and/or any other laws or policies of the Nation governing removal. 442 443 (4) Enforcement hereunder shall be determined by a majority vote of the members in attendance present at a Board meeting of an 444 445 established -quorum. 446 447 4-2. Prohibition of Violence. Board members are prohibited from engaging in or committing any violent intentional act that inflicts, attempts to inflict, or threatens to 448 inflict emotional or bodily harm on another person, or damage to property. 449 450 Drug and Alcohol Use. When acting in their official capacity, the use of alcohol and/or 451 4-3. prohibited drugs by members of the Board is forbidden. 452
  - (a) Prohibited drugs are defined as marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, Page 10 of 13

453

454

; ;		•	other substances included in States Cottle 21 of the United States Co	<u>C</u>	
3			ounter medicine used in an un		
4-4.	Social Media.		al media shall be used in accorde and any laws or policies of the		
4-5.	Conflict of I		. Conflicts of interest shall dance with any laws or policest.	-	
	le V. Stipends	and Co	ompensation		
5-1.	Stipends.	Mem set for Com	bers of the Board shall be eligorth in and subject to these missions law; and resolution Blution BC-09-26-18-DAmend	bylaws; the Boards, Cor 3C- <del>05</del> -08- <del>19 B</del> <u>12-20-C</u> title	nmittees and
	Committees a		mmissions Law —		
	—Stipends, as n	nay be	further amended	from time-to-tim	e hereafter:
	(a)		(2No more than twenty-four	(24) meeting stipends per	month fiscal
<u>year</u> ,	provided				
		(1)	A quorum was established;		
		(2)	The meeting of the establishour; and	shed quorum lasted for at	least one (1)
		(3)	The member collecting the —entire		resent for the as defined, as
well a	as demonstrated	, in acc	cordance with the	Boards,	Committees
and C	<u>Commissions lay</u>				
	(b)	-	pend for attending a duly call	•	he Board and
			neida Business Committee, pr		
		(1)	A quorum was established	•	
		(2)	The joint meeting lasted for		
		(3)	The member collecting the —entire joint		
well (			cordance with the	Boards,	
	Commissions lav		ordance with the	Boards,	Committees
and C	(c)	_	pend for participating in interv	views and/or <del>job description</del>	nre-screens
	(d)	-	pend for conducting an official		pre sereciis.
	(e)		ipend for attending an One	•	long as the
	(-)		ber's attendance is required by	· · · · · · · · · · · · · · · · · · ·	8
	(f)		pend for each day of attendan	· •	ing, provided
	( )	that:			J/1
		(1)	The member attended a fu conference for a full day; a	•	present at the
		(1)	The amount of the stipen		receive for
		(*/	attending a conference or tra	<del>_</del>	

500			member attended up to four (4) hours of a conference or training or
501			more than four (4) hours of a conference or training; and
502			(2) The member's attendance at the training or conference was required
503			by law, bylaws or resolution.
504		<del>(g)</del>	To receive a stipend for attending any of the events described in 5-1(d) - (f),
505			members must obtain formal approval of eligibility from the Board and the
506			Oneida Business Committee prior to their attendance.
507			
508	5-2.	Compensation	n. Besides the travel, per diem and business expense reimbursement
509			authorized by the Boards, Committees and Commissions law, there are no
510			other forms of compensation that members are eligible to receive for the
511			duties/activities they perform on behalf of the Board.
512			
513	Artic	le VI. Records	and Reporting
514	6-1.	Agenda Items	. Agenda items shall be maintained in a consistent format provided by the
515			Oneida Business Committee Support Office and approved by the Board.
516			
517	6-2.	Minutes.	All meeting minutes shall be typed and in a consistent format designed by
518			the Oneida Business Committee, as approved by the Board, to generate the
519			most informative record.
520		(a)	Minutes must include a summary of the action taken by the Board.
521		(b)	Minutes shall be submitted to the Oneida Business Committee Support
522			Office within five (5) business days of approval by the Board.
523			
524	6-3.	Attachments.	Any handouts, attachments, reports, memoranda, and the like provided at a
525			Board meeting shall be included with their corresponding agenda and
526			minutes and maintained in accordance with the Nation's Open Records and
527			Open Meetings law.
528			
529	6-4.	Oneida Busir	ness Committee Liaison. The Board shall regularly communicate with the
530			Oneida Business Committee member who is its designated liaison.
531		(a)	The format and frequency of communication shall be as agreed upon by the
532			Board and the liaison through formal action of the Board, but not less than
533			that required in any law or policy on reporting developed by the Oneida
534			Business Committee or Oneida General Tribal Council.
535		(b)	The purpose of the liaison relationship is to uphold the ability of the liaison
536			to act as a support to the Oneida Nation School Board.
537			
538	6-5.	Audio Record	lings. All meetings of the Board shall be audio recorded by either the Oneida
539			Business Committee Support Office or designee of the Officer presiding
540			over the meeting using a device supplied by the Oneida Business
541			Committee Support Office.
542		(a)	The presiding Officer shall ensure each meeting is audio recorded.
543		(b)	Audio recordings shall be maintained by the Oneida Business Committee
544			Support Office in accordance with the Nation's Open Records and Open
545			Meetings law.
			Page 12 of 13

546		(1) Exception. Audio recordings of executive session portions of a
547		meeting shall not be required.
548		
549	Article VII. Amenda	ments
550	7-1. <i>Amendments</i> .	Amendments to these bylaws shall be approved by majority vote of the
551		members present at a regular Board meeting of an established quorum,
552		provided that written notice of the proposed amendments was made at a
553		prior regular meeting.
554	(a)	Amendments to these bylaws shall conform to the requirements of the
555		Boards, Committees and Commissions law and any other governing
556		policies of the Nation.
557	(b)	Amendments must be approved by the Board and the Oneida Business
558		Committee before implementation.
559	(c)	The Board shall conduct a review of these bylaws no less than on an annual
560		basis.
561		
562		[Signature Block]

1			ONEI	DA NATION SCHOOL BOARD BYLAWS
2	A4° -	l. T. A41		
3		le I. Authority	TC1	
4 5	1-1.	Name.		ame of this entity shall be the Oneida Nation School Board and may after be referred to as the Board.
6	1.0	E . 11:1		N ' 1 N 2' C 1 1 D 1
7	1-2.	Establishment		Oneida Nation School Board was established in 1977 by the Oneida
8			Gener	al Tribal Council.
9	1.2	A		
10	1-3.	Authority.	D	The Doord was established to coordinate evicting and future
11		(a)		se. The Board was established to coordinate existing and future
12				tion programs of the Oneida Nation; per directive of the Oneida
13				al Tribal Council, to be an autonomous administrator of the Oneida
14 1 E				n School System ("System") under a Memorandum of Agreement
15 16				he Oneida Business Committee; and to administer the Oneida Nation I System Endowment in accordance with the Nation's Endowments
10 17				authorized under resolution BC-02-27-19-B.
17 18		(b)		rs and Duties. In accordance with the Oneida General Tribal Council's
19		(0)		ive, on March 21, 1988, the Board entered into a Memorandum of
20				ment ("MOA") with the Oneida Business Committee, delegating
21			_	powers and duties to the Board, which, subject to amendment from
22				o-time hereafter, include, but are not limited to:
23			(1)	Overseeing and planning, in coordination with the Oneida Business
24			(1)	Committee, for the academic and cultural growth of the students
25				within the System;
26			(2)	Monitoring school operations and development, ensuring their
27			(-)	compliance with sound academic practice and consistency with
28				community priorities, as well as the Nation's initiatives and
29				planning;
30			(3)	Approving all curriculum developed and implemented for use
31			` /	within the System, ensuring quality academic instruction that
32				incorporates Oneida cultural tenets;
33			(4)	Providing direct involvement in the process of personnel matters, as
34				prescribed in the MOA, to be consistent with the Nation's Personnel
35				Policies and Procedures so as to ensure the maintenance of quality
36				staff and policy benefiting the harmony of the staff and ultimately
37				the students within the System;
38			(5)	Reviewing, endorsing and submitting all contracts, grants, and
39				proposals relative to the System's operation and planning consistent
40				with the Nation's policies and procedures, as well as the System's
41				funding cycles, by ensuring a level of funding that corresponds with
42				the System's developmental and operational needs;
43			(6)	Meeting with the Oneida Business Committee to negotiate any
44				disputes which may arise between the Oneida Business Committee
45				and the Board:

46 47 48			<ul> <li>(7) Monitoring long and short-range educational programming for the students attending Nation-specific programs of study; and</li> <li>(8) Developing and maintaining consistent procedures to be employed</li> </ul>
49			as it carries out its charge to the Oneida General Tribal Council and
50			the Oneida Nation School System.
51		(c)	The Board shall adhere to the laws of the Nation when exercising the
52			authority delegated it under the MOA, as may be amended from time-to-
53			time hereafter, and shall further exercise any other powers and duties
54			delegated to the Board through the laws, policies, rules and resolutions of
55			the Nation in a manner consistent therewith.
56			
57	1-4.	$O\!f\!f\!ice.$	The official mailing address of the Oneida Nation School Board is:
58			Oneida Nation School Board
59			P.O. Box 365
60			Oneida, WI 54155-0365
61	1.5	16 1 1:	
62	1-5.	Membership.	N. I. CM. I. THEO. '1 N. I. C. 1 1D. 1.1.11. '. 1
63		(a)	Number of Members. The Oneida Nation School Board shall be comprised
64 65		(b)	of nine (9) members.  Floated Members of the Board shall be chosen by election to three (2) year
65 66		(b)	<i>Elected.</i> Members of the Board shall be chosen by election to three (3) year staggered terms in accordance with any laws and/or policies of the Nation
67			governing elections.
68			(1) Members of the Board shall hold office until their term expires, they
69			resign, or they are terminated/removed from office.
70			(A) A member whose term has expired may remain in office
71			until his or her successor is sworn in by the Oneida Business
72			Committee.
73			(B) A member may resign at any time either verbally during a
74			Board meeting or by delivering written notice to the Oneida
75			Business Committee Support Office and the Board Chair-
76			person or Chairperson's designee.
77			(i) A resignation is deemed effective upon acceptance
78			by Board motion of the member's verbal resignation
79			or upon delivery of the written notices.
80		(c)	Vacancies. Vacancies of the Board shall be filled as follows:
81			(1) Expired Terms. Vacancies caused by term expiration shall be filled
82			by election in accordance with any laws and/or policies of the Nation
83			governing elections to office.
84			(2) Unexpired Terms. Vacancies that occur before the end of a term
85			shall be filled by appointment of the Oneida Business Committee
86			pursuant to the Boards, Committees and Commissions law.
87			(A) The Board Chairperson shall provide the Oneida Business
88 en			Committee with recommendations on all applications for
89 00			appointment to fill a vacancy of an unexpired term in accordance with the submission deadline for the Oneida
90			accordance with the submission deadine for the Oneida

91			Business Committee in which the appointment is intended to
92			be made.
93		(d)	Qualifications of Members. Members of the Board shall meet the following
94			qualifications:
95			(1) Be at least eighteen (18) years of age;
96			(2) Be enrolled members of the Oneida Nation;
97			(3) At least four (4) of the nine (9) members must be parents/guardians
98			of a student enrolled in an educational program that qualifies under
99			the Oneida Nation School System; and
100			(4) Have passed an Annual Care Giver Background Check (State of
101			Wisconsin Form F-80264).
102			
103	1-6.	Termination of	and Removal. A Board member found to be in violation of these bylaws or
104			any applicable law, policy and/or resolution of the Nation may be subject to
105			the following:
106		(a)	If the member was elected, the Board may direct the Chairperson to file a
107		` ,	petition for his or her removal on behalf of the Board pursuant to the
108			Removal law and/or any other law of the Nation governing the removal of
109			elected officials.
110		(b)	If the member was appointed, the Board may direct the Chairperson to
111			provide a recommendation to the Oneida Business Committee for his or her
112			termination in accordance with the Boards, Committees and Commissions
113			law and/or any other law of the Nation governing the termination of
114			appointed officials.
115		(c)	Petitions for removal and/or recommendations for termination shall be
116			decided by a majority vote of the Board members present at a meeting of an
117			established quorum.
118			•
119	1-7.	Trainings and	Conferences. Board members shall attend the following mandatory trainings
120			and/or conferences:
121		(a)	As recommended by the Superintendent;
122		(b)	Bi-annual trainings/conferences with the Bureau of Indian Education;
123		(c)	Interview Certification from Oneida Nation; and/or
124		(d)	Disciplinary Action from Oneida Nation.
125		(e)	Regardless of the number of trainings/conferences that he or she is required
126			to attend, no member of the Board shall be eligible to receive stipends for
127			attending more than five (5) full days of mandatory trainings/conferences
128			per year.
129			
130	Artic	le II. Officers	
131	2-1.	Officers.	The Officer positions for the Oneida Nation School Board shall consist of a
132		÷ ÷	Chairperson, a Vice-Chairperson and a Secretary.
133			•
134	2-2.	Responsibiliti	es of the Chairperson. The duties, responsibilities and limitations of the
135		-	Chairperson shall be to:

136		(a)	Call and preside over all regular meetings, emergency meetings and
137			hearings of the Board;
138		(b)	Represent the Board and the System at official functions;
139		(c)	Ensure that the Board complies in its charge to the Nation and the System;
140		(d)	Be an ex officio member of any committee established by the Board;
141		(e)	Carry out all general duties and powers assigned to the Board pursuant to
142			the Oneida Nation's Constitution, any laws of the Nation and the most
143			current version of the MOA, which may be amended from time-to-time
144			hereafter;
145		(f)	Submit, or through a designee submit, annual and semi-annual reports to the
146			Oneida General Tribal Council, as well as quarterly reports to the Oneida
147			Business Committee, in accordance with the Boards, Committees and
148			Commissions law; and submit other reports as required by resolution BC-
149			02-27-19-B, the most current version of the MOA, and any other governing
150			law, policy or resolution of the Nation; and
151		(g)	Attend, or designate a member to attend, the Oneida Business Committee
152			meeting in which the Board's quarterly report appears on the agenda.
153			
154	2-3.	Responsibilit	ies of the Vice-Chairperson. The duties, responsibilities and limitations of the
155			Vice-Chairperson shall be to:
156		(a)	Act in replacement of the Board Chairperson should for any reason he or
157			she be unable to carry out the above prescribed powers and duties;
158		(b)	Chair ad hoc committees established by the Board; and
159		(c)	Carry out all general duties and powers that are duly assigned or delegated
160			to the Board.
161			
162	2-4.	Responsibiliti	ies of the Secretary. The duties, responsibilities and limitations of the
163			Secretary shall be to:
164		(a)	Act in the absence of the Chairperson and Vice-Chairperson in the carrying
165			out of their powers and duties;
166			(1) With respect to calling or presiding over meetings of the Board, the
167			Secretary's authority shall be limited as follows:
168			(A) In the event that both the Chairperson and Vice-Chairperson
169			positions have become vacant before the end of their terms,
170			the Secretary shall have the authority to call Board meetings
171			to fill the vacancies and to preside over those meetings for
172			the sole purpose of conducting an election of new Officers,
173			at which point the Chairperson, or Vice-Chairperson in the
174			absence of the Chairperson, shall preside.
175		(b)	Establish the agenda and provide notice of all meeting locations, agendas,
176			documents and minutes to all members of the Board, as well as the public,
177			in accordance with the Boards, Committees and Commissions law, the
178			Open Records and Open Meetings law, these bylaws, and the most current
179			version of the MOA;
180		(c)	Maintain accurate recording and presenting of all Board minutes and other
181			formal documents in accordance with the Boards, Committees and Page 4 of 13

182			Commissions law, the Open Records and Open Meetings law, these bylaws,
183			and the most current version of the MOA;
184		(d)	Work closely with System staff and/or the Oneida Business Committee
185			Support Office to ensure timely reporting of all Board actions; and
186		(e)	Carry out all general duties and powers that are duly assigned or delegated
187			to the Board.
188			
189	2-5.	Selection of	Officers. Officers of the Board shall be elected by a majority vote of the
190			members present at a Board meeting of an established quorum to terms of
191			one (1) year.
192		(a)	Officer elections shall occur at the first Board meeting of an established
193			quorum that takes place subsequent to an election of the Board members.
194		(b)	Board Officers shall hold their positions until the new Officers are elected.
195		. ,	(1) Officers may be re-elected and there is no limitation upon the
196			number of times a member may run for an Officer position.
197			(2) Board members shall not hold more than one (1) Officer position
198			per Officer term.
199		(c)	If for any reason, an Officer of the Board cannot fulfill the obligations of
200		` /	his or her Officer position, upon majority vote of the members present at a
201			Board meeting of an established quorum, that member may be dismissed
202			from his or her Officer position and a new Officer shall be elected.
203			
204	2-6.	Budgetary Si	gn-Off Authority and Travel. The Board shall follow the Nation's policies and
205		0	procedures regarding purchasing and sign-off authority.
206		(a)	Levels of budgetary sign-off authority for the Board shall be as set forth in
207		` /	the manual titled, Oneida Tribe of Indians of Wisconsin Purchasing Policies
208			and Procedures, for Divisional Directors/Tribal School Chairperson/Trust
209			Committee/Gaming Director.
210			(1) All Board Officers have sign-off authority and two (2) Officers shall
211			be required to sign-off on all budgetary requests.
212			(A) Upon formal approval of a purchase by the Board, the
213			Oneida Business Committee Support Office shall have
214			official budgetary sign-off authority for the Board.
215		(b)	Travel on behalf of the Board for any member shall be approved by majority
216		· /	vote of the members present at a regular or emergency Board meeting of an
217			established quorum.
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219	2-7.	Personnel.	Commencing on the date these bylaws are adopted by the Oneida Business
220			Committee and from that point forward, the Board shall not have authority
221			to hire personnel for the benefit of the Board.
222		(a)	The Board shall have authority to be involved in the hiring of personnel for
223		(/	the System so long as conducted in accordance with the most current
224			version of the MOA, the Nation's Personnel Policies and Procedures, and
225			any applicable accounting policies/procedures of the Nation.
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- (b) The Board shall have authority, at its discretion, to hire consultants and 226 other resource persons to help carry out the stated purposes and goals of the 227 System, subject to the following: 228 (1) The Superintendent shall assist the Board with establishing criteria 229 for the hiring of consultants/resource persons and, when appropriate, 230 provide selection recommendations to the Board. 231 Consultants/resource persons shall be hired under formal contract (2) 232 per the process set forth in the most current version of the MOA and
  - Where issues arise between the Board and individuals/entities other than the (c) Oneida Business Committee, the Board shall have the authority to avail itself of legal counsel per the Request for Proposal ("RFP") process set by the Nation's competitive bidding/purchasing policies and procedures, to protect the powers and responsibilities delegated to the Board by the Oneida General Tribal Council.

consistent with the policies and procedures of the Nation.

Prior to commencing with the RFP process to retain outside counsel, (1) the Board shall be required to avail itself of counsel through the Oneida Law Office; provided, it is capable and willing to supply the Board with the necessary legal services.

## **Article III. Meetings**

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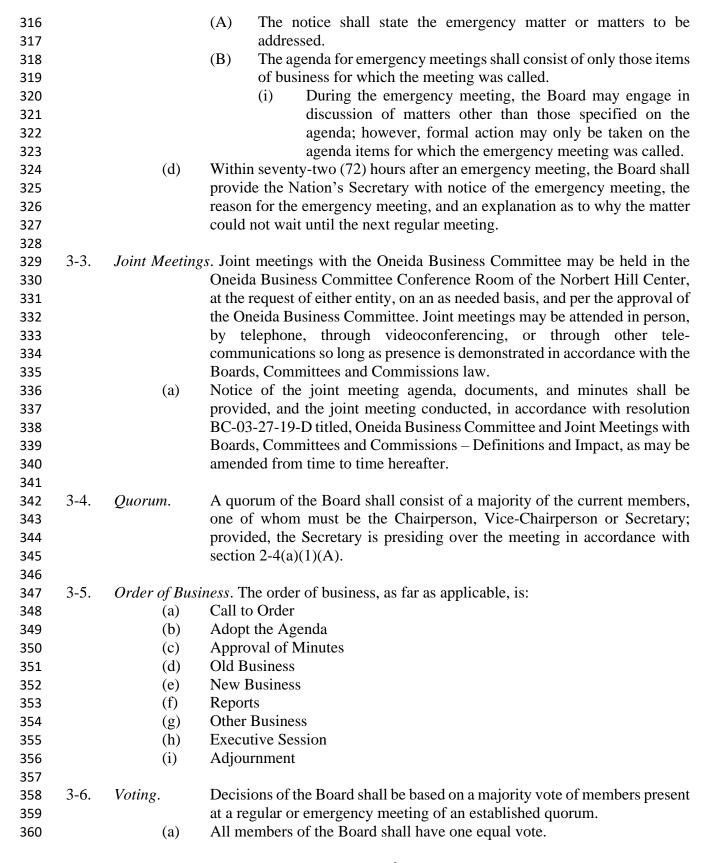
- Regular Meetings. Meetings of the Board shall be held at 5:00 p.m. on the first and third Monday of each month in the Oneida Nation Elementary School, located at N7125 Seminary Road in Oneida, Wisconsin. Meetings may be attended in person, by telephone, through videoconferencing, or through other telecommunications so long as presence is demonstrated in accordance with the Boards, Committees and Commissions law.
  - The meetings date, time and/or location may change from time-to-time as (a) determined by a majority vote of the members present at a Board meeting of an established quorum; provided, notice is given to all members in writing and, along with the public, in accordance with the Nation's Open Records and Open Meetings law, prior to the implementation of a new date, time and/or location.
  - The agenda for regular meetings shall be established by the Secretary, or (b) Secretary's designee, in accordance with these bylaws.
    - Board members and other persons wishing to have items placed on the agenda should submit the item to the Secretary, or Secretary's designee.
    - (2) Items should be submitted at least ten (10) days prior to the next regular meeting.
  - Action items shall be incorporated into the School Superintendent's report. (c)
  - (d) The Secretary or Secretary's designee shall prepare the meeting agenda, minutes and other appropriate documentation for action items; mail or email them to each Board member, along with the Superintendent, at least seven (7) days before a regular meeting date; and further provide them to all

members, as well as the public, in accordance with the Nation's Open Records and Open Meetings law.

(1) Any email correspondence to Board members must be sent to the official Oneida Nation email address that was provided to them to conduct business electronically on behalf of the Board ("Official Email").

## 3-2. Emergency Meetings.

- (a) An emergency meeting may be called when there is an imminent issue that needs to be addressed by the Board before its next scheduled meeting. Emergency meetings may be attended in person, by telephone, through videoconferencing, or through other telecommunications so long as presence is demonstrated in accordance with the Boards, Committees and Commissions law.
  - (1) The Board is delegated the authority to represent the parents and the Oneida General Tribal Council in the conducting of System related business. Under certain governmental and other System related agreements, some contractors require periodic meetings that require parent representation. This constitutes an imminent issue for which an emergency meeting may be called when necessary to satisfy the Board's contractual obligations.
    - (A) Meetings to fulfill contractual obligations may be held on the evenings of regular Board meetings or may be separately scheduled. In either case, along with the notice required in subsection (c) of this section if the meeting was called as an emergency or in section 3-1(d) if called as part of a regular meeting, the Secretary or Secretary's designee must provide notice to all groups identified by the contractor as set forth within the contract, or in writing if not set by contract, and to all parents through the school newsletter, as well as the Kalihwisaks.
- (b) Emergency meetings may be called by the Chairperson and upon request of a Board member or System administrator.
  - (1) Board members or System administrators shall contact the Board's Chairperson or Vice-Chairperson to request an emergency meeting.
    - (A) The Chairperson, or when he or she cannot be reached, the Vice-Chairperson shall determine whether the basis for the Board member's or System administrator's request justifies scheduling an emergency meeting.
- (c) The Chairperson or Chairperson's designee shall provide notice of emergency meetings to all Board members by telephone call, as well as via their Official Email, and to the System administration at least twenty-four (24) hours in advance of the meeting; and shall further provide notice to all Board members and the rest of the public in accordance with the Nation's Open Records and Open Meetings law.



361		(1) In all matters requiring a vote of the Board, the Chairperson, or in
362		the absence of the Chairperson, the presiding Officer, shall call for
363		a vote of the membership.
364		(A) All members, excluding the presiding Officer, shall vote or enter an abstention.
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366 367		(B) In the event of a deadlock, the Chairperson, or the presiding Officer acting in his or her place, shall vote to break the
368		deadlock.
369	(b)	E-polls are permissible so long as conducted in accordance with the Boards,
370	(0)	Committees and Commissions law.
370 371		(1) The Chairperson shall appoint either the Vice-Chairperson or
372		Secretary to serve as the designee responsible for conducting e-polls
373		in lieu of the Chairperson.
374		in nea of the Champerson.
375	Article IV. Expectat	tions
376	_	Members. The Board has a moral duty and responsibility to the System, the
377	11. Benarior of i	community, and the students. In the carrying-out of that responsibility,
378		members of the Board are expected to adhere to the following principles of
379		conduct:
380	(a)	Individual Board members shall not intervene in the orderly process of
381	· /	System administration and governance. Concerns over policy or personnel
382		matters shall be addressed through the application of the principles set out
383		in the most current version of the MOA and consistent with the Nation's
384		Personnel Policies and Procedures.
385	(b)	The Board shall act only at duly authorized meetings with at least a quorum
386		present to conduct business and develop policy for the System. All the
387		Board's actions shall be within the charge granted to the Board by the
388		Oneida General Tribal Council, the most current version of the MOA, and
389		any other applicable laws, polices and/or resolutions of the Nation.
390		(1) Members of the Board shall not speak or act on behalf of the Board
391		unless the Board has specifically authorized a member to speak or
392		act on its behalf by majority vote of the members present at a Board
393		meeting of an established quorum.
394	(c)	In any issues before the Board involving a Board member's immediate
395		family member and potential nepotism, that Board member shall decline
396		comment and abstain from voting.
397		(1) Immediate family member shall be as defined in the Nation's
398		Conflict of Interest law.
399	(d)	Board members must be apolitical in their charge to the community and the
400		students. Board members shall take no action to endorse or otherwise
401		support any candidate for any Tribal office or position.
402	(e)	While acting on behalf of the Board, members shall faithfully maintain the
403		principles of due process and assure that all sides have a legitimate hearing
404	4.00	in any issue brought before the Board.
405	(f)	Members of the Board will bargain in good faith with all employees of the

System.

407 (g) Board members shall strictly adhere to the policies and procedures of the System, the most current version of the MOA, as well as any other 408 applicable the laws, policies and resolutions of the Nation, and shall work 409 in consort for the positive growth of the System and for all of its students. 410 Board members shall notify a Board Officer of an absence and reason for 411 (h) absence prior to the start of a meeting. 412 Board members shall not accrue three (3) consecutive unexcused (1) 413 absences from meetings in a one (1) year period. 414 A member who fails to notify a Board Officer, in writing, of 415 his or her pending absence at least thirty (30) minutes before 416 the missed meeting shall be deemed unexcused. 417 (i) Enforcement. Any member of the Board found to be in violation of this 418 section of the bylaws, another section of these bylaws or any other laws. 419 policies and/or resolutions of the Nation may be subject to the following: 420 Disciplinary action in accordance with any laws or policies of the (1) 421 Nation governing sanctions and/or penalties for elected or appointed 422 officials. 423 (2) If the member was appointed, the Board may make a 424 recommendation to the Oneida Business Committee for termination 425 426 of his or her appointment in accordance with the Boards, Committees and Commissions law and/or any other law of the 427 Nation governing termination of appointed officials. 428 If the member was elected, the Board may direct the Chairperson to 429 (3) file a petition for his or her removal in accordance with the Removal 430 law and/or any other laws or policies of the Nation governing 431 removal. 432 433 (4) Enforcement hereunder shall be determined by a majority vote of the members present at a Board meeting of an established quorum. 434 435 4-2. Prohibition of Violence. Board members are prohibited from engaging in or committing 436 any violent intentional act that inflicts, attempts to inflict, or threatens to 437 inflict emotional or bodily harm on another person, or damage to property. 438 439 4-3. Drug and Alcohol Use. When acting in their official capacity, the use of alcohol and/or 440 prohibited drugs by members of the Board is forbidden. 441 Prohibited drugs are defined as marijuana, cocaine, opiates, amphetamines, 442 (a) phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, 443 any other substances included in Schedules I though V under Section 812 444 445 of Title 21 of the United States Code, and prescription medication or overthe-counter medicine used in an unauthorized or unlawful manner. 446 447

Social Media. Social media shall be used in accordance with the Board members' oath of

office and any laws or policies of the Nation governing social media.

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451 4-5. *Conflict of Interest*. Conflicts of interest shall be reported and mitigated/removed in accordance with any laws or policies of the Nation governing conflicts of interest.

## **Article V. Stipends and Compensation**

- 456 5-1. *Stipends*.457458459
- Members of the Board shall be eligible to receive the following stipends as set forth in and subject to these bylaws; the Boards, Committees and Commissions law; and resolution BC-08-12-20-C titled, Amended Boards, Committees and Commissions Law Stipends, as may be further amended from time-to-time hereafter:
- (a) No more than twenty-four (24) meeting stipends per fiscal year, provided that:
  - (1) A quorum was established;
  - (2) The meeting of the established quorum lasted for at least one (1) hour; and
  - (3) The member collecting the stipend was present for the entire meeting as defined, as well as demonstrated, in accordance with the Boards, Committees and Commissions law.
- (b) A stipend for attending a duly called joint meeting between the Board and the Oneida Business Committee, provided that:
  - (1) A quorum was established by the Board;
  - (2) The joint meeting lasted for at least one (1) hour; and
  - (3) The member collecting the stipend was present for the entire joint meeting as defined, as well as demonstrated, in accordance with the Boards, Committees and Commissions law.
- (c) A stipend for participating in interviews and/or screens.
- (d) A stipend for conducting an official hearing of the Board.
- (e) A stipend for attending an Oneida Judiciary Hearing so long as the member's attendance is required by official subpoena.
- (f) A stipend for each day of attendance at a conference or training, provided that:
  - (1) The amount of the stipend a member is eligible to receive for attending a conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training or more than four (4) hours of a conference or training; and
  - (2) The member's attendance at the training or conference was required by law, bylaws or resolution.

5-2. *Compensation*. Besides the travel, per diem and business expense reimbursement authorized by the Boards, Committees and Commissions law, there are no other forms of compensation that members are eligible to receive for the duties/activities they perform on behalf of the Board.

## **Article VI. Records and Reporting**

6-1. *Agenda Items*. Agenda items shall be maintained in a consistent format provided by the Oneida Business Committee Support Office and approved by the Board.

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498	6-2.	Minutes.	All meeting minutes shall be typed and in a consistent format designed by
499			the Oneida Business Committee, as approved by the Board, to generate the
500			most informative record.
501		(a)	Minutes must include a summary of the action taken by the Board.
502		(b)	Minutes shall be submitted to the Oneida Business Committee Support
503			Office within five (5) business days of approval by the Board.
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505	6-3.	Attachments.	Any handouts, attachments, reports, memoranda, and the like provided at a
506			Board meeting shall be included with their corresponding agenda and
507			minutes and maintained in accordance with the Nation's Open Records and
508			Open Meetings law.
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510	6-4.	Oneida Busin	ess Committee Liaison. The Board shall regularly communicate with the
511			Oneida Business Committee member who is its designated liaison.
512		(a)	The format and frequency of communication shall be as agreed upon by the
513			Board and the liaison through formal action of the Board, but not less than
514			that required in any law or policy on reporting developed by the Oneida
515			Business Committee or Oneida General Tribal Council.
516		(b)	The purpose of the liaison relationship is to uphold the ability of the liaison
517			to act as a support to the Oneida Nation School Board.
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519	6-5.	Audio Recordi	ings. All meetings of the Board shall be audio recorded by either the Oneida
520			Business Committee Support Office or designee of the Officer presiding
521			over the meeting using a device supplied by the Oneida Business
522			Committee Support Office.
523		(a)	The presiding Officer shall ensure each meeting is audio recorded.
524		(b)	Audio recordings shall be maintained by the Oneida Business Committee
525			Support Office in accordance with the Nation's Open Records and Open
526			Meetings law.
527			(1) Exception. Audio recordings of executive session portions of a
528			meeting shall not be required.
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530	Articl	e VII. Amendr	nents
531	7-1.	Amendments.	Amendments to these bylaws shall be approved by majority vote of the
532			members present at a regular Board meeting of an established quorum,
533			provided that written notice of the proposed amendments was made at a
534			prior regular meeting.
535		(a)	Amendments to these bylaws shall conform to the requirements of the
536			Boards, Committees and Commissions law and any other governing
537			policies of the Nation.
538		(b)	Amendments must be approved by the Board and the Oneida Business
539			Committee before implementation.

The Board shall conduct a review of these bylaws no less than on an annual

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basis.



# Oneida Nation School Board Bylaws Legislative Analysis

## **SECTION 1. EXECUTIVE SUMMARY**

	Analysis by the Legislative Reference Office			
Intent of the Amendments	<ul> <li>To comply with the amended Boards, Committees and Commissions law ("Law"), which provides that, within a reasonable time after the Law's adoption, all existing boards, committees and commissions of the Nation must present bylaws for adoption that comply with the format and contain the minimal amount of information prescribed in the Law, including:         <ul> <li>The process for filling vacancies on the Oneida Nation School Board ("Board");</li> <li>The qualifications necessary for membership on the Board;</li> <li>Officer positions on the Board, as well as the process for selecting those Officers and the duties assigned to each specific Officer position;</li> <li>The behavioral expectations of those serving on the Board;</li> <li>The process for calling, noticing, conducting and recording meetings;</li> <li>The requisite trainings/conferences for members of the Board;</li> <li>Stipend eligibility; and</li> <li>The process for further amendments to the Board's bylaws. [1 O.C. 105.10-1(a)]; and</li> </ul> </li> <li>To comply with the directive from the Oneida Business Committee to include certain across-the-board amendments to all bylaws of the boards, committees and</li> </ul>			
Purpose	commissions.  The School Board was established to coordinate existing and future education programs of the Oneida Nation; per directive of the Oneida General Tribal Council (GTC), to be an autonomous administrator of the Oneida Nation School System (ONSS) under a Memorandum of Agreement (MOA) with the OBC and to administer the ONSS Endowment in accordance with Endowments law under resolution BC-02-27-19-B.			
Related Legislation	Oneida Nation Constitution, Administrative Rulemaking law, Endowments law, Boards, Committees and Commissions law, Election law, Removal Law, Social Media Policy, Computer Resources Ordinance, Travel and Expense Policy, Conflict of Interest law, Open Records and Open Meetings law, Vehicle Driver Certification and Fleet Management law.			
Enforcement/Due Process	Removal from an elected position on the Board follows the Removal Law [1 O.C. 104] and termination from an appointed position on the Board follows the Boards, Committees and Commissions law. [1.O.C. 105.7-4]. A two-thirds majority vote of the OBC is required to terminate a Board member's appointment. The OBC's decision to terminate an appointment is final and not subject to appeal [1 O.C. 105-7.4]. A petition for a member's removal or recommendation for a member's termination by the Board must be by a majority vote of the members present at a Board meeting of an established quorum.			
Public Meeting	Public meetings are not required for bylaws.			
Fiscal Impact	A fiscal impact statement is not required for bylaws.			

## 1 SECTION 2. BACKGROUND

- A. Bylaws provide a framework for the operation and management of a board, committee or commission of the Nation, the government of its members and the regulation of its affairs [1 O.C. 105.3-1(d)].
  - B. The School Board bylaws were added to the Active Files List on October 3, 2018 for purposes of amending per the requirements of the Boards, Committees and Commissions law.
  - C. The Oneida Education Board was created by the General Tribal Council through resolution GTC-01-29-77-A. The Oneida Education Board was later dissolved upon the creation of the Oneida Nation School Board through resolution GTC-01-07-84-A. The Board was expanded to nine (9) members by resolution GTC-03-21-88-B.
- D. The Board is currently governed by a Memorandum of Agreement with the OBC which was ratified by GTC resolution on 03-21-88.
  - a) The MOA between the OBC and the Board was created per the directive of the GTC to grant the Board the authority to operate with autonomous administration and provide for full involvement of the Board in all personnel matters related to the operation of the Oneida Nation School System. Any changes to the MOA require a two-thirds (2/3) vote by GTC.
  - E. The School Board was granted administrative rulemaking authority under resolution BC-02-27-19-B titled "Creation of the Oneida Nation School System Endowment". Administrative rules must be developed following the Administrative Rulemaking law. [1 O.C. 106].
  - F. The School Board does not currently operate under bylaws approved by the OBC. However, the MOA served a similar purpose, and thus, the MOA served as the foundation for the creation of the "bylaws amendments" being referred to throughout this analysis.

## SECTION 3. COMPLIANCE WITH THE BOARDS, COMMITTEES AND COMMISSIONS LAW

- A. The amendments to the Board's bylaws comply with the Boards, Committees and Commissions law.
  - B. The amendments to the Board's bylaws comply with OBC resolution BC-08-19-20-C titled "Amended Boards, Committees and Commissions Law Stipends" which details the types, specific dollar amounts and eligibility requirements of stipends.
  - C. The amendments to the Board's bylaws comply with OBC resolution BC-03-27-19-D titled "Oneida Business Committee and Joint Meetings with Boards, Committees and Commissions Definitions and Impact".
- D. The amendments to the Board's bylaws do not conflict with the MOA ratified by GTC resolution on 03-21-88.

## **SECTION 4. CONTENTS OF THE BYLAWS**

- A. ARTICLE I. AUTHORITY
  - a. <u>Purpose, Powers and Duties.</u> The purpose, powers and duties of the Board were included in the authority section [*Proposed Bylaws 1-3(a)*] in accordance with the Boards, Committees and Commissions law [1 O.C. 105.10-3(a)].
  - b. <u>Membership.</u> The Board is comprised of nine (9) elected members per resolution GTC-03-21-88-B. Members will stay on the Board until their term expires, they resign, or they are terminated or removed from office. A member whose term has expired may stay on the Board until his or her successor is sworn in by the OBC [Proposed Bylaws 1-5], which is optional under the Boards, Committees and Commissions law [1 O.C. 105.6-2(a)(1)].
    - Resignations are accepted in accordance with the Boards, Committees and Commissions law [1 O.C. 105.10-3(a)(5)]:
      - i. Verbally and accepted by motion at a meeting; or

- ii. By delivering a written resignation to the Business Committee Support Office (BCSO) and the School Board's Chairperson or Chairperson's designee. [Proposed Bylaws 1-5(b)(1)(B)].
- <u>Vacancies.</u> Expired terms are filled by the Nation's election process [1 O.C. 102]. Unexpired terms are filled by appointment by the OBC [1 O.C. 105.7]. The Chairperson of the Board will be required to provide the OBC with recommendations on all applicants for appointment [Proposed Bylaws 1-5(c)] which is optional under the Boards, Committees and Commissions law. [1 O.C. 105. 7-1(b)(1)].
- Qualifications. Members must be at least eighteen (18) years old; be enrolled members of the Oneida Nation; at least four (4) of the nine (9) members must be parents/guardians of a student enrolled in a qualifying program of the Oneida Nation School System; and must have passed an Annual Caregiver Background Check [Proposed Bylaws 1-5(d)]. The inclusion of qualifications of membership are a requirement of the bylaws per the Boards, Committees and Commissions law. [1 O.C. 105.10-3(a)(5)(D)].
- c. Termination and Removal.
  - i. The Removal Law will be followed for removal of elected members [1 O.C. 104] and the Boards, Committees and Commissions law will be followed for termination of appointed members [1 O.C. 105.6-2(c)], subject to the process in 4-1(i) of the proposed bylaws.
  - ii. A removal petition or a recommendation for termination of appointment must be by a majority vote of the School Board members present at a regular or emergency meeting of an established quorum. [Proposed Bylaws 1-6(c)].
- d. <u>Trainings and Conferences</u>. Required trainings and conferences are included in this section in compliance with the Boards, Committees and Commissions law [1 O.C. 105.10-3(a)(7)] with the added requirement that Board members are not eligible to receive stipends for more than five (5) full days of attendance at a mandatory training or conference per fiscal year. [Proposed Bylaws 1-7].

## B. ARTICLE II. OFFICERS

- a. This section details the duties and limitations of Officer positions on the Board in accordance with the Boards, Committees and Commissions law. [1 O.C. 105.10-3(b)].
- o. Chairperson. The duties of the Chairperson include:
  - call and preside over all meetings and hearings, represent the Board and School System at official functions, ensure the Board remains in compliance with the all requirements of the Nation and the System, and be an ex-officio member of any committee established by the Board [Proposed Bylaws 2-2(a) through (d)];
  - carry out all responsibilities assigned to the Board by the Nation's Constitution and the MOA [Proposed Bylaws 2-2(e)]; and
  - ensure the submission of all annual and semi-annual reports to the GTC, as well as quarterly reports to the OBC, and attend or designate a member to attend OBC meetings when the Board's report is on the agenda [Proposed Bylaws 2-2(f) and (g)] in accordance with the Boards, Committees and Commissions law [1 O.C. 105.12-3].
- c. <u>Vice-Chairperson</u>. The duties of the Vice-Chairperson include:
  - act in replacement of the Chairperson if he or she is not available; chair ad-hoc committees of the Board; and carry out all duties assigned to the Board. [Proposed Bylaws 2-31.
- d. <u>Secretary</u>. The duties of the Secretary include:

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- act in the absence of the Chairperson and Vice-Chairperson in carrying out all powers and duties [Proposed Bylaws 2-4(a)];
  - with respect to presiding over meetings of the Board, the Secretary's authority is limited to the following: if the Chairperson and the Vice-Chairperson positions both become vacant at the same time, the Board Secretary shall be allowed to call meetings of the Board to fill vacancies and to preside over meetings to conduct an election after which the newly elected Chairperson or Vice-Chairperson shall preside [Proposed Bylaws 2-4(a)(1)(A)]. In this case the Secretary may also be included to meet the quorum requirement. [Proposed Bylaws 3-4].
- establish the agenda and provide notice of all meeting locations, agenda, documents and minutes to all members of the Board and the public and maintain the accurate recording and presenting of all Board minutes and other formal documents in compliance with the Boards, Committees and Commissions law [1] O.C. 105] and the Open Records and Open Meetings law [1 O.C. 107] [Proposed Bylaws 2-4(b) and (c); and
- ensure timely reporting of all Board actions and carry out all general duties and powers assigned or delegated to the Board [Proposed Bylaws 2-4(d) and (e)].
- Selection of Officers. Officers will be elected by a majority vote of the Board members present at the first meeting with an established quorum following an election. There is no limit to the number of terms an officer can be reelected. Officers can only hold one Officer position at a time. If an Officer cannot fulfill the obligations of the position, the Board can, by majority vote of the members at an established meeting, dismiss the Officer from his or her position and elect a new Officer. [Proposed Bylaws 2-5]. This section fulfills requirements established by the Boards, Committees and Commissions law. [1 O.C. 105.10-3(b)(5)1.
- Budgetary Sign-Off Authority and Travel. The budgetary sign-off authority will be consistent with the Purchasing Policies and Procedures of the Nation per the MOA with the OBC. [Proposed Bylaws 2-6(a)]. All Board Officers have sign-off authority reserved for Divisional Directors/Tribal School Chairperson/Trust Committee Chairperson/and Gaming Director. The BCSO will have official sign-off authority for all budgetary purchases approved by the Board.

Travel on behalf of the Board will require approval by a majority vote of the members at a regular or emergency meeting with an established quorum [Proposed Bylaws 2-6(b)] in accordance with the Boards, Committees and Commissions law. [1 O.C. 105.10-3(b)(6)(B)]. All travel must be authorized by two (2) Officers of the Board in accordance with the Travel and Expense Policy [2 O.C. 219.4-2]. Board members may travel in the Nation's vehicles when certified and must follow the Vehicle Driver Certification and Fleet Management law. [2 O.C. 210]. This section fulfills requirements established by the Boards, Committees and Commissions law. [1 O.C. 105.10-3(b)(6)].

- Personnel. From the date the proposed bylaws are adopted by the OBC moving forward, the Board will not have authority to hire personnel for the benefit of the School Board. [Proposed Bylaws 2-7].
  - This provision applies to future hiring authority and does not affect current personnel who will keep their positions.

The Board will have authority to be involved in the hiring of personnel for the School System in accordance with the MOA and the Personnel Policies and Procedures of the Nation. [Proposed Bylaws 2-7(a)]. The Board has the authority to hire consultants and other resource persons to carry out the purposes and goals of the School System. [Proposed Bylaws 2-7(b)]. The School Board has authority to hire legal counsel in accordance with

the laws of the Nation. [Proposed Bylaws 2-7(c)]. This section fulfills requirements established by the Boards, Committees and Commissions law [1 O. C. 105.10-3(b)(7)].

Regular Meetings. Regular meetings are held monthly at 5:00 p.m. on the first and third

Monday of each month at the Oneida Nation Elementary School [Proposed Bylaws 3-1]. Meetings may be attended in person, by telephone, through teleconference, or through

other telecommunications so long as a member's presence is demonstrated in accordance

• The School Board Secretary will create the agenda and items will be required to

be submitted to the Secretary or the Secretary's designee at least ten (10) days prior

to the next regular meeting. Action items will be included in the School

Superintendent's report. The Secretary will establish and distribute the agenda and

documentation to School Board members at least seven (7) days before a regular

meeting date by official email [Proposed Bylaws 3-1(b) to (d)]. This section fulfills

requirements in the Boards, Committees and Commissions law. [1 O.C. 105.10-

with the Boards, Committees and Commissions law.

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## C. ARTICLE III. MEETINGS

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  - b. Emergency Meetings. Emergency meetings are called when an issue cannot wait for the next regular meeting. School Board members or school system administration will contact the Chairperson or the Vice-Chairperson of the School Board and request an emergency meeting. All School Board members will receive notice by official email and telephone call at least twenty-four (24) hours in advance including the basis of the emergency. If matters are discussed that are not on the agenda no formal action will be taken. Meetings will be noticed to include both written notice by mail and Official email if a regular meeting and Official email and telephone call if deemed an emergency meeting, the school newsletter and the Kalihwisaks [*Proposed Bylaws 3-2(a)(1)*].
    - The School Board is authorized to hold meetings with parents to fulfill contractual obligations which may be called as an emergency meeting [Proposed Bylaws 3-
    - A provision was included per the Boards, Committees and Commissions law that the School Board will notify the Nation's Secretary within seventy-two (72) hours of holding an emergency meeting with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular meeting [Proposed Bylaws 3-2(d)] and [1 O.C. 105.10-3(c)(2)(A)].
  - c. Joint Meetings. The bylaws contain joint meetings with the OBC [Proposed Bylaws 3-3) on an as needed basis, with the approval of the OBC in compliance with the Boards, Committees and Commissions law [1 O.C. 105.10-3(c)(3)]. Joint meetings will be held in the OBC conference room. The meeting notice, agenda documents and minutes for joint meetings will be provided and the joint meetings will be conducted in accordance with OBC Resolution BC-03-27-19-D titled "Oneida Business Committee and Joint Meetings with Boards, Committees and Commissions – Definitions and Impact".
    - Quorum. A quorum will consist of a majority of current members including the Chairperson, Vice-Chairperson or Secretary if presiding over the meeting in accordance with section 2-4(a)(1)(A) [Proposed Bylaws 3-4]. This complies with the requirements established in the Boards, Committees and Commissions law [1]  $O.C.\ 105.10-3(c)(4)$ ].
    - Order of Business. The order of business is included [Proposed Bylaws 3-5] in accordance with the Boards, Committees and Commissions law 11 O.C. 105.10-3(c)(5)].
    - Voting. Voting requirements are contained in the proposed bylaws [Proposed Bylaws 3-6]. Decisions require a majority vote of members present at a regular or

emergency meeting with an established quorum. All members of the School Board have one equal vote except the presiding Officer of the meeting who will only vote in the case of a tie. All members are required to vote or abstain. This section fulfills requirements established by the Boards, Committees and Commissions law.  $[1\ O.C.\ 105.10-3(c)(6)]$ .

i. E-polls were included as an acceptable form of voting and will be conducted by the Chairperson or Vice-Chairperson or Secretary in lieu of and as appointed by the Chairperson [Proposed Bylaws 3-6(b)] and in accordance with the Boards, Committees and Commissions law. [1 O.C. 105.10-3(c)(6)(C) and (D)] and [1 O.C. 105.11].

#### D. ARTICLE IV. EXPECTATIONS

This section is based on the requirements established in the Boards, Committees and Commissions law  $[1 \ O.C. \ 105.10-3(d)]$ .

- a. The School Board is required to act in accordance with the principles of conduct established in Article IV. 4-1 of the proposed School Board bylaws.
  - A term for un-excused absence is included in all bylaws amendments and is defined as a failure to notify a School Board Officer, in writing, of his or her pending absence no less than thirty (30) minutes before the scheduled meeting that he or she will be absent from [Proposed Bylaws 4-1(h)(1)(A)].
- b. Enforcement of violations of the bylaws or any other law, policy and/or resolutions of the Nation may be subject to [Proposed Bylaws 4-1(i)]:
  - Disciplinary action in accordance with any laws or policies of the Nation governing sanction or penalties of elected or appointed officials;
  - Recommendation by the School Board for termination of appointment by the OBC [1 O.C. 105.6-2(c)];
  - The Chairperson is responsible for filing a petition for removal at the direction of the School Board in accordance with the Removal Law [1 O.C. 104]; and
  - Enforcement must be by a majority vote of the School Board present at a meeting with an established quorum. [Proposed Bylaws 4-1(i)(4)].
  - This section complies with the Boards, Committees and Commissions law [1 O.C. 105.10-3(d)(1)]
- c. Intentional acts of violence that inflicts, attempts to inflict or threatens to inflict emotional or bodily harm or damage to property are prohibited by a member of the School Board [Proposed Bylaws 4-2] in compliance with the Boards, Committees and Commissions law [1 O.C. 105.10-3(d)(2)].
- d. Drug and alcohol use by a School Board member when acting in an official capacity is forbidden [Proposed Bylaws 4-3] in compliance with the Boards, Committees and Commissions law [1 O.C. 105.10-3(d)(3)].
- e. The School Board must comply with the Social Media Policy and their Oath of Office when using social media in relation to School Board activities [Proposed Bylaws 4-4] and [2 O.C. 218] in compliance with the Boards, Committees and Commissions law [1 O.C. 105.10-3(d)(4)].
- f. The bylaws require the School Board to abide by all laws of the Nation related to conflicts of interest [Proposed Bylaws 4-5] including the Nation's Conflict of Interest law [2 O.C. 217] and the Boards, Committees and Commissions law [1 O.C. 105.10-3(d)(5) and 105.15] which requires disclosure of conflicts of interest annually. Additionally, School Board members are expected to decline comment and to abstain from voting when issues related to immediate family members come before the School Board [Proposed Bylaws 4-1(c)].

g. The Conflict of Interest law defines immediate family member as an individual's husband, wife, mother, father, step mother, step father, son, daughter, step son, step daughter, brother, sister, step brother, step sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law or sister-in-law and any of these relations attained through legal adoption [2 O.C. 217.3-1(g)].

## E. ARTICLE V. STIPENDS AND COMPENSATION

This section of the bylaws details stipends, compensation and corresponding requirements in accordance with the Boards, Committees and Commissions law [1 O.C. 105.10-3(e)].

- The list of stipends and corresponding eligibility requirements that members of the School Board are entitled to receive are included in the bylaws. [Proposed Bylaws 5-1]. This section complies with Resolution BC-08-12-20-C titled "Amended Boards, Committees and Commissions Law Stipends" and the Boards, Committees and Commissions law:
- Besides travel, per diem and business expense reimbursement authorized by the Boards, Committees and Commissions law [1 O.C. 105.13-9]; School Board members are not eligible for any other compensation for duties performed on behalf of the School Board [Proposed Bylaws 5-2].

## F. ARTICLE VI. RECORDS AND REPORTING

- a. Agenda items will be maintained in a consistent format provided by the BCSO and approved by the School Board [Proposed Bylaws 6-1]. This complies with the Boards, Committees and Commissions law [1 O.C. 105.10-3(f)(1)].
- b. Minutes will be typed in a consistent format provided by the BCSO and approved by the School Board. Minutes will include a summary of action taken by the School Board and will be submitted to the BCSO within five (5) business days after approved by the School Board [Proposed Bylaws 6-2]. This meets the requirements established by the Boards, Committees and Commissions law [1 O.C. 105.10-(f)(2)].
- c. Attachments will be maintained with the meeting material from the corresponding meeting of the School Board [Proposed Bylaws 6-3] in accordance with the Open Records and Open Meetings law which requires records to be maintained for seven (7) years [1 O.C. 107.9-4]. This meets requirements established by the Boards, Committees and Commissions law [1 O.C. 105.10-3(f)(3)].
- d. The School Board will regularly communicate with the OBC liaison as mutually agreed upon [Proposed Bylaws 6-4] in accordance with the Boards, Committees and Commissions law [1 O.C. 105.10-3(f)(4)].
- e. All meetings will be audio recorded by the BCSO or as designated by the Officer presiding over the meeting using the device supplied by the BCSO. The BCSO will maintain the audio recordings. Executive session is not required to be audio recorded [Proposed Bylaws 6-5]. This complies with requirements established by the Boards, Committees and Commissions law [1 O.C. 105.10-3(f)(5)] and the Open Records and Open Meetings law [1 O.C. 107.7-3].

## G. ARTICLE VII. AMENDMENTS

a. Amendments will comply with the Boards, Committees and Commissions law and any other policy of the Nation, are effective upon approval of the School Board and the OBC [1 O.C. 105.10-3(g)], and the bylaws will be reviewed as needed and no less than annually [Proposed Bylaws 7-1].

## SECTION 5. RELATED LEGISLATION

There are no conflicts between the proposed bylaws and the Oneida Code of Laws. Below is a detailed list of laws that establish requirements and are referenced in the School Board bylaws.

A. <u>Oneida Nation Constitution</u>. The Constitution of the Oneida Nation contains a provision that allows for the creation of committees for the proper conduct of tribal business of the Nation *[Oneida Nation Constitution, Article IV(g)]*. The School Board will carry out duties assigned by the OBC and GTC in accordance with the Constitution *[Proposed Bylaws 2-2(e)]*. There are no conflicts between these bylaws and the Oneida Nation Constitution.

- B. <u>Administrative Rulemaking [1 O.C. 106]</u>. This law governs the Administrative Rulemaking process for the adoption and amendment of administrative rules by authorized agencies of the Nation. Administrative rules developed under this law have the same force and effect as the law that delegated the authority to the authorized agency.
  - a. The School Board is considered an authorized agency and also an entity under this law.
    - i. The School Board is required to follow the administrative rulemaking procedures contained in this law for the promulgation of all rules when delegated rulemaking authority to act as an authorized agency. Rulemaking authority must be delegated by a law of the Nation to implement, interpret and/ or enforce a law of the Nation.
    - ii. When acting as an entity under this law, the School Board shall prepare all financial analyses upon request indicating financial effects of a proposed administrative rule promulgated by an authorized entity of the Nation in compliance with this law.
  - b. The School Board has been delegated administrative rulemaking authority as an authorized agency under the following laws of the Nation:
    - i. Endowments [1 O.C. 131] according to resolution BC-02-27-19-B "Creation of the Oneida Nation School System Endowment".
- C. Endowments [1 O.C. 131]. The Endowments law was established to provide a process for the establishment and maintenance of all endowment fund accounts established by the Oneida Nation [1. O.C. 131-1]. The law grants administrative rulemaking authority [1 O.C. 106] by resolution [1. O.C. 131.11-1]. The School Board was granted administrative rulemaking authority by resolution BC-02-27-19-B "Creation of the Oneida Nation School System Endowment" which requires the School Board to submit a three-year planning resolution to the Treasurer and Chief Financial Officer and submit a funding allocation notice which will identify how the funds will be utilized by January 31st of each year. The proposed bylaws comply and there are no conflicts with the Endowments law.
- D. <u>Boards, Committees and Commissions [1 O.C. 105]</u>. This law governs the procedures regarding the appointment and election of persons to boards, committees and commissions of the Nation, including the creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. The School Board is elected by the General Tribal Council [Proposed Bylaws 1-5(b)]. The requirements for entity bylaws are contained in this law as well as a requirement that all existing entities of the Nation comply with the format detailed in the law and present the bylaws for adoption by the OBC within a reasonable timeframe [1 O.C. 105.10]. These proposed bylaws comply and there are no conflicts with the Boards, Committees and Commissions law.
- E. <u>Election [1 O.C. 102]</u>. The Election law governs the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations [1 O.C. 102.1-1]. The law governs all procedures used in the election process [1 O.C. 102.1-2]. The School Board is elected by the General Tribal Council [Proposed Bylaws 1-5(b)]. The proposed bylaws comply with and there are no conflicts with the Election law.

F. Removal Law [1 O.C. 104]. This law governs the removal process related to School Board members that are elected by the qualified voting membership of the Nation. This law contains due process measures related to specific causes for removal, petition requirements, preliminary review by the Judiciary, a hearing that includes potential witnesses and a burden of proof by a person seeking the removal by clear and convincing evidence that ground(s) for removal exist and a Special GTC Meeting that requires a 2/3 affirmative majority vote. Elected School Board members may be subject to removal if the bylaws or any law, policy, rule or resolution of the Nation is violated [Proposed Bylaws 4-1(i)(3)]. This aligns with the Boards, Committees and Commissions law [1 O.C. 105.10-3(d)]. The proposed bylaws comply and there are no conflicts with the Removal Law.

- G. Social Media Policy [2 O.C. 218]. This policy regulates social media accounts including how content is managed and who has authority to post on social media on behalf of the Nation. The School Board must register social media accounts with the Nation's Secretary's Office to include specific information related to access to the account, acknowledgment and compliance with the Computer Resource Ordinance [2 O.C. 215] and this policy, use a Nation issued email address, and ensure all content complies with all applicable laws of the Nation, state or federal laws. The School Board must follow the Social media policy and their Oath of Office with respect to social media use related to the School Board [Proposed Bylaws 4-4]. The proposed bylaws comply and there are no conflicts with the Social Media Policy.
- H. Computer Resources Ordinance [2 O.C. 215]. School Board members are considered users under this law which regulates and ensures appropriate the use of the Nation's computer resources. Members of the School Board must sign an acknowledgment form indicating notice of the Nation's applicable computer and media related laws according to the Boards, Committees and Commissions law [1 O.C. 105.14-3(b)]. The proposed bylaws comply and there are no conflicts with the Computer Resources Ordinance.
- I. <u>Travel and Expense Policy [2 O.C. 219]</u>. Members of the School Board are eligible to be reimbursed for travel and per diem to attend a conference or training in accordance with this policy. The BCSO has sign-off authority over requests for stipends, travel per diem and business expense reimbursement [Proposed Bylaws 2-6(a)(1)(A)]. All travel must be signed off by two (2) Officers [Proposed Bylaws 2-6(a)(1)] in accordance with the Travel and Expense Policy [2 O.C. 219.4-2]. The School Board will approve all School Board travel by majority vote [Proposed Bylaws 2-6(b)] in accordance with the Boards, Committees and Commissions law [1 O.C. 105.10-3(b)(6)(B)]. The proposed bylaws comply and there are no conflicts with the Travel and Expense Policy.
- J. Conflict of Interest [2 O.C. 217]. This law applies to the School Board and establishes specific limitations to which information or materials that are confidential or may be used by a competitor of the Nation's enterprises or interests may be used to protect the interests of the Nation. The Boards, Committees and Commissions law establishes that bylaws require members to disclose potential or real conflicts annually [1 O.C. 105.10-3(d)(5) and 105.15]. The School Board bylaws require the School Board to follow all Conflict of Interest laws of the Nation [Proposed Bylaws 4-5]. Additionally; School Board members must decline to comment and abstain from voting on issues when nepotism as defined by the Nation's Conflict of Interest law may be a factor [Proposed Bylaws 4-1(c)]. This aligns with the Conflict of Interest law of the Nation which allows for entities to outline further conflicts and prohibited activities resulting from those conflicts of interest [2 O.C. 217.7-2]. Penalties for failure to disclose conflicts of interest include termination of appointment in accordance with the Boards, Committees and Commissions law and enforcement of any penalties in accordance with the laws of the Nation [2 O.C. 217.6-2 and 6-3]. The proposed bylaws comply and there are no conflicts with the Conflict of Interest law.

- K. Open Records and Open Meetings [1 O.C. 107]. This law details how records must be maintained and made available to the public and that meetings are open to the public unless specific criteria are met which allow the meetings to be closed [1 O.C. 107.15 and 107.17]. Public notice of meetings is also required by this law [1 O.C. 107.15-1]. The bylaws delegate the maintenance of the records to the School Board Secretary and dictates that attachments will be included with the agenda and meeting minutes for maintenance [Proposed Bylaws 2-4(c) and 6-3]. The School Board meetings are open to the public except portions that meet the exceptions in this law related to personnel matters or contracts are being discussed and deemed confidential [Proposed Bylaws 3-1(a)]. Meeting packets and backup materials are available to all School Board members and the public [Proposed Bylaws 3-1(d)] and in accordance with this law which states that any requestor has the right to make or receive a copy of a public record [1 O.C. 107.7-2]. Meeting minutes, agenda materials and audio recordings will be maintained by the the BCSO [Proposed Bylaws 6-2 and 6-3 and 6-5(b)]. The proposed bylaws comply and there are no conflicts with the Open Records and Open Meetings law.
- L. Vehicle Driver Certification and Fleet Management [2 O.C. 210]. The School Board is considered an entity [2 O.C. 210.3-1(g)] and individual members are considered officials [2 O.C. 210.3-1(j)] under this law and are authorized to travel in the Nation's vehicles. The law requires the Human Resources Department or designee to ensure drivers, including School Board members, are certified to drive a vehicle of the Nation or a personal vehicle on Tribal business. The law requires School Board members (officials) to have written consent from the School Board prior to being approved to use a Tribal vehicle [2 O.C. 210.6-1(b)(2)]. Certification includes providing the Human Resources Department with the appropriate license, training certifications, and insurance information [2 O.C. 210.8-1]. Additionally, School Board members must abide by all reporting requirements in this law [2 O.C. 210.9-2]. The proposed bylaws comply and there are no conflicts with the Vehicle Driver Certification and Fleet Management law.
  - a. School Board members who violate this law may be subject to:
    - i. any laws regarding sanctions or penalties; and
    - ii. termination of appointment following the Boards, Committees and Commissions law [1 O.C. 105].

# March 16, 2020, Legislative Operating Committee E-Poll Materials for the Adoption of Emergency Amendments to the Election Law



## **Good Morning Legislative Operating Committee,**

This e-mail serves as the e-poll for the materials for the adoption of emergency amendments to the Election law.

#### **EXECUTIVE SUMMARY**

The world is currently facing a pandemic of coronavirus disease (COVID-19) after an outbreak began in Wuhan, China and quickly spread to many other countries throughout the world, including the United States. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. As of March 13, 2020, there were one thousand and six hundred and twenty-nine (1,629) cases reported through the United States, and eighteen (18) cases of positive tests in Wisconsin. The number of positive tests in Wisconsin, as well as across the country, continue to increase. On March 12, 2020, in accordance with Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

On March 13, 2020, the Oneida Election Board met with the Public Health Officer and acted to postpone the March 14, 2020 Caucus scheduled for the 2020 General Elections in order to avoid large gatherings of members where COVID-19 could be easily spread. The Oneida Election Board has identified that conducting a caucus or requiring applicants to obtain ten (10) signatures through the petition process would unnecessarily spread COVID-19 by encouraging contact between individuals. The Oneida Election Board has expressed a strong desire to avoid moving the actual election date of July 4, 2020.

Emergency amendments to the Election law (the "Law") are being sought to address the impact of the COVID-19 pandemic on the Nation's 2020 General Election. The emergency amendments to the Law will:

- Eliminate the caucus from the election process [1 O.C. 102.6-1];
- Require an individual to submit an application in order to have his or her name placed on a ballot for an election [1 O.C. 102.6-1];
- Eliminate the requirement for an individual to obtain at least ten (10) signatures of qualified voters when submitting an application to be placed on the ballot [1 O.C. 102.6-1];
- Require that all applications be submitted to the Business Committee Support Office by the close of business on April 3, 2020 [1 O.C. 102.6-1(c)]; and

• Reduce the number of Oneida Election Board members who are required to sign the election totals on machine counted ballots from six (6) to three (3) [1 O.C. 102.10-2].

The emergency amendments to this Law are necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendments are needed to protect the Reservation population against the public health crisis that is the COVID-19 pandemic. The elimination of the requirement to hold the caucus while allowing individuals to be placed on the ballot through the submission of an application, in conjunction with the elimination to obtain at least ten (10) signatures from qualified voters, will eliminate any unnecessary contact between individuals which could spread the COVID-19, while also ensuring that the July 2020 General Election can occur without interruption.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The caucus was scheduled to be held on March 14, 2020. The Law currently requires that the caucus occur at least ninety (90) days before a general election. The 2020 General Election is scheduled to be held on July 4, 2020. Therefore, the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the 2020 General Election could occur uninterrupted without violating the caucus procedures currently contained in the Law.

An e-poll is necessary for this matter because the next Legislative Operating Committee meeting is scheduled for March 18, 2020, and immediate action is required by Legislative Operating Committee to approve the materials for the emergency adoption of amendments to the Election law so the materials can be forwarded to the Oneida Business Committee for consideration during the March 17, 2020, special Oneida Business Committee meeting.

#### **REQUESTED ACTION**

To approve the following actions:

- Add the Election law emergency amendments to the Active Files List with David P. Jordan as the sponsor; and
- Approve the Election law emergency adoption packet and forward to the Oneida Business Committee for consideration.

## **DEADLINE FOR RESPONSE**

March 16, 2020 at 1:15 p.m.

All supporting documentation has been attached to this email for your convenience.



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

## **E-POLL RESULTS:**

The e-poll was approved by Jennifer Webster, Kirby Metoxen, Ernest Stevens III, David P. Jordan, and Daniel Guzman King.



Mon 3/16/2020 12:19 PM

Jennifer A. Webster

RE: E-POLL REQUEST: Materials for the Adoption of Emergency Amendments to the Election Law

To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen

Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago

#### Approve



Mon 3/16/2020 12:19 PM

Kirby W. Metoxen

RE: E-POLL REQUEST: Materials for the Adoption of Emergency Amendments to the Election Law

To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster

Cc Fawn J. Billie: Jameson J. Wilson: Jessica L. Wallenfang: Levne C. Orosco: Rosa J. Laster: Jennifer A. Falck: Clorissa N. Santiago

#### Approve



Mon 3/16/2020 12:23 PM

Ernest L. Stevens

Re: E-POLL REQUEST: Materials for the Adoption of Emergency Amendments to the Election Law

To LOC; Daniel P. Guzman; David P. Jordan; Jennifer A. Webster; Kirby W. Metoxen

Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago

#### Approve

Sent from my Verizon, Samsung Galaxy smartphone Get Outlook for Android



Mon 3/16/2020 1:14 PM

David P. Jordan

Approve: E-POLL REQUEST: Materials for the Adoption of Emergency Amendments to the Election Law

Cc David P. Jordan

i) The sender responded: Approve.

#### Approve



Mon 3/16/2020 1:15 PM

Daniel P. Guzman

E-POLL REQUEST: Materials for the Adoption of Emergency Amendments to the Election Law

To Kirby W. Metoxen; David P. Jordan; LOC; Ernest L. Stevens; Jennifer A. Webster

Cc Jameson J. Wilson; Leyne C. Orosco; Clorissa N. Santiago; Rosa J. Laster; LOC; Jennifer A. Falck; Jessica L. Wallenfang; Fawn J. Billie

#### Approve

Sent from Workspace ONE Boxer



## Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



TO:

Oneida Business Committee

FROM:

David P. Jordan, LOC Chairperson

DATE:

March 17, 2020

RE:

**Election Law Emergency Amendments** 

Please find the following attached backup documentation for your consideration of the Election Law Emergency Amendments:

- Resolution: Adoption of Emergency Amendments to the Election Law to Implement Alternative Processes to Address COVID-19 Pandemic Impacts on the Oneida Nation 2020 General Election
- 2. Statement of Effect: Adoption of Emergency Amendments to the Election Law to Implement Alternative Processes to Address COVID-19 Pandemic Impacts on the Oneida Nation 2020 General Election
- 3. Election Law Emergency Amendments Legislative Analysis
- 4. Election Law (Redline)
- 5. Election Law (Clean)

## Overview

Emergency amendments to the Election law (the "Law") are being sought to address the impact of the coronavirus disease (COVID-19) pandemic on the Nation's 2020 General Election. The emergency amendments to the Law will:

- Eliminate the caucus from the election process [1 O.C. 102.6-1];
- Require an individual to submit an application in order to have his or her name placed on a ballot for an election [1 O.C. 102.6-1];
- Eliminate the requirement for an individual to obtain at least ten (10) signatures of qualified voters when submitting an application to be placed on the ballot [1 O.C. 102.6-1];
- Require that all applications be submitted to the Business Committee Support Office by the close of business on April 3, 2020 [1 O.C. 102.6-1(c)]; and
- Reduce the number of Oneida Election Board members who are required to sign the election totals on machine counted ballots from six (6) to three (3) [1 O.C. 102.10-2].

The world is currently facing a pandemic of COVID-19 after an outbreak began in Wuhan, China and quickly spread to many other countries throughout the world, including the United States. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. As of March 13, 2020, there were one thousand and six hundred and twenty-nine (1,629) cases reported through the United States, and eighteen (18) cases of positive tests in Wisconsin. The number of positive tests in Wisconsin, as well as across the country, continue to increase. On March 12, 2020, in accordance with

Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency amendments to this Law are necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendments are needed to protect the Reservation population against the public health crisis that is the COVID-19 pandemic. The elimination of the requirement to hold the caucus while allowing individuals to be placed on the ballot through the submission of an application, in conjunction with the elimination to obtain at least ten (10) signatures from qualified voters, will eliminate any unnecessary contact between individuals which could spread the COVID-19, while also ensuring that the July 2020 General Election can occur without interruption.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The caucus was scheduled to be held on March 14, 2020. The Law currently requires that the caucus occur at least ninety (90) days before a general election. The 2020 General Election is scheduled to be held on July 4, 2020. Therefore, the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the 2020 General Election could occur uninterrupted without violating the caucus procedures currently contained in the Law.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months, or until the 2020 General Election has concluded, whichever is sooner. There will be one (1) opportunity to extend the emergency amendments for an additional six (6) months. [1 O.C. 109.9-5(b)].

## **Requested Action**

Approve the Resolution: Adoption of Emergency Amendments to the Election Law to Implement Alternative Processes to Address COVID-19 Pandemic Impacts on the Oneida Nation 2020 General Election



# **Oneida Nation**

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

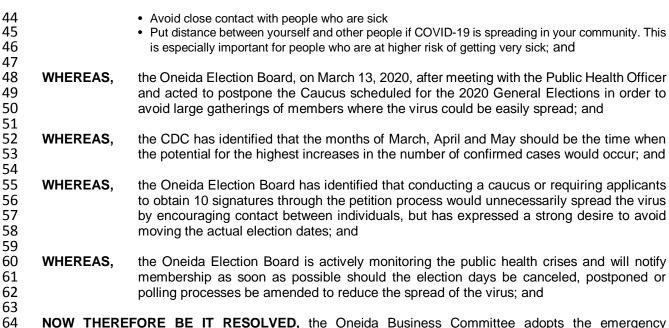
## **BC** Resolution #

Adoption of Emergency Amendments to the Election Law to Implement Alternative Processes to Address COVID-19 Pandemic Impacts on the Oneida Nation 2020 General Election

	Addition to the forth and the mipute of the offered that of 2020 offered Elocation			
1 2 3	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and		
4 5	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and		
6 7 8	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and		
9 10 11	WHEREAS,	the United States has identified multiple cases of COVID-19 after learning of the epidemic outbreak in Wuhan, China; and		
12 13 14 15 16	WHEREAS,	the President has created the White House Coronavirus Task Force to track the spread of the virus, identify solutions for reducing the spread of the virus, managing scarce resources, and identifying opportunities to improve testing, develop treatment and immunizations, and identify how to inform about and contain epidemics in the future; and		
17 18 19	WHEREAS,	the U.S. Congress has adopted legislation which devotes \$8.3 billion to fund the fight regarding COVID-19; and		
20 21 22 23	WHEREAS,	the World Health Organization has identified that the spread of COVID-19 is now a pandemic with many countries experience the effects of illness and health issues related to the virus and economic impacts; and		
24 25 26	WHEREAS,	Governor Evers has announced that he has signed Executive Order # 72 which declares a "Public Health Emergency in Response to the COVID-19 Coronavirus"; and		
27 28 29 30 31	WHEREAS,	on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" which sets into place the necessary authority should action need to be taken and allowing the Oneida Nation to seek reimbursement of emergency management actions that may result in unexpected expenses; and		
32 33 34	WHEREAS,	on March 13, 2020, there were 1,629 cases reported through the United States, and 18 cases of positive tests in Wisconsin; and		
35 36 37 38 39 40 41 42 43	WHEREAS,	<ul> <li>the CDC has issued the following precautions to avoid further spread of the virus: Clean your hands often</li> <li>Wash your hands often with soap and water for at least 20 seconds especially after you have been in a public place, or after blowing your nose, coughing, or sneezing.</li> <li>If soap and water are not readily available, use a hand sanitizer that contains at least 60% alcohol. Cover all surfaces of your hands and rub them together until they feel dry.</li> <li>Avoid touching your eyes, nose, and mouth with unwashed hands.</li> </ul> Avoid close contact		

**BC** Resolution

Adoption of Emergency Amendments to the Election Law to Implement Alternative Processes to Address COVID-19
Pandemic Impacts on the Oneida Nation 2020 General Election Pandemic Financial Impacts
Page 2 of 2



amendments outlined in the Election Law for six months from the date of adoption of this resolution, or until the 2020 General Election is concluded, which ever is sooner.

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## Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



## **Statement of Effect**

Adoption of Emergency Amendments to the Election Law to Implement Alternative Processes to Address COVID-19 Pandemic Impacts on the Oneida Nation 2020 General Election

## **Summary**

This resolution adopts emergency amendments to the Election law which eliminate the caucus from the election process, instead requiring all individuals to apply to be placed on the ballot, while also eliminating the requirement of those who apply to obtain ten (10) signatures of qualified voters.

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

Date: March 15, 2020

## Analysis by the Legislative Reference Office

This resolution adopts emergency amendments to the Election law ("the Law"). The purpose of the Law is to govern the procedures for the conduct of orderly elections of the Nation. [1 O.C. 102.1-1]. The emergency amendments to the Law will:

- Eliminate the caucus from the election process [1 O.C. 102.6-1];
- Require an individual to submit an application in order to have his or her name placed on a ballot for an election [1 O.C. 102.6-1];
- Eliminate the requirement for an individual to obtain at least ten (10) signatures of qualified voters when submitting an application to be placed on the ballot [1 O.C. 102.6-1];
- Require that all applications be submitted to the Business Committee Support Office by the close of business on April 3, 2020 [1 O.C. 102.6-1(c)]; and
- Reduce the number of Oneida Election Board members who are required to sign the election totals on machine counted ballots from six (6) to three (3) [1 O.C. 102.10-2].

The Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety or general welfare of the reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [1 O.C. 109.9-5].

The resolution provides various information on the COVID-19 pandemic that the world is now facing. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. As of March 13, 2020, there were one thousand and six hundred and twenty-nine (1,629) cases reported through the United States, and eighteen (18) cases of positive tests in Wisconsin. The number of positive tests in Wisconsin, as well as across the country, continue to increase.

On March 12, 2020, in accordance with Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding

COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

The resolution provides that the emergency amendments to this Law are necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendments are needed to protect the Reservation population against the public health crisis that is the COVID-19 pandemic. The elimination of the requirement to hold the caucus while allowing individuals to be placed on the ballot through the submission of an application, in conjunction with the elimination to obtain at least ten (10) signatures from qualified voters, will eliminate any unnecessary contact between individuals which could spread the COVID-19, while also ensuring that the July 2020 General Election can occur without interruption.

Additionally, the resolution provides that observance of the requirements under the LPA for adoption of this amendment would be contrary to public interest. The caucus was scheduled to be held on March 14, 2020. The Law currently requires that the caucus occur at least ninety (90) days before a general election. The 2020 General Election is scheduled to be held on July 4, 2020. Therefore, the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the 2020 General Election could occur uninterrupted without violating the caucus procedures currently contained in the Law.

The emergency amendments to the Law will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendments will remain effective for six (6) months, or until the 2020 General Election concludes, whichever is sooner. The LPA provides the possibility to extend the emergency amendments for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

## Conclusion

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





Onayote?a·ká· Tho Ni· Yót Tsi? ayethiyataláko Tsi? Kayanláhsla People of the Standing Stone how it is we will appoint them the kind of laws we have

## EMERGENCY AMENDMENTS TO ELECTION LAW LEGISLATIVE ANALYSIS

## **SECTION 1. EXECUTIVE SUMMARY**

SECTION 1. EXECUTIVE SUMMARY		
	Analysis by the Legislative Reference Office	
Intent of the	Eliminate the caucus from the election process;	
Proposed	Require an individual to submit an application in order to have his or her	
Amendments	name placed on a ballot for an election;	
	■ Eliminate the requirement for an individual to obtain at least ten (10)	
	signatures of qualified voters when submitting an application to be placed on	
	the ballot;	
	Require that all applications be submitted to the Business Committee	
	Support Office by the close of business on April 3, 2020;	
	Reduces the number of Oneida Election Board members who are required to	
	sign the election totals on machine counted ballots.	
Purpose	To govern the procedures for the conduct of orderly elections of the Nation [1]	
	O.C. 102.1-1]	
Affected Entities	Oneida Election Board, Business Committee Support Office, Oneida Business	
	Committee, Oneida Nation Judiciary, Oneida Gaming Commission, Legal	
	Resource Center, Oneida Land Claims Commission, Oneida Land Commission,	
	Oneida Nation Commission on Aging, Oneida Nation School Board, Oneida	
	Trust Enrollment Committee.	
Related Legislation	Boards, Committees, and Commissions law, Emergency Management and	
S 111 25 1	Homeland Security law.	
<b>Public Meeting</b>	A public meeting is not required for emergency legislation [1 O.C. 109.8-1(b)]	
	and 109.9-5(a)].	
Fiscal Impact	A fiscal impact statement is not required for emergency legislation [1 O.C.	
	[109.9-5(a)].	
Expiration of	Emergency amendments expire six (6) months after adoption and may be	
Emergency	renewed for one additional six (6) month period.	
Amendments		

## **SECTION 2. LEGISLATIVE DEVELOPMENT**

- **A.** *Background*. The Election law was first adopted on June 19, 1993, and most recently amended by the General Tribal Council on April 23, 2017. The Law governs the procedures for the conduct of orderly elections of the Nation. [1 O.C. 102.1-1].
- **B.** 2020 General Election. The Nation is required to hold a general election every three (3) years in the month of July. [Constitution and Bylaws of the Oneida Nation Article III, Section 5; 1 O.C. 102.9-1]. The caucus for the 2020 General Election was scheduled to be held on March 14, 2020, with the Primary Election to be held on May 16, 2020, and the General Election occurring on July 4, 2020. The 2020 General Election ballot would include the following positions:
  - Oneida Business Committee;

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- One (1) vacancy Chairperson, three (3) year term.
- One (1) vacancy Vice Chairperson, three (3) year term.

- One (1) vacancy Treasurer, three (3) year term. 13 • One (1) vacancy – Secretary, three (3) year term. 14 • Five (5) vacancies – Council Member, three (3) year term. 15 16 Oneida Election Board: Three (3) vacancies – three (3) year term. 17 18 Oneida Gaming Commission; 19 • One (1) vacancy – five (5) year term. 20 Legal Resource Center; One (1) vacancy – Attorney, four (4) year term. 21 22 • One (1) vacancy – Advocate, four (4) year term. 23 Oneida Land Claims Commission; 24 Two (2) vacancies – three (3) year term. 25 Oneida Land Commission; 26 ■ Two (2) vacancies – three (3) year term. 27 Oneida Nation Commission on Aging; 28 Three (3) vacancies – three (3) year term. 29 Oneida Nation School Board; 30 Three (3) vacancies – Parent, three (3) year term. Oneida Trust Enrollment Committee; and 31 32 Two (2) vacancies – three (3) year term. Oneida Judiciary. 33 Court of Appeals: 34 35 One (1) vacancy – Appellate Court Chief Judge, six (6) year term. One (1) vacancy – Appellate Court Judge, six (6) year term. 36 **Trial Court:** 37 One (1) vacancy – Trial Court Chief Judge, six (6) year term. 38 One (1) vacancy – Trial Court Judge, six (6) year term. 39 C. COVID-19 Pandemic. The world is currently facing a pandemic of the coronavirus disease 2019 40 41 (COVID-19). The COVID-19 outbreak originated in Wuhan, China and has spread to many other 42 countries throughout the world, including the United States. The World Health Organization has 43 identified that the spread of COVID-19 is now a pandemic resulting in many countries experiencing 44 the effects of illness and health issues related to COVID-19 and economic impacts. As of March 13, 45 2020, there were one thousand and six hundred and twenty-nine (1,629) cases reported through the United States, and eighteen (18) cases of positive tests in Wisconsin. 46 47 Declarations of Emergency. Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" on 48 49 March 12, 2020, regarding COVID-19 which sets into place the necessary authority should action need to be taken and allowing the Nation to seek reimbursement of emergency 50 management actions that may result in unexpected expenses. 51
  - Governor Evers declared a public health emergency for the State of Wisconsin on March 12, 2020, based on COVID-19 cases in Wisconsin.
  - President Trump declared a national emergency for the United States over the COVID-19 outbreak on March 13, 2020.

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- Center of Disease Control Precautions. The Center of Disease Control has identified that March, April, and May should be the time when the potential for the highest increases in the number of confirmed cases would occur, and issued the following precautions to avoid further spread of COVID-19:
  - Clean your hand often.

- Wash your hands often with soap and water for at least twenty (20) seconds especially after you have been in a public place, or after blowing your nose, coughing, or sneezing.
- If soap and water are not readily available, use a hand sanitizer that contains at least sixty percent (60%) alcohol. Cover all surfaces of your hands and rub them together until they feel dry.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Avoid close contact.
  - Avoid close contact with people who are sick
  - Put distance between yourself and other people if COVID-19 is spreading in your community. This is especially important for people who are at higher risk of getting very sick.
- **D.** On March 13, 2020, after meeting with the Public Health Officer, the Oneida Election Board acted to postpone the Caucus scheduled for the 2020 General Elections in order to avoid large gatherings of members where the COVID-19 could be easily spread. The Oneida Election Board has identified that conducting a caucus or requiring applicants to obtain ten (10) signatures through the petition process would unnecessarily spread COVID-19 by encouraging contact between individuals, but has expressed a strong desire to avoid moving the actual election dates. In an effort to maintain the July 2020 General Election date, emergency amendments to the Law are being sought to eliminate the caucus from the election process, instead requiring all individuals to apply to be placed on the ballot, while also eliminating the requirement of those who apply to obtain ten (10) signatures of qualified voters.

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

- **A.** Representatives from the following departments or entities participated in the development of this Law and legislative analysis:
  - Oneida Law Office; and
  - Oneida Election Board.
- **B.** The following laws were reviewed in the drafting of this analysis:
  - Oneida Nation Constitution and Bylaws.

## **SECTION 4. PROCESS**

- **A.** These amendments are being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency law "where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the Reservation population and enactment or amendment of legislation is required sooner than would be possible under this law" [1 O.C. 109.9-5].
  - Emergency amendments are being pursued for the immediate preservation of the public health, safety, and general welfare of the Reservation population against the public health crisis that is the COVID-19 pandemic. Chairman Tehassi Hill declared a public health state of emergency for the Nation on March 12, 2020.

- Observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The caucus was scheduled to be held on March 14, 2020, and must occur at least ninety (90) days before the General Election, which is scheduled to be held on July 4, 2020. Therefore, the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the General Election could still occur on July 4, 2020, without violating the caucus procedures contained in the Law.
- **B.** Emergency amendments typically expire six (6) months after adoption, with one (1) opportunity for a six (6) month extension of the emergency amendments. [1 O.C. 109.9-5(b)]. The resolution for these emergency amendments provides that the amendment will expire in six (6) months or until the 2020 General Election is concluded, whichever is sooner.
- **C.** The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact statement will eventually be required when considering permanent adoption of these amendments.
- **C.** The Legislative Operating Committee added these emergency amendments to the Active Files List on March 16, 2020.

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

- A. *Elimination of the Caucus*. The proposed amendments eliminate the caucus from the election process. Previously, the Law required that the Election Board call a caucus at least ninety (90) days before a general election was held, or forty-five (45) days before any other election. [GTC-04-23-17-A 1 O.C. 102.6-1]. At the caucus individuals could nominate potential candidates on the floor, and those potential candidates that were present during the caucus would then accept or decline the nomination. [GTC-04-23-17-A 1 O.C. 102.6-2]. If an individual was nominated during the caucus but not present to accept the nomination, that individual could follow the petition process to get his or her name on the ballot. Now, with the elimination of the caucus from the election process, an individual who is interested in having his or her name on the ballot has to apply to be on the ballot by submitting the designated application form to the Business Committee Support Office. [1 O.C. 102.6-1].
  - Effect. The proposed emergency amendment would allow for the 2020 General Election to occur as scheduled. The elimination of the requirement to hold the caucus while allowing individuals to be placed on the ballot through the submission of an application will eliminate any unnecessary contact between individuals which could spread the COVID-19, while also ensuring that the July 2020 General Election can occur without interruption.
- **B.** Application to be Placed on the Ballot. The proposed amendments require that an individual submit an application in order to be placed on the ballot. [1 O.C. 102.6-1]. The application form consists of information that satisfies the minimum requirements for eligible candidates as described in section 102.5-2 of the Law and is required to be submitted to the Business Committee Support Office by April 3, 2020. [1 O.C. 102.6-1(b)-(c)]. Previously, if an individual was not present at the caucus to accept a nomination, or was not nominated at the caucus, the individual could file a petition to have his or her name placed on the ballot. [GTC-04-23-17-A 1 O.C. 102.6-3]. The petitioner was required to submit the petition form along with no less than ten (10) signatures of qualified voters, which would be verified by the Oneida Trust Enrollment Department, prior to the close of business at least five (5) business days after the caucus. [GTC-04-23-17-A 1 O.C. 102.6-3].
  - Effect. The proposed amendment makes the application process the sole way for an individual to have his or her name placed on the ballot for an election. The requirement to obtain at least ten (10)

signatures of qualified voters was eliminated in an effort to eliminate any unnecessary contact between individuals which could spread COVID-19. Because the requirement to obtain signatures was eliminated from the Law, so was the requirement that the Oneida Trust Enrollment Department verify the signatures. Since there is no caucus, the deadline to submit an application to be placed on the ballot was revised from five (5) days after the caucus to April 3, 2020. The combinations of these changes along with the elimination of the caucus should ensure that the 2020 General Election can occur in July as scheduled while still protecting the health and safety of the people of the Nation.

- C. *Election Board Members Signature on Machine Counted Ballots*. The proposed amendments lower the number of Oneida Election Board members that are required sign the election totals, which includes the tape signed by the members of the Nation before the polls were opened, from six (6) to three (3).
  - Effect. Requiring less Oneida Election Board members to be present at the polling place to sign
    the election totals help reduce unnecessary contact between individuals which could spread
    COVID-19.

#### **SECTION 6. EXISTING LEGISLATION**

- **A.** *Related Legislation*. The following laws of the Nation are related to the emergency amendments to this Law:
  - Boards, Committees, and Commissions law. The Boards, Committees, and Commission law governs boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1].
    - The Boards, Committees, and Commissions law provides that all elected positions shall be nominated at a caucus called by the Oneida Election Board, or petition for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment. [1 O.C. 105.8-1].
    - The emergency amendments will eliminate the caucus from the election process, leaving application for ballot placement as the only method to be elected to an entity, except where an entity's bylaws allow for a vacancy to be filled by appointment.
  - Emergency Management and Homeland Security law. The Emergency Management and Homeland Security law provides for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; and provides for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; and establishes the use of the National Incident Management System; and designates authority and responsibilities for public health preparedness. [3 O.C. 302.1-1].
    - The Emergency Management and Homeland Security law provides that the Oneida Business Committee shall be responsible for proclaiming or ratifying the existence of an emergency. [3 O.C. 302.8-1]. A public health emergency is defined as the occurrence or imminent threat of an illness or health condition which:
      - (1) is a quarantinable disease, or is believed to be caused by bioterrorism or a biological agent; and
      - (2) poses a high probability of any of the following:

188	(A) a large number of deaths or serious or long-term disability among humans; or
189	(B) widespread exposure to a biological, chemical, or radiological agent that
190	creates a significant risk of substantial future harm to a large number of people.
191	[3 O.C. 302.3-1(o)].
192	<ul> <li>Chairman Tehassi Hill's March 12, 2020, "Declaration of Public Health State of</li> </ul>
193	Emergency" conform with the requirements of the Emergency Management and Homeland

Emergency" conform with the requirements of the Emergency Management and Homeland Security law.

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#### **SECTION 7. OTHER CONSIDERATIONS**

- A. Deadline for Permanent Adoption of Amendments. The emergency amendments will expire six (6) months after adoption or until the 2020 General Election is concluded, whichever is sooner. The emergency amendments may be renewed for an additional six (6) month period.
  - Conclusion: The Legislative Operating Committee will need to consider the development and adoption of permanent amendments to this Law within the next six (6) to twelve (12) months.
- B. Consideration of Additional Amendments. The Oneida Election Board will be actively monitoring the public health crises and will notify the membership of the Nation as soon as possible should the 2020 General Election day be canceled or postponed, or if the polling processes need to be amended to reduce the spread of COVID-19.
  - Conclusion: The Legislative Operating Committee may have to consider additional amendments to this Law if the 2020 General Election timeframe or procedure will be further impacted by the COVID-19 health crisis.
- C. Fiscal Impact. A fiscal impact statement is not required for emergency legislation.
  - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

# Title 1. Government and Finances - Chapter 102 ELECTION

#### Onayote?a.ká. Tho Ni. Yót Tsi? ayethiyataláko Tsi? Kayanláhsla

People of the Standing Stone how it is we will appoint them the kind of laws we have

#### **ELECTION**

102.1.	Purpose	and Policy
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102.2. Adoption, Amendment, Repeal

102.3. Definitions

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102.4. Election Board

102.5. Candidate Eligibility

102.6. Selection of Candidates

102.7. Notice of Polling Places

102.8. Registration of Voters

102.9. Election Process

102.10. Tabulating and Securing Ballots

102.11. Election Outcome and Ties

102.12. Elections

102.13. Oneida Nation Constitution and By-law Amendments

#### 102.1. Purpose and Policy

2 102.1-1. It is the policy of the Nation that this law shall govern the procedures for the conduct of

- 3 orderly elections of the Nation, including pre-election activities such as caucuses and nominations.
- Because of the desire for orderly and easily understood elections, there has not been an allowance made for write-in candidates on ballots.
- 6 102.1-2. This law defines the duties and responsibilities of the Election Board members and other
- 7 persons employed by the Oneida Nation in the conduct of elections. It is intended to govern all

8 procedures used in the election process.9

#### 102.2. Adoption, Amendment, Repeal

- 11 102.2-1. This law was adopted by the Oneida General Tribal Council by resolution GTC 07-06-
- 98-A and amended by resolutions GTC-01-04-10-A, BC-02-25-15-C-and, GTC-04-23-17-A-, and
- emergency amended by BC-\_ - .
- 14 102.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to
- the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding
- amendments to this law and policies adopted regarding implementation of this law are to be
- presented to the Business Committee who shall then adopt or forward action(s) to the General
- 18 Tribal Council for adoption.
- 19 102.2-3. 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
- 21 to have legal force without the invalid portions.
- 102.2-4. In the event of a conflict between a provision of this law and a provision of another law,
- 23 the provisions of this law shall control.
- 24 102.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### **102.3. Definitions**

- 27 102.3-1. 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.
- 29 102.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on
- 30 the Election Board during an election and until election results have been certified.
- 31 102.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for
- 32 acceptance on a ballot.
- 33 102.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. 4:30 p.m., excluding
- 34 holidays of the Nation.
- 35 102.3-5. "Campaigning" shall mean all efforts designed to influence members of the Nation to
- support or reject a particular candidate of the Nation including, without limitation, advertising,

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- 37 rallying, public speaking, or other communications with members of the Nation.
- 38 102.3-6. "Candidate" shall mean a petitioner or nominee an applicant for an elected position whose
- name is placed on the ballot by the Election Board after successful application.
- 40 102.3-7. "Clerk" shall mean the election official who identifies proper registration for the purpose
- 41 of determining voter eligibility.
- 42 102.3-8. "Close of business" shall mean 4:30 p.m. Monday through Friday.
- 43 102.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political
- or otherwise, in which a Nation elected official, employee, consultant, appointed or elected,
- 45 member of any board, committee or commission, or their immediate relatives, friends or
- associates, or any other person with whom they have contact, that conflicts with any right of the
- Nation to property, information, or any other right to own and operate its enterprises, free from
- 48 undisclosed competition or other violation of such rights of the Oneida Nation, or as defined in
- any law or policy of the Nation.
- 50 102.3-10. "Election" shall mean every primary and election.
- 51 102.3-11. "General election" shall mean the election held every three (3) years in July to elect the
- 52 Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the
- Business Committee and may include contests for elected boards, committees and commissions
- 54 positions.
- 55 102.3-12. "Judge" shall mean the election official who informs and advises the Chairperson of
- discrepancies, complaints and controversy regarding voter eligibility.
- 57 102.3-13. "Judiciary" means the judicial system that was established by Oneida General Tribal
- 58 Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of
- 59 the Nation.
- 60 102.3-14. "Lot drawing" shall mean the equal chance method used to select a candidate as the
- winner of an elected position, in the case of a tie between two (2) or more candidates.
- 62 102.3-15. "Nation" means the Oneida Nation.
- 63 102.3-16. "Nation's newspaper" shall mean the Kalihwisaks, or any other newspaper operated by
- the Nation for the benefit of transmitting news to members of the Nation, which is designated by
- 65 the Election Board as a source for election related news.
- 66 102.3-17. "Oneida Police Officer" shall mean an enrolled member of the Oneida Nation who is a
- 67 police officer on any police force.
- 68 102.3-18. "Private property" shall mean any lot of land not owned by the Nation, a residential
- dwelling or a privately owned business within the boundaries of the Reservation.
- 70 102.3-19. "Prominent locations" shall mean the polling places, main doors of the Norbert Hill
- 71 Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida
- 72 Community Health Center, the SEOTS building and all One-Stop locations.
- 73 102.3-20. "Qualified voter" shall mean an enrolled member of the Nation who is eighteen (18)
- 74 years of age or older.
- 75 102.3-21. "Rejected Ballots" shall mean those ballots which are rejected by the vote tabulating
- 76 machine.
- 77 102.3-22. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise marred
- and is not tabulated.
- 79 102.3-23. "Teller" shall mean the election official in charge of collecting and storing of all ballots.

#### 102.4. Election Board

- 83 Section A. Establishment, Composition and Election
- 84 102.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this
- law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.
- 86 102.4-2. The Election Board shall consist of nine (9) elected members. All members shall be
- elected to terms of three (3) years, not to exceed two (2) consecutive terms.
- 88 102.4-3. *Recusal*. An Election Board member shall recuse himself/herself from participating as an
- 89 Election Board member in any pre-election, election day, or post-election activities while he or
- 90 she is a petitioner, an applicant or candidate in any election or there is otherwise a conflict of
- 91 interest

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- 92 102.4-4. *Removal*. Removal of members shall be pursuant to the Oneida Removal Law. A member
- 93 who is removed from the Election Board shall be ineligible to serve on the Board for three (3)
- years from the time he or she is removed from the Election Board.
- 95 102.4-5. Vacancies. Any vacancy in an unexpired term shall be filled by appointment by the
- 96 Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed
- 97 to correspond with the pre-election activities and the needs of the Election Board.
- 98 102.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.
- 99 102.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to
- the Election Board, as recommended by the Election Board, to assist with election day and pre-
- 101 election activities.
- 102 102.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in
- the By-laws of the Election Board, to preside over the meetings. This selection shall be carried
- out at the first meeting of the Election Board following an election. The Chairperson shall then
- ask the Election Board to select a Vice-Chairperson and Secretary.

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Section B. Duties of the Election Board

108 102.4-9. The Election Board shall have the following duties, along with other responsibilities listed throughout this law.

- (a) The Election Board shall be in charge of all registration and election procedures; and
- (b) Upon completion of an election, the Election Board shall make a final report on the election results as set out in this law.

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Section C. Specific Duties of Officers and Election Board Members

- 115 102.4-10. Specific duties of the Chairperson and other Election Board members, in addition to being present at all Election Board meetings and assisting the handicapped through the voting process, are as set out herein:
  - (a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 102.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and Trust Enrollment Department personnel when their election day duties are complete; and shall post and report election results.
- (b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.
- 124 (c) Secretary: Shall keep a record of the meetings and make them available to the Nation's Secretary, other Election Board members and the public as required in the Open Records
- and Open Meetings Law.

(d) Clerks: Shall implement the requirements of identifying and registering all voters and 127 determining voter eligibility. Clerks shall work in conjunction with the Trust Enrollment 128 Department personnel in the registration process, and assist the Chairperson as directed in 129

- conducting the election. Clerks cannot be currently employed by the Trust Enrollment 130 131 Department.
  - (e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as determined by this law. Shall assist the Chairperson in conducting the election.
  - (f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between members of the Nation and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

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- Section D. Compensation Rates
- 142 102.4-11. Election Board members are to be compensated at an hourly rate when conducting
- elections as provided for in the Election Board's bylaws as approved by the Business Committee. 143
- The Election Board shall have a budget, approved through the Nation's budgeting process. 144
- 102.4-12. The Trust Enrollment Department personnel and Oneida Police Officer(s) shall be 145 compensated at their regular rate of pay out of their respective budgets. 146

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#### 102.5. Candidate Eligibility

- 149 Section A. Requirements
- 150 102.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted bylaws or other documents, all applicants shall meet the minimum requirements set out in this section 151 152 in order to become a candidate.
- 153 102.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:
  - (a) be an enrolled member of the Nation, as verified by membership rolls of the Nation.
  - (b) be a qualified voter on the day of the election.
  - (c) provide proof of physical residency as required for the position for which they have been nominated or for which they have petitioned. applied. Proof of residency may be through one (1) or more of the following:
    - (1) a valid Wisconsin driver's license;
    - (2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;
    - (3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.
  - 102.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election.
- 167 168 102.5-4. Applications and petitions where the applicant was not nominated during caucus shall be 169 filed by presenting the information to the Nation's Secretary, or designated agent, during normal 170 171 business hours, 8:00 to 4:30 Monday through Friday, within five (5) business days after the
  - caucus.by April 3, 2020. No mailed, internal Nation mail delivery, faxed or other delivery method

- shall be accepted.
- 173 102.5-5. The names of the candidates and the positions sought shall be a public record and made available to the public upon the determination of eligibility by the Election Board or the Board's

designated agent.

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- 177 Section B. Eligibility Review
- 178 102.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal.
- At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall
- select the hearing body. The hearing shall be held within two (2) business days of receipt of the
- appeal. The applicant shall be notified by phone of time and place of the hearing. The decision
- of the hearing body shall be sent via certified mail or hand delivery within two (2) business days
- of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the
- 184 Judiciary on an accelerated schedule.
- 185 102.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to
- verify eligibility. Any applicant found to be ineligible for a nominated or petitioned for position
- shall be notified by certified mail return receipt requested. The notice shall provide the following information:
- 189 (a) Position for which they were considered
  - (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
  - (c) A brief summary explaining why the applicant was found to be ineligible.
  - (d) That the applicant has two (2) business days from notification to make an appeal. Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal Nation mail, faxed or other delivery method will be accepted.

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Section C. Campaign Financing

#### 102.5-8. Contributions:

- (a) Solicitation of Contributions by Candidates.
  - (1) Candidates shall only accept contributions from individuals who are members of the Nation or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.
  - (2) Candidates shall not solicit or accept contributions in any office or business/facility of the Nation.
- (b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.
- 102.5-9. Campaign Signs and Campaigning:
  - (a) Placement of campaign signs:
    - (1) Campaign signs shall not be posted or erected on any property of the Nation except for private property with the owner/tenant's permission.
    - (2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.
    - (3) No campaign sign shall project beyond the property line into the public right of way.

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- 217 (b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.
  - (c) Employees of the Nation shall not engage in campaigning for offices of the Nation during work hours. The Nation's employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.
  - (d) Enforcement. The Zoning Administrator shall cause to be removed any campaign signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.
  - (e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

#### Section D. Candidate Withdrawal

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- 102.5-10 Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.
- 102.5-11 After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.
- 237 102.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.
- 102.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.
  - 102.5-14. Candidate Withdrawal After Winning an Election.
    - (a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.
    - (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

#### 2.6. Selection of Candidates

#### Section A. Setting of Caucus

- 102.6-1. The Election Board shall be responsible for calling a caucus before any election is held. The caucus for the general election shall be held at least ninety (90) calendar days prior to the election date. Caucuses for other elections shall be held at least forty-five (45) calendar days prior to the election date. In a general election year, caucuses shall be combined so that candidates for the Business Committee and elected boards, committees and commissions are nominated at the same caucus.
- 102.6-2. The procedures for the caucus shall be as follows:
  - (a) Candidates shall be nominated from the floor.
  - (b) Candidates present at the caucus will accept/decline their nomination at the caucus.

Candidates nominated at the caucus, but not present to accept the nomination, shall be required to follow the petition process.

(c) Nominations shall consist of the following positions: Chairperson, Vice-Chairperson, Treasurer, Secretary, Council Member and other elected positions as required by laws or creating documents of a board, committee, or commission.

#### Section B. Petition

102.6-3. Any eligible member of the Nation may petitionapply to be placed on a ballot according to the following procedures:

- (a) Each petitioner, not nominated at caucus, shall file a petition containing endorsee's original signatures; photocopies shall not be accepted.
- (b) Petitioners(a) Applicants shall use an official petition form as designated by this law which may be obtained in the Office of the Nation's Secretary or from the mailing for that caucus.
- (eb) The petition form shall consist of each endorsee's:
  - (1) printed name and address;
  - (2) date of birth;
  - (3) Oneida Nation Enrollment Number; and
  - (4) signature.
- (d) Petitioners shall obtain not less than ten (10) signatures of qualified voters as defined under information that satisfies the minimum requirements for eligible candidates, as descried in section 102.5-2 of this law.
- (e) <u>Petitions(c)</u> <u>Applications</u> shall be presented to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business five (5) business days after the caucus.on <u>April 3, 2020.</u> The location to drop-off <u>petitions applications</u> shall be <u>identified in the mailing identifying the caucus date the Business Committee Support Office.</u>
- (fd) The Nation's Secretary shall forward all <u>petitions applications</u> to the Election Board Chairperson the next business day following the close of <u>petition</u> submissions.
- (g) The Election Board shall have the Trust Enrollment Department verify all signatures contained on the petition.
- 102.6-42. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

#### 102.7. Notice of Polling Places

- 102.7-1. The Election Board shall post a notice in the prominent locations, stating the location of the polling places and the time the polls will be open. This notice shall also be posted in an easily visible position, close to the entrance of the Nation's businesses/facilities.
- 102.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the election, and shall remain posted until the poll closes on the day of the election.
- 102.7-3. Except for a Special Election, notice for the election shall be mailed to all Nation members, stating the time and place of the election and a sample of the ballot, no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior

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- 307 to the requested mailing.
- 308 102.7-4. Notice of the election shall be placed in the Nation's newspaper.

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- 102.8. Registration of Voters
- 311 Section A. Requirements
- 312 102.8-1. Registration of Voters. All enrolled members of the Nation, who are eighteen (18) years
- of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the
- 314 Oneida Nation Constitution.

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- 316 Section B. Identification of Voters
- 102.8-2. All voters must present one of the following picture identifications in order to be able to vote:
  - (a) Oneida Nation I.D.
  - (b) Drivers License.
  - (c) Other I.D. with name and photo.

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- 323 Section C. Registration Procedures
- 324 102.8-3. Voters shall physically register, on the day of the election, at the polls.
- 325 102.8-4. Trust Enrollment Department personnel shall be responsible for verifying enrollment
- with the Nation. Conduct of Trust Enrollment Department personnel is governed by the Election
- 327 Officials during the voting period.
- 328 102.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration
- 329 Form containing the voter's following information:
- 330 (a) name and maiden name (if any);
  - (b) current address;
    - (c) date of birth; and
    - (d) enrollment number.

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- 335 Section D. Qualification/Verification of Voter Eligibility
- 336 102.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote,
- the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with
- 338 the Trust Enrollment Department personnel who are registering voters, to decide the voting
- member's eligibility currently being questioned and shall make such decisions from the facts
- available, whether the applicant is, in fact, qualified/verifiable under the Oneida Nation
- Constitution, Article III Section 2, to vote in the Nation's elections.
- 342 102.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be
- placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of
- 344 the voter shall be written next to a numbered list which corresponds to the numbered and sealed
- envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box
- 346 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they
- desire to challenge the decision made by the Election Officials. The Election Board shall make a
- final decision, within five (5) business days of receiving the appeal and shall report this decision
- in the final report sent to the Oneida Business Committee.

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**102.9.** Election Process

- 352 Section A. Polling Places and Times
- 353 102.9-1. In accordance with Article III, Section 5 of the Oneida Nation Constitution, elections
- shall be held in the month of July on a date set by the General Tribal Council. The General Tribal
- Council shall set the election date at the January annual meeting, or at the first GTC meeting held
- during a given year. Special Elections shall be set in accordance with 102.12-6.
- 102.9-2. Elections shall be held in an Oneida Nation facility(s) as determined by the Election Board.
- 102.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line to vote at 7:00 p.m. shall be allowed to vote.
  - (a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four
  - (4) members of the Nation verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.
- 102.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, and until the counting of ballots is completed, and tentative results posted.
- 102.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such that there is an area with at least two sides and a back enclosure.
- 102.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of the voting area, excluding private property.
- 371 102.9-7. No one causing a disturbance shall be allowed in the voting area.
- 102.9-8. Election Board members may restrict the voting area to qualified voters only. This restriction is in the interest of maintaining security of the ballots and voting process.

375 Section B. Ballot Box

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- 376 102.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and shall be locked until counting at the close of polls. Provided that, with electronic ballot counting, the ballots may be placed within the ballot counting machine as they are received.
- 380 Section C. Spoiled Ballots
- 381 102.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.
- 102.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials and placed in an envelope marked as "Spoiled Ballots."
- 384 102.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15)
- calendar days following finalization of any challenge of the election, at the Records Management
  Department.
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- 388 Section D. Rejected Ballots
- 389 102.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.
- 390 (a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 102.9-10 through 102.9-12.
  - (b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. –If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the

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ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

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#### 102.10. Tabulating and Securing Ballots

- 400 Section A. Machine Counted Ballots
- 102.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.
- 403 102.10-2. At least six (6three (3)) Election Board members shall sign the election totals, which shall include the tape signed by the members of the Nation before the polls were opened per section
- 405 102.9-3(a).

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- 407 Section B. Manually Counted Ballots
- 408 102.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the
- ballot box and remove the ballots.
- 410 102.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall
- be secured in a sealed container for transportation to the ballot counting location. The sealed
- ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election
- 413 Officials for counting/tallying of ballots.
- 414 102.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and
- witnessed/monitored by an Oneida Police Officer.
- 416 102.10-6. Ballots must be counted by two different Election Officials until two final tallies are
- equal in back to back counting. Final tallies shall be verified by the Election Judges.

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- 419 Section C. Securing Ballots
- 420 102.10-7. The Judges shall place together all ballots counted and secure them together so that they
- cannot be untied or tampered with without breaking the seal. The secured ballots, and the election
- totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container
- in such a manner that the container cannot be opened without breaking the seals or locks, or
- destroying the container. The Oneida Police Officer shall then deliver, on the day of the election,
- the sealed container to the Records Management Department for retaining.

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#### **102.11. Election Outcome and Ties**

- 428 Section A. Election Results Announcement
- 429 102.11-1. The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain
- the following statement:

"The election results posted here are tentative results. Final election results are forwarded by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"

102.11-2. The Election Board shall post, in the prominent locations, and publish in the Nation's newspaper, the tentative results of an election.

- 439 Section B. Tie
- 102.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to
- determine the outcome of an election, the Election Board shall conduct an automatic recount of

- the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.
  - 102.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.
    - (a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.
    - (b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.
    - (c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

#### Section C. Recount Procedures

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- 102.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the office of the Nation's Secretary, or noticed designated agent, within five (5) business days after the election.
- Requests shall be limited to one (1) request per candidate. The Nation's Secretary shall contact the Election Board Chairperson by the next business day after the request for recounts.
- 102.11-6. The Election Board shall respond by the close of business on the fifth (5<sup>th</sup>) day after the request regarding the results of the recount. Provided that, no recount request need be honored
- where there have been two (2) recounts completed as a result of a request either as a recount of the
- whole election results, or of that sub-section.
- 476 102.11-7. All recounts shall be conducted manually with, if possible, the original Election
- Officials and Oneida Police Officer present, regardless of the original type of counting process.
- Manual recounts may, at the discretion of the Election Officials, be of the total election results, or
- of the challenged sub-section of the election results.
- 480 102.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed
- container with the ballots from the Records Management Department and transporting it to the
- ballot recounting location.
- 102.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three
- 484 (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election
- Board Chairperson and an Oneida Police Officer shall witness the recount.
- 486 102.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be

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counted until two (2) final tallies are equal in back to back counting and the total count of ballots reconciles with the total count from the ballot counting machine. Sub-sections of candidates may be recounted in lieu of a full recount.

- (a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.
- (b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

#### Section D. Challenges and Declaration of Results

- 102.11-11. Challenges. Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.
  - (a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.
  - (b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.
- 102.11-12. *The Final Report*. The Election Board shall forward a Final Report to the Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:
  - (a) Total number of persons voting.
  - (b) Total votes cast for each candidate by subsection of the ballot.
  - (c) List of any ties and final results of those ties, including the method of resolution.
  - (d) List of candidates elected and position elected to.
  - (e) Number of spoiled ballots.
  - (f) Cost of the election, including the compensation paid to each Election Board member.
- 102.11-13. *Declaration of Results*. The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.
- 102.11-14. Candidates elected to the Business Committee shall resign from any salaried position effective prior to taking a Business Committee oath of office
- 102.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the official results of an election are declared by the Business Committee.
  - (a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.
  - (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

102.11-16. The Election Board shall send notice to the Records Management Department to 532 533

destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

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#### **102.12.** Elections

- 537 Section A. Primary Elections; Business Committee
- 102.12-1. When a primary is required under 102.12-2, it shall be held on a Saturday at least sixty 538 539 (60) calendar days prior to the election.
- 102.12-2. There shall be a primary election for Business Committee positions whenever there are 540 three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-541 542 large council member positions.
  - (a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.
  - (b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.
  - (c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.
  - 102.12-3. The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary by the petitioning deadline set for the primary..
  - 102.12-4. In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for notifying the Oneida public in section 102.5-11 and 102.5-12 shall be followed, including the requirement to print a notice in the Nation's newspaper if time lines allow.

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- Section B. Special Elections
- 560 102.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as 561 defined in this law, may be placed on the same ballot as the subject matter of an election.
- 102.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business 562
- 563 Committee as recommended by the Election Board or as ordered by the Judiciary in connection 564 with an election challenge.
- 565 102.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent
- locations, and placed in the Nation's newspaper not less than ten (10) calendar days prior to the 566
- 567 Special Election.
- 568 102.12-8. In the event of an emergency, the Election Board may reschedule the election, provided
- that no less than twenty-four (24) hours notice of the rescheduled election date is given to the 569
- 570 voters, by posting notices in the prominent locations.

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- 572 Section C. Referendums
- 102.12-9. Registered voters may indicate opinions on any development, law or resolution, 573
- 574 proposed, enacted, or directed by the Business Committee, or General Tribal Council, in a special
- 575 referendum election.
  - (a) Referendum elections in which a majority of the qualified voters who cast votes shall

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- be binding on the Business Committee to present the issue for action/decision at General Tribal Council.
  - (b) Referendum requests may appear on the next called for election.
  - (c) Referendum questions are to be presented to the Nation's Secretary, in writing, at the caucus prior to election, regarding issues directly affecting the Nation or general membership.

- Section D. Initiation of Special Elections
- 585 102.12-10. Special Elections may be initiated by a request or directive of the General Tribal Council or the Oneida Business Committee.
- 587 102.12-11. Special Election may be requested by a member of the Nation to the Business Committee or General Tribal Council.
- 589 102.12-12. All Special Elections shall follow rules established for all other elections. This includes positions for all Boards, Committees and Commissions.

#### 102.13. Oneida Nation Constitution and By-law Amendments

- 102.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition of qualified voters. The requirements for the Oneida Business Committee's initiation of Constitutional amendments are as provided in the Constitution and as further detailed in the supporting standard operating procedures which the Oneida Business Committee shall adopt. Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting a petition to the Office of the Nation's Secretary which includes the full text of the proposed amendments and signatures that are equal in number to at least ten percent (10%) of all members qualified to vote.
  - (a) Qualified voters may request a petition form from the Office of the Nation's Secretary.
  - (b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall direct the Trust Enrollment Department to calculate the number of signatures currently required for a petition submittal, which shall be ten percent (10%) of all members qualified to vote on the date the petition form is requested from the Office of the Nation's Secretary. When the Nation's Secretary receives the calculation from the Trust Enrollment Department, the Nation's Secretary shall provide the requester with the petition form and the number of signatures that are currently required.
  - (c) Such petitions shall be circulated with all supporting materials and submitted a minimum of ninety (90) days prior to the election at which the proposed amendment is to be voted upon. If a petition includes supporting materials in addition to the petition form, each qualified voter signing the petition shall also acknowledge that the supporting materials were available for review at the time he or she signed the petition by initialing where required on the petition form.
  - (d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment Department for verification of signatures and to the Election Board to provide notice that the petition may need to be placed on an upcoming ballot.
  - (e) If the petition is verified by the Trust Enrollment Department to contain signatures from at least ten percent (10%) of all qualified voters, the Election Board shall make an official announcement of the proposed amendments to the Oneida Nation Constitution at least sixty

(60) days prior to the election at which the proposed amendments are to be voted on. 622 623

102.13-2. The Election Board shall place any proposed amendments to the Oneida Nation Constitution that meet the requirements contained in 102.13-1 on the ballot at the next general election. Provided that, the Oneida Business Committee or General Tribal Council may order a special election be held to consider the proposed amendments. In such circumstances, the Election Board shall place any proposed amendments to the Oneida Nation Constitution on the ballot at the next special election.

102.13-3. The Election Board shall publish any proposed amendments by publishing a sample ballot no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing. Copies of such publications shall be prominently posted in each polling place and at administrative offices of the Nation and shall also be published in official Oneida media outlets, which the Oneida Business Committee shall identify by resolution. For the purposes of this section, Oneida administrative offices means the location where the Oneida Business Committee conducts business.

102.13-4. The Election Board shall ensure that the ballot contains a statement of the purpose of the proposed amendments prepared by the Oneida Law Office. The Oneida Law Office shall ensure that the statement of purpose is one hundred (100) words or less exclusive of caption, is a true and impartial statement and is written in such a manner that does not create prejudice for or against the proposed amendment.

102.13-5. Pursuant to Article VI, Section 3 of the Oneida Nation Constitution, proposed amendments that are approved by sixty-five percent (65%) of the qualified voters that vote on that amendment shall become part of the Constitution and By-laws, and shall abrogate or amend existing provisions of the Constitution and By-laws at the end of thirty (30) days after submission of the final election report.

102.13-6. If two (2) or more amendments approved by the voters at the same election conflict, the amendment receiving the highest affirmation vote prevails.

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654 Adopted - June 19, 1993 655

Amended - June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)

656 Presented for Adoption of 1997 Revisions - GTC-7-6-98-A 657

Amended- October 11, 2008 (General Tribal Council Meeting)

658 Amended-GTC-01-04-10-A

659 Amended - BC-02-25-15-C 660 Amended – GTC-04-23-17-A

661 Emergency Amended – BC- - -

#### Title 1. Government and Finances - Chapter 102 Onayote?a·ká· Tho Ni· Yót Tsi? ayethiyataláko Tsi? Kayanláhsla

People of the Standing Stone how it is we will appoint them the kind of laws we have **ELECTION** 

102.1.	Purpose and Policy	102.8.	Registration of Voters
102.2.	Adoption, Amendment, Repeal	102.9.	Election Process
102.3.	Definitions	102.10	. Tabulating and Securing Ballots
102.4.	Election Board	102.11.	. Election Outcome and Ties
102.5.	Candidate Eligibility	102.12	. Elections
102.6.	Selection of Candidates	102.13.	Oneida Nation Constitution and By-law Amendments
102.7	Notice of Polling Places		·

#### 1 **102.1. Purpose and Policy**

- 2 102.1-1. It is the policy of the Nation that this law shall govern the procedures for the conduct of
- 3 orderly elections of the Nation, including pre-election activities. Because of the desire for orderly
- 4 and easily understood elections, there has not been an allowance made for write-in candidates on
- 5 ballots.

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102.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida Nation in the conduct of elections. It is intended to govern all procedures used in the election process.

## 10 102.2. Adoption, Amendment, Repeal

- 11 102.2-1. This law was adopted by the Oneida General Tribal Council by resolution GTC 07-06-
- 98-A and amended by resolutions GTC-01-04-10-A, BC-02-25-15-C, GTC-04-23-17-A, and
- emergency amended by BC-\_\_-\_\_.
- 14 102.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to
- the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding
- amendments to this law and policies adopted regarding implementation of this law are to be
- presented to the Business Committee who shall then adopt or forward action(s) to the General
- 18 Tribal Council for adoption.
- 19 102.2-3. 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
- 21 to have legal force without the invalid portions.
- 102.2-4. In the event of a conflict between a provision of this law and a provision of another law,
- 23 the provisions of this law shall control.
- 24 102.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### **102.3. Definitions**

- 102.3-1. 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.
- 102.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.
- 31 102.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for
- 32 acceptance on a ballot.
- 33 102.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. 4:30 p.m., excluding
- 34 holidays of the Nation.
- 35 102.3-5. "Campaigning" shall mean all efforts designed to influence members of the Nation to
- support or reject a particular candidate of the Nation including, without limitation, advertising,
- 37 rallying, public speaking, or other communications with members of the Nation.

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- 38 102.3-6. "Candidate" shall mean an applicant for an elected position whose name is placed on the
- 39 ballot by the Election Board after successful application.
- 40 102.3-7. "Clerk" shall mean the election official who identifies proper registration for the purpose
- 41 of determining voter eligibility.
- 42 102.3-8. "Close of business" shall mean 4:30 p.m. Monday through Friday.
- 43 102.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political
- or otherwise, in which a Nation elected official, employee, consultant, appointed or elected,
- 45 member of any board, committee or commission, or their immediate relatives, friends or
- associates, or any other person with whom they have contact, that conflicts with any right of the
- Nation to property, information, or any other right to own and operate its enterprises, free from
- 48 undisclosed competition or other violation of such rights of the Oneida Nation, or as defined in
- any law or policy of the Nation.
- 50 102.3-10. "Election" shall mean every primary and election.
- 51 102.3-11. "General election" shall mean the election held every three (3) years in July to elect the
- 52 Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the
- Business Committee and may include contests for elected boards, committees and commissions
- 54 positions.
- 55 102.3-12. "Judge" shall mean the election official who informs and advises the Chairperson of
- discrepancies, complaints and controversy regarding voter eligibility.
- 57 102.3-13. "Judiciary" means the judicial system that was established by Oneida General Tribal
- 58 Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of
- 59 the Nation.
- 60 102.3-14. "Lot drawing" shall mean the equal chance method used to select a candidate as the
- winner of an elected position, in the case of a tie between two (2) or more candidates.
- 62 102.3-15. "Nation" means the Oneida Nation.
- 63 102.3-16. "Nation's newspaper" shall mean the Kalihwisaks, or any other newspaper operated by
- the Nation for the benefit of transmitting news to members of the Nation, which is designated by
- the Election Board as a source for election related news.
- 66 102.3-17. "Oneida Police Officer" shall mean an enrolled member of the Oneida Nation who is a
- 67 police officer on any police force.
- 68 102.3-18. "Private property" shall mean any lot of land not owned by the Nation, a residential
- dwelling or a privately owned business within the boundaries of the Reservation.
- 70 102.3-19. "Prominent locations" shall mean the polling places, main doors of the Norbert Hill
- 71 Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida
- 72 Community Health Center, the SEOTS building and all One-Stop locations.
- 73 102.3-20. "Qualified voter" shall mean an enrolled member of the Nation who is eighteen (18)
- years of age or older.
- 75 102.3-21. "Rejected Ballots" shall mean those ballots which are rejected by the vote tabulating
- 76 machine.
- 77 102.3-22. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise marred
- and is not tabulated.
- 79 102.3-23. "Teller" shall mean the election official in charge of collecting and storing of all ballots.

- 83 Section A. Establishment, Composition and Election
- 84 102.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this
- law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.
- 86 102.4-2. The Election Board shall consist of nine (9) elected members. All members shall be
- elected to terms of three (3) years, not to exceed two (2) consecutive terms.
- 88 102.4-3. *Recusal*. An Election Board member shall recuse himself/herself from participating as an
- 89 Election Board member in any pre-election, election day, or post-election activities while he or
- 90 she is an applicant or candidate in any election or there is otherwise a conflict of interest.
- 91 102.4-4. *Removal*. Removal of members shall be pursuant to the Oneida Removal Law. A member
- 92 who is removed from the Election Board shall be ineligible to serve on the Board for three (3)
- 93 years from the time he or she is removed from the Election Board.
- 94 102.4-5. Vacancies. Any vacancy in an unexpired term shall be filled by appointment by the
- 95 Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed
- be to correspond with the pre-election activities and the needs of the Election Board.
- 97 102.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.
- 98 102.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to
- the Election Board, as recommended by the Election Board, to assist with election day and preelection activities.
- 101 102.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in
- the By-laws of the Election Board, to preside over the meetings. This selection shall be carried
- out at the first meeting of the Election Board following an election. The Chairperson shall then
- ask the Election Board to select a Vice-Chairperson and Secretary.

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Section B. Duties of the Election Board

102.4-9. The Election Board shall have the following duties, along with other responsibilities listed throughout this law.

- (a) The Election Board shall be in charge of all registration and election procedures; and
- (b) Upon completion of an election, the Election Board shall make a final report on the election results as set out in this law.

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Section C. Specific Duties of Officers and Election Board Members

- 102.4-10. Specific duties of the Chairperson and other Election Board members, in addition to being present at all Election Board meetings and assisting the handicapped through the voting process, are as set out herein:
  - (a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 102.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and Trust Enrollment Department personnel when their election day duties are complete; and shall post and report election results.
  - (b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.
- 123 (c) Secretary: Shall keep a record of the meetings and make them available to the Nation's Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.
  - (d) Clerks: Shall implement the requirements of identifying and registering all voters and determining voter eligibility. Clerks shall work in conjunction with the Trust Enrollment

Department personnel in the registration process, and assist the Chairperson as directed in conducting the election. Clerks cannot be currently employed by the Trust Enrollment Department.

- (e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as determined by this law. Shall assist the Chairperson in conducting the election.
- (f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between members of the Nation and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

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#### Section D. Compensation Rates

- 102.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee.
- The Election Board shall have a budget, approved through the Nation's budgeting process.
  - 102.4-12. The Trust Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

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#### 102.5. Candidate Eligibility

- 148 Section A. Requirements
- 102.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted bylaws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.
- 152 102.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:
  - (a) be an enrolled member of the Nation, as verified by membership rolls of the Nation.
  - (b) be a qualified voter on the day of the election.
  - (c) provide proof of physical residency as required for the position for which they have applied. Proof of residency may be through one (1) or more of the following:
    - (1) a valid Wisconsin driver's license;
    - (2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;
    - (3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.

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- 102.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to election.
- 166 102.5-4. Applications shall be filed by presenting the information to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, by April 3,
- 168 2020. No mailed, internal Nation mail delivery, faxed or other delivery method shall be accepted.
- 169 102.5-5. The names of the candidates and the positions sought shall be a public record and made
- available to the public upon the determination of eligibility by the Election Board or the Board's designated agent.

- 173 Section B. Eligibility Review
- 174 102.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal.
- 175 At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall
- select the hearing body. The hearing shall be held within two (2) business days of receipt of the
- appeal. The applicant shall be notified by phone of time and place of the hearing. The decision
- of the hearing body shall be sent via certified mail or hand delivery within two (2) business days
- of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the
- Judiciary on an accelerated schedule.
- 181 102.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a position shall be notified by certified mail return receipt requested. The notice shall provide the following information:
  - (a) Position for which they were considered
  - (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
  - (c) A brief summary explaining why the applicant was found to be ineligible.
  - (d) That the applicant has two (2) business days from notification to make an appeal. Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal Nation mail, faxed or other delivery method will be accepted.

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#### Section C. Campaign Financing

#### 102.5-8. Contributions:

- (a) Solicitation of Contributions by Candidates.
  - (1) Candidates shall only accept contributions from individuals who are members of the Nation or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.
  - (2) Candidates shall not solicit or accept contributions in any office or business/facility of the Nation.
- (b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.
- 102.5-9. Campaign Signs and Campaigning:
  - (a) Placement of campaign signs:
    - (1) Campaign signs shall not be posted or erected on any property of the Nation except for private property with the owner/tenant's permission.
    - (2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.
    - (3) No campaign sign shall project beyond the property line into the public right of way.
  - (b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.
  - (c) Employees of the Nation shall not engage in campaigning for offices of the Nation during work hours. The Nation's employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.
  - (d) Enforcement. The Zoning Administrator shall cause to be removed any campaign

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- signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.
  - (e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

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- Section D. Candidate Withdrawal
- 102.5-10 Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.
- 102.5-11 After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.
- 232 102.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.
- 102.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.
  - 102.5-14. Candidate Withdrawal After Winning an Election.
    - (a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.
    - (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

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#### **2.6.** Selection of Candidates

- 102.6-1. Any eligible member of the Nation may apply to be placed on a ballot according to the following procedures:
  - (a) Applicants shall use an official form as designated by this law which may be obtained in the Office of the Nation's Secretary.
  - (b) The form shall consist of information that satisfies the minimum requirements for eligible candidates, as descried in section 102.5-2 of this law.
  - (c) Applications shall be presented to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business on April 3, 2020. The location to drop-off applications shall be the Business Committee Support Office.
  - (d) The Nation's Secretary shall forward all applications to the Election Board Chairperson the next business day following the close of submissions.
- 102.6-2. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

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#### **102.7.** Notice of Polling Places

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- 263 102.7-1. The Election Board shall post a notice in the prominent locations, stating the location of
- 264 the polling places and the time the polls will be open. This notice shall also be posted in an easily
- visible position, close to the entrance of the Nation's businesses/facilities.
- 266 102.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the
- election, and shall remain posted until the poll closes on the day of the election.
- 268 102.7-3. Except for a Special Election, notice for the election shall be mailed to all Nation
- members, stating the time and place of the election and a sample of the ballot, no less than ten (10)
- calendar days prior to the election, through a mass mailing. The Trust Enrollment Department
- shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior
- 272 to the requested mailing.
- 273 102.7-4. Notice of the election shall be placed in the Nation's newspaper.

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#### 102.8. Registration of Voters

- 276 Section A. Requirements
- 277 102.8-1. Registration of Voters. All enrolled members of the Nation, who are eighteen (18) years
- of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the
- 279 Oneida Nation Constitution.

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- 281 Section B. Identification of Voters
- 102.8-2. All voters must present one of the following picture identifications in order to be able to vote:
  - (a) Oneida Nation I.D.
    - (b) Drivers License.
      - (c) Other I.D. with name and photo.

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- 288 Section C. Registration Procedures
- 289 102.8-3. Voters shall physically register, on the day of the election, at the polls.
- 290 102.8-4. Trust Enrollment Department personnel shall be responsible for verifying enrollment
- with the Nation. Conduct of Trust Enrollment Department personnel is governed by the Election
- 292 Officials during the voting period.
- 293 102.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration
- Form containing the voter's following information:
- 295 (a) name and maiden name (if any);
- 296 (b) current address:
  - (c) date of birth; and
  - (d) enrollment number.

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- 300 Section D. Qualification/Verification of Voter Eligibility
- 301 102.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote,
- the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with
- 303 the Trust Enrollment Department personnel who are registering voters, to decide the voting
- member's eligibility currently being questioned and shall make such decisions from the facts
- available, whether the applicant is, in fact, qualified/verifiable under the Oneida Nation
- Constitution, Article III Section 2, to vote in the Nation's elections.
- 307 102.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be

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- placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of 308
- the voter shall be written next to a numbered list which corresponds to the numbered and sealed 309
- 310 envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box
- 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they 311
- 312 desire to challenge the decision made by the Election Officials. The Election Board shall make a
- final decision, within five (5) business days of receiving the appeal and shall report this decision 313
- in the final report sent to the Oneida Business Committee. 314

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#### **102.9.** Election Process

- 317 Section A. Polling Places and Times
- 102.9-1. In accordance with Article III, Section 5 of the Oneida Nation Constitution, elections 318
- 319 shall be held in the month of July on a date set by the General Tribal Council. The General Tribal
- Council shall set the election date at the January annual meeting, or at the first GTC meeting held 320
- 321 during a given year. Special Elections shall be set in accordance with 102.12-6.
- 322 102.9-2. Elections shall be held in an Oneida Nation facility(s) as determined by the Election
- Board. 323
- 324 102.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line
- 325 to vote at 7:00 p.m. shall be allowed to vote.
  - (a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four
  - (4) members of the Nation verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.
- 102.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, 330
- and until the counting of ballots is completed, and tentative results posted. 331
- 102.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such 332
- that there is an area with at least two sides and a back enclosure. 333
- 102.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of 334
- the voting area, excluding private property. 335
- 336 102.9-7. No one causing a disturbance shall be allowed in the voting area.
- 337 102.9-8. Election Board members may restrict the voting area to qualified voters only. This
- 338 restriction is in the interest of maintaining security of the ballots and voting process.

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- 340 Section B. Ballot Box
- 341 102.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and
- 342 shall be locked until counting at the close of polls. Provided that, with electronic ballot counting,
- 343 the ballots may be placed within the ballot counting machine as they are received.

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- 345 Section C. Spoiled Ballots
- 346 102.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.
- 102.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials 347
- and placed in an envelope marked as "Spoiled Ballots." 348
- 102.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15) 349
- 350 calendar days following finalization of any challenge of the election, at the Records Management
- 351 Department.

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- 353 Section D. Rejected Ballots
- 354 102.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.
  - (a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 102.9-10 through 102.9-12.
    - (b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

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#### **102.10.** Tabulating and Securing Ballots

- 365 Section A. Machine Counted Ballots
- 102.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.
- 102.10-2. At least three (3) Election Board members shall sign the election totals, which shall include the tape signed by the members of the Nation before the polls were opened per section 102.9-3(a).

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- 372 Section B. Manually Counted Ballots
- 373 102.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.
- 375 102.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall
- be secured in a sealed container for transportation to the ballot counting location. The sealed
- ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election

  Officials for counting/tallying of ballots
- 378 Officials for counting/tallying of ballots.
- 102.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and witnessed/monitored by an Oneida Police Officer.
- 102.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.

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- 384 Section C. Securing Ballots
- 385 102.10-7. The Judges shall place together all ballots counted and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots, and the election totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The Oneida Police Officer shall then deliver, on the day of the election, the sealed container to the Records Management Department for retaining.

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#### 102.11. Election Outcome and Ties

- 393 Section A. Election Results Announcement
- 394 102.11-1. The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain
- 396 the following statement:
- 397 "The election results posted here are tentative results. Final election results are forwarded

2020 03 17

by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"

102.11-2. The Election Board shall post, in the prominent locations, and publish in the Nation's newspaper, the tentative results of an election.

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- Section B. Tie
- 405 102.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to 406 determine the outcome of an election, the Election Board shall conduct an automatic recount of 407 the votes for each candidate receiving the same number of votes. Any recount conducted shall be 408 the only recount allowed for the tied candidates.
  - 102.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.
    - (a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.
    - (b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.
    - (c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

- Section C. Recount Procedures
- 430 102.11-5. A candidate may request the Election Board to complete a recount, provided the margin 431 between the requesting candidate's vote total and vote total for the unofficial winner was within
- 432 two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is
- 433 greater. A candidate requests a recount by hand delivering a written request to the office of the
- 434 Nation's Secretary, or noticed designated agent, within five (5) business days after the election.
- Requests shall be limited to one (1) request per candidate. The Nation's Secretary shall contact 435
- 436 the Election Board Chairperson by the next business day after the request for recounts.
- 102.11-6. The Election Board shall respond by the close of business on the fifth (5<sup>th</sup>) day after the 437
- 438 request regarding the results of the recount. Provided that, no recount request need be honored
- 439 where there have been two (2) recounts completed as a result of a request either as a recount of the
- 440 whole election results, or of that sub-section.
- 102.11-7. All recounts shall be conducted manually with, if possible, the original Election 441
- 442 Officials and Oneida Police Officer present, regardless of the original type of counting process.

- Manual recounts may, at the discretion of the Election Officials, be of the total election results, or
- of the challenged sub-section of the election results.
- 102.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed
- container with the ballots from the Records Management Department and transporting it to the
- 447 ballot recounting location.

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- 448 102.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three
- 449 (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election
- Board Chairperson and an Oneida Police Officer shall witness the recount.
- 102.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be
- counted until two (2) final tallies are equal in back to back counting and the total count of ballots
- reconciles with the total count from the ballot counting machine. Sub-sections of candidates may
- be recounted in lieu of a full recount.
  - (a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.
  - (b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

Section D. Challenges and Declaration of Results

- 102.11-11. Challenges. Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.
  - (a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.
  - (b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.
- 102.11-12. *The Final Report*. The Election Board shall forward a Final Report to the Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:
  - (a) Total number of persons voting.
  - (b) Total votes cast for each candidate by subsection of the ballot.
  - (c) List of any ties and final results of those ties, including the method of resolution.
  - (d) List of candidates elected and position elected to.
  - (e) Number of spoiled ballots.
  - (f) Cost of the election, including the compensation paid to each Election Board member.
- 102.11-13. *Declaration of Results*. The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.
- 487 102.11-14. Candidates elected to the Business Committee shall resign from any salaried position

- 488 effective prior to taking a Business Committee oath of office
- 102.11-15. Except in the event of an emergency, as determined by the Business Committee,
- newly elected officials shall be sworn into office no later than thirty (30) calendar days after the official results of an election are declared by the Business Committee.
  - (a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.
  - (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.
  - 102.11-16. The Election Board shall send notice to the Records Management Department to destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

#### **102.12.** Elections

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- 502 Section A. Primary Elections; Business Committee
- 503 102.12-1. When a primary is required under 102.12-2, it shall be held on a Saturday at least sixty (60) calendar days prior to the election.
  - 102.12-2. There shall be a primary election for Business Committee positions whenever there are three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the atlarge council member positions.
    - (a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.
    - (b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.
    - (c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.
  - 102.12-3. The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary.
  - 102.12-4. In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for notifying the Oneida public in section 102.5-11 and 102.5-12 shall be followed, including the requirement to print a notice in the Nation's newspaper if time lines allow.
- 523 Section B. Special Elections
- 524 102.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as defined in this law, may be placed on the same ballot as the subject matter of an election.
- 526 102.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business
- 527 Committee as recommended by the Election Board or as ordered by the Judiciary in connection
- with an election challenge.
- 529 102.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent
- locations, and placed in the Nation's newspaper not less than ten (10) calendar days prior to the
- 531 Special Election.
- 532 102.12-8. In the event of an emergency, the Election Board may reschedule the election, provided

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that no less than twenty-four (24) hours notice of the rescheduled election date is given to the voters, by posting notices in the prominent locations.

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- Section C. Referendums
- 102.12-9. Registered voters may indicate opinions on any development, law or resolution, proposed, enacted, or directed by the Business Committee, or General Tribal Council, in a special referendum election.
  - (a) Referendum elections in which a majority of the qualified voters who cast votes shall be binding on the Business Committee to present the issue for action/decision at General Tribal Council.
  - (b) Referendum requests may appear on the next called for election.
  - (c) Referendum questions are to be presented to the Nation's Secretary, in writing, at the caucus prior to election, regarding issues directly affecting the Nation or general membership.

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- Section D. Initiation of Special Elections
- 549 102.12-10. Special Elections may be initiated by a request or directive of the General Tribal Council or the Oneida Business Committee.
- 551 102.12-11. Special Election may be requested by a member of the Nation to the Business 552 Committee or General Tribal Council.
- 553 102.12-12. All Special Elections shall follow rules established for all other elections. This includes positions for all Boards, Committees and Commissions.

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#### 102.13. Oneida Nation Constitution and By-law Amendments

- 102.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition of qualified voters. The requirements for the Oneida Business Committee's initiation of Constitutional amendments are as provided in the Constitution and as further detailed in the supporting standard operating procedures which the Oneida Business Committee shall adopt. Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting a petition to the Office of the Nation's Secretary which includes the full text of the proposed amendments and signatures that are equal in number to at least ten percent (10%) of all members qualified to vote.
  - (a) Qualified voters may request a petition form from the Office of the Nation's Secretary.
  - (b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall direct the Trust Enrollment Department to calculate the number of signatures currently required for a petition submittal, which shall be ten percent (10%) of all members qualified to vote on the date the petition form is requested from the Office of the Nation's Secretary. When the Nation's Secretary receives the calculation from the Trust Enrollment Department, the Nation's Secretary shall provide the requester with the petition form and the number of signatures that are currently required.
  - (c) Such petitions shall be circulated with all supporting materials and submitted a minimum of ninety (90) days prior to the election at which the proposed amendment is to be voted upon. If a petition includes supporting materials in addition to the petition form, each qualified voter signing the petition shall also acknowledge that the supporting

- materials were available for review at the time he or she signed the petition by initialing where required on the petition form.
  - (d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment Department for verification of signatures and to the Election Board to provide notice that the petition may need to be placed on an upcoming ballot.
  - (e) If the petition is verified by the Trust Enrollment Department to contain signatures from at least ten percent (10%) of all qualified voters, the Election Board shall make an official announcement of the proposed amendments to the Oneida Nation Constitution at least sixty (60) days prior to the election at which the proposed amendments are to be voted on.
  - 102.13-2. The Election Board shall place any proposed amendments to the Oneida Nation Constitution that meet the requirements contained in 102.13-1 on the ballot at the next general election. Provided that, the Oneida Business Committee or General Tribal Council may order a special election be held to consider the proposed amendments. In such circumstances, the Election Board shall place any proposed amendments to the Oneida Nation Constitution on the ballot at the next special election.
- 102.13-3. The Election Board shall publish any proposed amendments by publishing a sample ballot no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing. Copies of such publications shall be prominently posted in each polling place and at administrative offices of the Nation and shall also be published in official Oneida media outlets, which the Oneida Business Committee shall identify by resolution. For the purposes of this section, Oneida administrative offices means the location where the Oneida Business Committee conducts business.
- 102.13-4. The Election Board shall ensure that the ballot contains a statement of the purpose of the proposed amendments prepared by the Oneida Law Office. The Oneida Law Office shall ensure that the statement of purpose is one hundred (100) words or less exclusive of caption, is a true and impartial statement and is written in such a manner that does not create prejudice for or against the proposed amendment.
- 102.13-5. Pursuant to Article VI, Section 3 of the Oneida Nation Constitution, proposed amendments that are approved by sixty-five percent (65%) of the qualified voters that vote on that amendment shall become part of the Constitution and By-laws, and shall abrogate or amend existing provisions of the Constitution and By-laws at the end of thirty (30) days after submission of the final election report.
- 102.13-6. If two (2) or more amendments approved by the voters at the same election conflict, the amendment receiving the highest affirmation vote prevails.

*End*.

- 618 Adopted June 19, 1993
- Amended June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)
- 620 Presented for Adoption of 1997 Revisions GTC-7-6-98-A
- Amended- October 11, 2008 (General Tribal Council Meeting)
- 622 Amended-GTC-01-04-10-A
- 623 Amended BC-02-25-15-C
- 624 Amended GTC-04-23-17-A
- 625 Emergency Amended BC-\_\_-\_-

# March 16, 2020, Legislative Operating Committee E-Poll Materials for the Adoption of Emergency Amendments to the Boards, Committees, and Commissions Law



#### **Good Morning Legislative Operating Committee,**

This e-mail serves as the e-poll for the materials for the adoption of emergency amendments to the Boards, Committees, and Commissions law.

#### **EXECUTIVE SUMMARY**

The world is currently facing a pandemic of coronavirus disease (COVID-19) after an outbreak began in Wuhan, China and quickly spread to many other countries throughout the world, including the United States. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. As of March 13, 2020, there were one thousand and six hundred and twenty-nine (1,629) cases reported through the United States, and eighteen (18) cases of positive tests in Wisconsin. The number of positive tests in Wisconsin, as well as across the country, continue to increase. On March 12, 2020, in accordance with Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

Emergency amendments to the Boards, Committees, and Commission law (the "Law") are being sought to address the impact of the coronavirus disease (COVID-19) pandemic on the Nation's boards, committees, and commissions. The emergency amendments to the Law will:

- Eliminate the requirement that a member of a board, committee, or commission be physically
  present during the entirety of a meeting or joint meeting in order to be eligible to receive a
  meeting stipend [1 O.C. 105.13-3, 105.13-4];
- Provide that meetings and joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications [1 O.C. 105.13-3, 105.13-4];
- Revise how the limitation of stipend eligible meetings is calculated [1 O.C. 105.13-3(a)-(b)]; and
- Eliminate the requirement for boards, committees, and commissions to audio record meetings [1 O.C. 105.10-3(f)].

The emergency amendments to this Law are necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendments are needed to protect the Reservation population against the public health crisis that is the COVID-19 pandemic. Eliminating the requirement that a member of a board, committee, or commission of the Nation be physically present for the entirety of a meeting in order to be eligible for a stipend will eliminate any unnecessary contact

between individuals which could spread the COVID-19, while ensuring that the boards, committees, and commissions could conduct business uninterrupted without losing the opportunity to collect a stipend. Adjusting how the limitation of stipend eligible meetings is calculated provides boards, committees, and commissions more flexibility in determining how to hold meetings during the pandemic and the elimination of the audio recording requirements eliminates any unnecessary burdens.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this amendment would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that boards, committees and commissions can safely practice social distancing and eliminate any unnecessary contact with other individuals which may spread COVID-19 without having interruptions to the ability to hold a meeting and receive a stipend for that meeting.

An e-poll is necessary for this matter because the next Legislative Operating Committee meeting is scheduled for March 18, 2020, and immediate action is required by Legislative Operating Committee to approve the materials for the emergency adoption of amendments to the Boards, Committees, and Commissions law so the materials can be forwarded to the Oneida Business Committee for consideration during the March 17, 2020, special Oneida Business Committee meeting.

#### **REQUESTED ACTION**

To approve the following actions:

- Approve the Boards, Committees, and Commissions law emergency adoption packet and forward to the Oneida Business Committee for consideration;
- Approve the resolution "Amending Resolution BC-05-08-19-B Boards, Committees, and Commissions Law Stipends" and forward to the Oneida Business Committee for consideration.

#### **DEADLINE FOR RESPONSE**

March 16, 2020 at 1:15 p.m.

All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by Kirby Metoxen, Jennifer Webster, Ernest Stevens III, and Daniel Guzman King. David P. Jordan did not provide a response.



Mon 3/16/2020 12:17 PM

Kirby W. Metoxen

RE: E-POLL REQUEST: Materials for the Adoption of Emergency Amendments to the Boards, Committees, and Commissions Law

To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster

Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago

Approve



Mon 3/16/2020 12:22 PM Jennifer A. Webster

RE: E-POLL REQUEST: Materials for the Adoption of Emergency Amendments to the Boards, Committees, and Commissions Law

To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen

Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago

Approve, Jenny

Sent from my Samsung Galaxy smartphone



M-- 2 // 6 /2020 1-12 PM

Daniel P. Guzman

Re: E-POLL REQUEST: Materials for the Adoption of Emergency Amendments to the Boards, Committees, and Commissions Law

To Kirby W. Metoxen; David P. Jordan; LOC; Ernest L. Stevens; Jennifer A. Webster

Cc Jameson J. Wilson; Leyne C. Orosco; Clorissa N. Santiago; Rosa J. Laster; Jennifer A. Falck; Jessica L. Wallenfang; Fawn J. Billie

Approve

Sent from Workspace ONE Boxer



Mon 3/16/2020 1:05 PM

Ernest L. Stevens

Re: E-POLL REQUEST: Materials for the Adoption of Emergency Amendments to the Boards, Committees, and Commissions Law

To LOC; Daniel P. Guzman; David P. Jordan; Kirby W. Metoxen; Jennifer A. Webster

Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago

Approve

Sent from my Verizon, Samsung Galaxy smartphone Get <u>Outlook for Android</u>



### Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



TO:

Oneida Business Committee

FROM:

David P. Jordan, LOC Chairperson 📉

DATE:

March 17, 2020

RE:

Boards, Committees, and Commissions Law Emergency Amendments

Please find the following attached backup documentation for your consideration of the Boards, Committees, and Commissions Law Emergency Amendments:

- Resolution: Adoption of Emergency Amendments to the Boards, Committees, and Commissions Law to Address COVID-19 Pandemic Impacts Boards, Committees, and Commissions of the Nation
- 2. Statement of Effect: Adoption of Emergency Amendments to the Boards, Committees, and Commissions Law to Address COVID-19 Pandemic Impacts Boards, Committees, and Commissions of the Nation
- 3. Boards, Committees, and Commissions Law Emergency Amendments Legislative Analysis
- 4. Boards, Committees, and Commissions Law (Redline)
- 5. Boards, Committees, and Commissions Law (Clean)

#### Overview

Emergency amendments to the Boards, Committees, and Commission law (the "Law") are being sought to address the impact of the coronavirus disease (COVID-19) pandemic on the Nation's boards, committees, and commissions. The emergency amendments to the Law will:

- Eliminate the requirement that a member of a board, committee, or commission be physically present during the entirety of a meeting or joint meeting in order to be eligible to receive a meeting stipend [1 O.C. 105.13-3, 105.13-4];
- Provide that meetings and joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications [1 O.C. 105.13-3, 105.13-4];
- Revise how the limitation of stipend eligible meetings is calculated [1 O.C. 105.13-3(a)-(b)]; and
- Eliminate the requirement for boards, committees, and commissions to audio record meetings [1 O.C. 105.10-3(f)].

The world is currently facing a pandemic of COVID-19 after an outbreak began in Wuhan, China and quickly spread to many other countries throughout the world, including the United States. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. As of March 13, 2020, there were one thousand and six hundred and twenty-nine (1,629) cases reported throughout the United States, and eighteen (18) cases of positive tests in Wisconsin. The number of positive tests in Wisconsin,

as well as across the country, continue to increase. On March 12, 2020, in accordance with the Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency amendments to this Law are necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendments are needed to protect the Reservation population against the public health crisis that is the COVID-19 pandemic. Eliminating the requirement that a member of a board, committee, or commission of the Nation be physically present for the entirety of a meeting in order to be eligible for a stipend will eliminate any unnecessary contact between individuals which could spread the COVID-19, while ensuring that the boards, committees, and commissions could conduct business uninterrupted without losing the opportunity to collect a stipend. Adjusting how the limitation of stipend eligible meetings is calculated provides boards, committees, and commissions more flexibility in determining how to hold meetings during the pandemic and the elimination of the audio recording requirements eliminates any unnecessary burdens.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this amendment would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that boards, committees and commissions can safely practice social distancing and eliminate any unnecessary contact with other individuals which may spread COVID-19 without having interruptions to the ability to hold a meeting and receive a stipend for that meeting.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

#### **Requested Action**

Approve the Resolution: Adoption of Emergency Amendments to the Boards, Committees, and Commissions Law to Address COVID-19 Pandemic Impacts Boards, Committees, and Commissions of the Nation



# **Oneida Nation**

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

#### **BC** Resolution #

Adoption of Emergency Amendments to the Boards, Committees, and Commissions Law to Address COVID-19 Pandemic Impacts on Boards, Committees, and Commissions of the Nation

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 31 31 31 31 31 31 31 31 31 31 31 31	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and
	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
	WHEREAS,	the United States has identified multiple cases of COVID-19 after learning of the epidemic outbreak in Wuhan, China; and
	WHEREAS,	the President has created the White House Coronavirus Task Force to track the spread of the virus, identify solutions for reducing the spread of the virus, managing scarce resources, and identifying opportunities to improve testing, develop treatment and immunizations, and identify how to inform about and contain epidemics in the future; and
	WHEREAS,	the U.S. Congress has adopted legislation which devotes \$8.3 billion to fund the fight regarding COVID-19; and
	WHEREAS,	the World Health Organization has identified that the spread of COVID-19 is now a pandemic with many countries experience the effects of illness and health issues related to the virus and economic impacts; and
	WHEREAS,	Governor Evers has announced that he has signed Executive Order # 72 which declares a "Public Health Emergency in Response to the COVID-19 Coronavirus"; and
	WHEREAS,	on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" which sets into place the necessary authority should action need to be taken and allowing the Oneida Nation to seek reimbursement of emergency management actions that may result in unexpected expenses; and
	WHEREAS,	on March 13, 2020, there were 1,629 cases reported through the United States, and 18 cases of positive tests in Wisconsin; and
	WHEREAS,	<ul> <li>the CDC has issued the following precautions to avoid further spread of the virus: <i>Clean your hands often</i></li> <li>Wash your hands often with soap and water for at least 20 seconds especially after you have been in a public place, or after blowing your nose, coughing, or sneezing.</li> <li>If soap and water are not readily available, use a hand sanitizer that contains at least 60% alcohol. Cover all surfaces of your hands and rub them together until they feel dry.</li> <li>Avoid touching your eyes, nose, and mouth with unwashed hands.</li> </ul> Avoid close contact

Adoption of Emergency Amendments to the Boards, Committees, and Commissions Law to Address COVID-19 Pandemic Impacts on Boards, Committees, and Commissions of the Nation Page 2 of 2

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- Avoid close contact with people who are sick
- Put distance between yourself and other people if COVID-19 is spreading in your community. This is especially important for people who are at higher risk of getting very sick; and
- WHEREAS, the CDC has identified that the months of March, April and May should be the time when the potential for the highest increases in the number of confirmed cases would occur; and
- the emergency amendments to the Law is being sought to address the impact of COVID-WHEREAS, 19 on the Nation's boards, committees, and commissions; and
- the Legislative Procedures Act authorizes the Oneida Business Committee to enact WHEREAS. legislation on an emergency basis, to be in effect for a period of six (6) months, renewable for an additional six (6) months; and
- WHEREAS. emergency adoption of legislation is allowed when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act; and
- WHEREAS, the emergency adoption of these amendments to the Law are necessary for the preservation of the public health, safety, and general welfare of the Reservation population to protect the Reservation population against the public health crisis that is the COVID-19 pandemic: and
- WHEREAS, observance of the requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest since the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that boards, committees and commissions can safely practice social distancing and eliminate any unnecessary contact with other individuals which may spread COVID-19 without having interruptions to the ability to hold a meeting and receive a stipend for that meeting; and
- WHEREAS, the Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation; and
- NOW THEREFORE BE IT RESOLVED, the Oneida Business Committee adopts the emergency amendments outlined in the Boards, Committees, and Commissions law effective immediately.
- BE IT FINALLY RESOLVED, that the amended Boards, Committees, and Commissions law hereby supersedes any conflicting language that may be found in the bylaws of boards, committees, or commissions of the Nation.



# Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



#### **Statement of Effect**

Adoption of Emergency Amendments to the Boards, Committees, and Commissions Law to Address COVID-19 Pandemic Impacts on Boards, Committees, and Commissions of the Nation

#### **Summary**

This resolution adopts emergency amendments to the Boards, Committees, and Commissions law which address the COVID-19 pandemic's impact on the boards, committees, and commissions of the Nation.

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

Date: March 15, 2020

### Analysis by the Legislative Reference Office

This resolution adopts emergency amendments to the Boards, Committees, and Commissions law ("the Law"). The purpose of the Law is to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1]. The emergency amendments to the Law will:

- Eliminate the requirement that a member of a board, committee, or commission be physically present during the entirety of a meeting or joint meeting in order to be eligible to receive a meeting stipend [1 O.C. 105.13-3, 105.13-4];
- Provide that meetings and joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications [1 O.C. 105.13-3, 105.13-4];
- Revise how the limitation of stipend eligible meetings is calculated [1 O.C. 105.13-3(a)-(b)]; and
- Eliminate the requirement for boards, committees, and commissions to audio record meetings [1 O.C. 105.10-3(f)].

The Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [1 O.C. 109.9-5].

The resolution provides various information on the COVID-19 pandemic that the world is now facing. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. As of March 13, 2020, there were one thousand and six hundred and twenty-nine (1,629) cases reported throughout the United States, and eighteen (18) cases of positive tests in Wisconsin. The number of positive tests in Wisconsin, as well as across the country, continue to increase.

On March 12, 2020, in accordance with the Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

The resolution provides that the emergency amendments to this Law are necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendments are needed to protect the Reservation population against the public health crisis that is the COVID-19 pandemic. Eliminating the requirement that a member of a board, committee, or commission of the Nation be physically present for the entirety of a meeting in order to be eligible for a stipend will eliminate any unnecessary contact between individuals which could spread the COVID-19, while ensuring that the boards, committees, and commissions could conduct business uninterrupted without losing the opportunity to collect a stipend. Adjusting how the limitation of stipend eligible meetings is calculated provides boards, committees, and commissions more flexibility in determining how to hold meetings during the pandemic and the elimination of the audio recording requirements eliminates any unnecessary burdens.

Additionally, the resolution provides that observance of the requirements under the LPA for adoption of this amendment would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that boards, committees and commissions can safely practice social distancing and eliminate any unnecessary contact with other individuals which may spread COVID-19 without having interruptions to the ability to hold a meeting and receive a stipend for that meeting.

The resolution also provides clarification to the boards, committees, and commissions of the Nation through the statement that the amended Law supersedes any conflicting language that may be found in the bylaws of boards, committees, or commissions of the Nation.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

#### **Conclusion**

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





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#### SECTION 1. EXECUTIVE SUMMARY

	Analysis by the Legislative Reference Office
Intent of the	■ Eliminate the requirement that a member of a board, committee, or
Proposed	commission be physically present during the entirety of a meeting or joint
Amendments	meeting in order to be eligible to receive a meeting stipend;
	• Provide that meetings and joint meetings can occur in person, by telephone,
	through videoconferencing, or through other telecommunications;
	<ul> <li>Revise how the limitation of stipend eligible meetings is calculated; and</li> </ul>
	• Eliminate the requirement for boards, committees, and commissions to audio
	record meetings.
Purpose	To govern boards, committees, and commissions of the Nation, including the
	procedures regarding the appointment and election of persons to boards,
	committees and commissions, creation of bylaws, maintenance of official
	records, compensation, and other items related to boards, committees and
	commissions. [1 O.C. 105.1-1]
Affected Entities	Oneida Election Board, Oneida Gaming Commission, Oneida Land Claims
	Commission, Oneida Land Commission, Oneida Nation Commission on Aging
	(ONCOA), Oneida Nation School Board, Oneida Trust Enrollment Committee,
	Anna John Resident Centered Care Community Board, Oneida Community
	Library Board, Oneida Environmental Resource Board, Oneida Nation Arts
	Board, Oneida Personnel Commission, Oneida Police Commission, Oneida Pow
	Wow Committee, Oneida Nation Veterans Affairs Committee, Pardon and
	Forgiveness Screening Committee, Southeastern WI Oneida Tribal Services
	Advisory Board
<b>Public Meeting</b>	A public meeting is not required for emergency legislation [1 O.C. 109.8-1(b)
	and 109.9-5(a)].
Fiscal Impact	A fiscal impact statement is not required for emergency legislation [1 O.C.
	109.9-5(a)].
Expiration of	Emergency amendments expire six (6) months after adoption and may be
Emergency	renewed for one additional six (6) month period.
Amendments	

#### SECTION 2. LEGISLATIVE DEVELOPMENT

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- A. Background. The Boards, Committees, and Commissions law ("the Law") was first adopted by the Oneida Business Committee on August 2, 1995, and most recently amended on an emergency basis on March 11, 2020. The Law governs boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1]
- **B.** COVID-19 Pandemic. The world is currently facing a pandemic of the coronavirus disease 2019 9 (COVID-19). The COVID-19 outbreak originated in Wuhan, China and has spread to many other

countries throughout the world, including the United States. The World Health Organization has identified that the spread of COVID-19 is now a pandemic resulting in many countries experiencing the effects of illness and health issues related to COVID-19 and economic impacts. As of March 13, 2020, there were one thousand and six hundred and twenty-nine (1,629) cases reported throughout the United States, and eighteen (18) cases of positive tests in Wisconsin.

Declarations of Emergency.

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- Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" on March 12, 2020, regarding COVID-19 which sets into place the necessary authority should action need to be taken and allowing the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
- Governor Evers declared a public health emergency for the State of Wisconsin on March 12, 2020, based on COVID-19 cases in Wisconsin.
- President Trump declared a national emergency for the United States over the COVID-19 outbreak on March 13, 2020.
- Center of Disease Control Precautions. The Center of Disease Control has identified that March, April, and May should be the time when the potential for the highest increases in the number of confirmed cases would occur, and issued the following precautions to avoid further spread of COVID-19:
  - Clean your hands often.
    - Wash your hands often with soap and water for at least twenty (20) seconds especially after you have been in a public place, or after blowing your nose, coughing, or sneezing.
    - If soap and water are not readily available, use a hand sanitizer that contains at least sixty percent (60%) alcohol. Cover all surfaces of your hands and rub them together until they feel dry.
    - Avoid touching your eyes, nose, and mouth with unwashed hands.
  - Avoid close contact.
    - Avoid close contact with people who are sick
    - Put distance between yourself and other people if COVID-19 is spreading in your community. This is especially important for people who are at higher risk of getting very sick.
- **C.** In response to the COVID-19 pandemic, emergency amendments to the Law are being sought to address meeting and stipend requirements.
- **D.** Table 1 illustrates the various boards, committees, and commissions of the Nation this Law applies to. This Law does not apply to the Oneida Business Committee, standing committees of the Oneida Business Committee, corporate entities, or members of the Judiciary.

Table 1. Boards, Committees and Commissions of the Nation

ELECTED	APPOINTED
■ Oneida Election Board	<ul> <li>Anna John Resident Centered Care Community</li> </ul>
<ul> <li>Oneida Gaming Commission</li> </ul>	Board (AJRCC)
<ul> <li>Oneida Land Claims Commission</li> </ul>	<ul> <li>Oneida Community Library Board</li> </ul>
<ul> <li>Oneida Land Commission</li> </ul>	<ul> <li>Oneida Environmental Resource Board (ERB)</li> </ul>
<ul> <li>Oneida Nation Commission on</li> </ul>	<ul> <li>Oneida Nation Arts Board</li> </ul>
Aging (ONCOA)	<ul> <li>Oneida Personnel Commission</li> </ul>

<ul> <li>Oneida Nation School Board</li> </ul>	<ul> <li>Oneida Police Commission</li> </ul>
<ul> <li>Oneida Trust Enrollment</li> </ul>	<ul> <li>Oneida Pow Wow Committee</li> </ul>
Committee	Oneida Nation Veterans Affairs Committee
	(ONVAC)
	<ul> <li>Pardon and Forgiveness Screening Committee</li> </ul>
	<ul> <li>Southeastern WI Oneida Tribal Services Advisory</li> </ul>
	Board (SEOTS)

# SECTION 3. CONSULTATION AND OUTREACH

- **A.** Representatives from the following departments or entities participated in the development of this Law and legislative analysis:
  - Oneida Law Office.

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

- **A.** These amendments are being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency law "where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the Reservation population and enactment or amendment of legislation is required sooner than would be possible under this law" [1 O.C. 109.9-5].
  - Emergency amendments are being pursued for the immediate preservation of the public health, safety, and general welfare of the Reservation population against the public health crisis that is the COVID-19 pandemic. Chairman Tehassi Hill declared a public health state of emergency for the Nation on March 12, 2020. It is in the best interest of all members of boards, committees, and commissions of the Nation, as well as the general public, that social distancing is practiced and any unnecessary contact between individuals which could spread COVID-19 be eliminated.
  - Observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that boards, committees and commissions can safely practice social distancing without having interruptions to the ability to hold a meeting and receive a stipend for that meeting.
- **B.** The emergency amendments will expire six (6) months after adoption, with one (1) opportunity for a six (6) month extension of the emergency amendments. [1 O.C. 109.9-5(b)].
- **C.** The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact statement will eventually be required when considering permanent adoption of these amendments.
- **C.** The Legislative Operating Committee added these emergency amendments to the Active Files List on March 16, 2020.

#### SECTION 5. CONTENTS OF THE LEGISLATION

**A.** *Meetings Eligible for Stipends.* The proposed amendments eliminate the requirement that a member of a board, committee, or commission be physically present during the entirety of a meeting in order to be eligible to receive a meeting stipend. [1 O.C. 105.13-3]. The amendments also provide that meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications. [1 O.C. 105.13-3].

Effect. The proposed emergency amendments provide more flexibility to boards, committees, and commissions of the Nation in how they can hold meetings that are eligible for a stipend. Holding meetings by telephone, video conferencing, or other telecommunications will help eliminate any unnecessary contact between individuals which could spread the COVID-19, without disrupting the ability of a board, committee, and commission to conduct business and receive a stipend for the business they are conducting.

- **B.** Frequency of Meeting Stipends. The proposed amendments revise how many meetings a board, committee, or commission is eligible to receive a stipend for. The proposed amendments provide that a member of an appointed entity may be eligible for up to twelve (12) meeting stipends a year, while a member of an elected entity may be eligible for up to twenty-four (24) meeting stipends a year. [1 O.C. 105.13-3(a)-(b)]. Previously, the Law provided that an individual serving on an appointed entity shall be paid no more than one (1) meeting stipend per month, while an individual serving on an elected entity shall be paid no more than two (2) meeting stipends per month.
  - Effect. The proposed emergency amendments do not change the overall number of meetings a member of a board, committee, or commission may be eligible to receive per year. Providing the limitation on number of meetings that are eligible for a stipend per year instead of per month provides boards, committee, and commissions with more flexibility in determining when stipend eligible meetings should be held. The Legislative Operating Committee understands that the current COVID-19 pandemic might cause some boards, committees, and commissions to have to meet more frequently while other boards, committees, and commissions of the Nation might cease to meet until the COVID-19 pandemic is more under control.
- C. Joint Meetings Eligible for Stipends. The proposed amendments eliminate the requirement that a member of a board, committee, or commission be physically present during the entirety of a joint meeting with the Oneida Business Committee in order to be eligible to receive a joint meeting stipend. [1 O.C. 105.13-4]. The amendments also provide that joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications. [1 O.C. 105.13-4].
  - Effect. The proposed emergency amendments provide more flexibility to boards, committees, and commissions of the Nation in how they can hold joint meetings with the Oneida Business Committee that are eligible for a stipend. Holding joint meetings by telephone, video conferencing, or other telecommunications will help eliminate any unnecessary contact between individuals which could spread the COVID-19, without disrupting the ability of a board, committee, and commission to conduct a joint meeting with the Oneida Business Committee and receive a stipend for conducting that joint meeting.
  - The Oneida Business Committee adopted resolution BC-03-27-19-D titled, "Oneida Business Committee and Joint Meetings with Boards, Committees and Commissions Definitions and Impact" to set standard rules and understandings for joint meetings. Adoption of the proposed emergency amendments result in no conflict or impact on this resolution.
- **D.** Requirement to Audio Record Meetings. The proposed amendments eliminate the requirement that a board, committee, or commission of the Nation audio record all meetings. Previously, the Law required that all bylaws of a board, committee, or commission audio record all meetings and provide in their bylaws how the entity will accomplish the audio recording and how the entity shall maintain the audio records. [BC-03-11-20-B-1 O.C.105.10-3(f)(5)].
  - *Effect*. The requirement to audio record meetings was eliminated due to the fact that if in an effort to eliminate any unnecessary contact between individuals which could spread the COVID-19, the

boards, committees, or commissions hold their meetings over the phone, through a video conference, or through another source of telecommunications then audio recording the meeting may become difficult and burdensome. Boards, Committees, and Commissions of the Nation are still required to submit minutes to the Business Committee Support Office within a reasonable time after approval by an entity. [1 O.C. 102.12-1].

#### SECTION 6. EXISTING LEGISLATION

- **A.** *Related Legislation*. The following laws of the Nation are related to the emergency amendments to this Law:
  - Emergency Management and Homeland Security law. The Emergency Management and Homeland Security law provides for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; and provides for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; and establishes the use of the National Incident Management System; and designates authority and responsibilities for public health preparedness. [3 O.C. 302.1-1].
    - The Emergency Management and Homeland Security law provides that the Oneida Business Committee shall be responsible for proclaiming or ratifying the existence of an emergency. [3 O.C. 302.8-1]. A public health emergency is defined as the occurrence or imminent threat of an illness or health condition which:
      - (1) is a quarantinable disease, or is believed to be caused by bioterrorism or a biological agent; and
      - (2) poses a high probability of any of the following:
        - (A) a large number of deaths or serious or long-term disability among humans; or (B) widespread exposure to a biological, chemical, or radiological agent that creates a significant risk of substantial future harm to a large number of people. [3 O.C. 302.3-1(o)].
    - Chairman Tehassi Hill's March 12, 2020, "Declaration of Public Health State of Emergency" conform with the requirements of the Emergency Management and Homeland Security law.

#### SECTION 7. OTHER CONSIDERATIONS

- **A.** *Deadline for Permanent Adoption of Amendments.* The emergency amendments will expire six (6) months after adoption, with one (1) opportunity for an extension of an additional six (6) month period.
  - *Conclusion:* The Legislative Operating Committee will need to consider the development and adoption of permanent amendments to this Law within the next six (6) to twelve (12) months.
- **B.** Consideration of Additional Amendments. The emergency amendments are limited solely to addressing requirements of holding a meeting that is eligible for a stipend and the frequency of meeting stipends. However, there may be other areas of the Law that could benefit from further amendments. In 2019, the Legislative Reference Office completed a one (1) year review of the Boards, Committees and Commissions law. During this review, the Legislative Reference Office collected feedback from boards, committees and commissions for suggested amendments.
  - Conclusion: During development of permanent amendments to this law, the Legislative Operating Committee should review feedback received during the one (1) year review and consult with

- relevant boards, committees, commissions and the Business Committee Support Office to identify any additional amendments.
  - C. Updates to the Stipend Resolution. The Law requires that the Oneida Business Committee set stipend amounts by resolution. [1 O.C. 105.13-2]. On September 26, 2018, the Oneida Business Committee adopted resolution BC-09-26-18-D titled, "Boards, Committees, and Commissions Law Stipends" which set forth the specific stipend amounts allowed to be paid to a member of a board, committee, or commission. On May 8, 2019, the Oneida Business Committee adopted resolution BC-05-08-19-B titled, "Amending Resolution BC-09-26-18-D Boards, Committees, and Commissions Law Stipends' to allow the Oneida Nation School Board to be eligible to receive a stipend for participating in interviews and/or job description prescreens. Based on the proposed emergency amendments, revisions to resolution BC-05-08-19-B will have to be made to reflect the new proposal how addressing the limitation of meeting stipends.
    - Conclusion. The Legislative Operating Committee should consider bringing an amended stipend
      resolution for consideration when the Legislative Operating Committee presents the emergency
      amendments to the Oneida Business Committee for consideration.
  - **D.** *Fiscal Impact*. A fiscal impact statement is not required for emergency legislation.
    - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

## Draft 1 for OBC Emergency Consideration (Redline to Current) 2020 03 17

# Title 1. Government and Finances – Chapter 105 Laotiyanl<hsla>sh&ha k<tyohkway<=t&=se> Their laws of the groups we have

# Their laws of the groups we have **BOARDS, COMMITTEES, AND COMMISSIONS**

105.1. Purpose and Policy	105.10. Bylaws
105.2. Adoption, Amendment, Repeal	105.11 Electronic Polling
105.3. Definitions	105.12. Reporting Requirements
105.4. Creation of an Entity	105.13. Stipends, Reimbursement and Compensation
105.5. Applications	105.14. Confidential Information
105.6. Vacancies	105.15. Conflicts of Interest
105.7. Appointment to an Entity	105.16. Use of the Nation's Assets
105.8. Election to an Entity	105.17. Dissolution of an Entity
105.9. Oath of Office	105.18. Enforcement

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# 105.1. Purpose and Policy

105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

- (a) This law shall not apply to the Oneida Business Committee, or Standing Committees of the Oneida Business Committee.
- (b) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.
- 105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

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#### 105.2. Adoption, Amendment, Repeal

- 105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C, and BC-03-11-20-
- 19 B<sub>-</sub>, and emergency amended by BC- - -
- 20 105.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 22 105.2-3. Should a provision of this law or the application thereof to any person or circumstances
- be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.
- 105.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
  - 105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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## 105.3. Definitions

- 105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Application" means the form by which a person seeks to be appointed to fill a vacancy

on an entity.

- (b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.
- (c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
- (d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.
- (e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.
- (f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.
- (g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.
- (h) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.
- (i) "E-poll" means an electronic poll, which is the act of delivering an e-mail to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.
- (i) "Joint meeting" means a meeting with the Oneida Business Committee.
- (k) "Nation" means the Oneida Nation.
- (l) "Per Diem" means the payment made by the Nation to offset the costs of being on travel on behalf of the Oneida Nation.
- (m) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member's daily activities and operations.
- (n) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.
- (o) "Stipend" means the amount paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or

- her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation.
  - (p) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.
  - (q) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by clear and convincing evidence.
  - (r) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.
  - (s) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

# 105.4. Creation of an Entity

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- 92 105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida 93 Business Committee or General Tribal Council.
- 94 105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.
- 96 105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

### 105.5. Applications

- 105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.
  - (a) All applications shall include:
    - (1) a statement explaining the attendance requirements of section 105.12-3; and
    - (2) a section regarding disclosures of conflicts of interest.
  - (b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.
- 112 105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date.
- 114 105.5-3. Within eight (8) days after the posted deadline for filing applications the Business
- 115 Committee Support Office shall notify all persons who have filed an application of the date his or
- her application was received and if his or her application met the deadline to be considered for the
- election or appointment.
- 118 105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or
- policies governing elections. Applications for appointed positions shall be verified by the Business
- 120 Committee Support Office as needed or as required in the bylaws of the entity.

- 121 105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Oneida Business Committee may elect to:
  - (a) include within the pool of appointed persons late applications, or
  - (b) repost for an additional time period. In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.

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#### 105.6. Vacancies

- 105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.
- 105.6-2. A position on an entity shall be considered vacant in the following situations:
  - (a) *End of Term.* A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.
    - (1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.
  - (b) *Removal*. Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.
  - (c) *Termination of Appointment*. A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.
  - (d) Resignation. A resignation is effective upon:
    - (1) Deliverance of a letter to the Business Committee Support Office and to the Chairperson of the entity, or designee; or
    - (2) Acceptance by motion of the entity of a verbal resignation.
  - (e) New Positions. Vacancies on new entities are effective upon adoption of bylaws.
- 105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.
- 105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The Business Committee Support Office shall post notice of vacancies at the following times:
  - (a) End of Term. Automatically sixty (60) days prior to completion of the term.
  - (b) *Removal*. No later than the next Oneida Business Committee meeting following the effective date of the removal.
  - (c) *Resignation*. No later than the next Oneida Business Committee meeting following the Business Committee Support Office's receipt of notice of an effective resignation from the entity.
  - (d) New Positions. Upon one of the following conditions:
    - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or

- (2) upon date specified when creating the entity.
- (e) *Termination of appointment*. No later than the next Oneida Business Committee meeting following the effective date of the termination.
- 105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

### 105.7. Appointment to an Entity

- 105.7-1. *Appointment Selection*. The following procedures shall be used to determine how the applicant for an appointed position is selected:
  - (a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
    - (1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and
    - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made.
  - (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
    - (1) The entity's Chairperson may have until the executive session to review the application materials and provide the Oneida Business Committee a recommendation of an applicant for appointment.
  - (c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:
    - (1) choose an applicant for appointment, or
    - (2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.
  - (d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.
  - (e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:
    - (1) accept the selected applicant and vote to appoint the individual to the vacant position, or
    - (2) reject the selected applicant and vote to oppose the appointment of the

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209 individual. (f) If the Oneida Business Committee rejects the selected applicant, the matter will be 210 deferred to the next Oneida Business Committee meeting where another applicant may be 211 212 recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all 213 applications from the first posting shall be considered to have been filed within the deadline 214 period. 215 105.7-2. *Notification of Appointment*. Once an individual is selected for appointment at an Oneida 216 217 Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status 218 of their application. 219 (a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary 220 and the final decision regarding the selection after the procedures for selection of an 221 applicant described in section 105.7-1 are completed. 222 (b) The Nation's Secretary shall include on the notice to the applicant selected for 223 appointment the following paragraph: "The Oneida Nation reports all income paid by the 224 Oneida Nation in whatever form. The Internal Revenue Service of the United States 225 considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report 226 227 which is also forwarded to the Internal Revenue Service, it is also your responsibility to 228 keep documentation of expenses related to this income." 229 105.7-3. Declination of Appointment. An individual who has been selected for appointment to an 230 entity by the Oneida Business Committee may decline the appointment. (a) An individual may decline an appointment to an entity in the following ways: 231 232 Delivery of an letter stating that the individual wishes to decline the 233 appointment to the Business Committee Support Office; or 234 (2) The failure to take the oath of office within thirty (30) days of being selected 235 for appointment by the Oneida Business Committee. 236 (b) The Business Committee Support Office shall notify the Oneida Business Committee 237 if an individual declines an appointment to an entity. The Oneida Business Committee shall 238 then use the original pool of applications for the vacancy posting and the process outlined 239 in section 105.7-1 to select another applicant for appointment. 240 105.7-4. Termination of Appointment. An appointed member of an entity serves at the discretion 241 of the Oneida Business Committee. Upon the recommendation of a member of the Oneida 242 Business Committee or the entity, a member of an appointed entity may have his or her 243 appointment terminated by the Oneida Business Committee. 244 (a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual. 245

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not subject to appeal.

(b) The Oneida Business Committee's decision to terminate an appointment is final and

# **105.8. Election to an Entity**

105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or petitionapply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.

(a) When the Election Board notifies a petitioneran applicant or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: "The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

#### 105.9. Oath of Office

105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.

- (a) The appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.
- 105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.
- 105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded to the new member of the entity and the entity.
- 105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will carry out the duties and responsibilities as a member of the [entity name], and all recommendations shall be made in the best interest of the Oneida Nation as a whole.
- 286 105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware of their duty to the Nation and as members of the entity.

#### 105.10. Bylaws

105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.

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293 (a) All existing entities must comply with this format and present bylaws for adoption 294 within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law. 295 296 (b) Bylaws must contain at least the minimum information required by law, although more 297 information is not prohibited. 298 (c) Exception. Task Forces and Ad Hoc Committees are excepted from the requirement 299 to have bylaws. However, these entities must have, at minimum, mission or goal 300 statements for completion of the task. 301 105.10-2. Articles. Bylaws shall contain, at a minimum, the following Articles: 302 (a) Article I. Authority. 303 (b) Article II. Officers. 304 (c) Article III. Meetings. 305 (d) Article IV. Expectations. 306 (e) Article V. Stipends and Compensation. 307 (f) Article VI. Records and Reporting. 308 (g) Article VII. Amendments. 309 105.10-3. Sections. Articles shall be divided into "sections" as set out. (a) "Article I. Authority" shall consist of the following: 310 311 (1) Name. The full name of the entity shall be stated, along with any short name 312 that will be officially used. 313 (2) Establishment. This section shall state the citation and name, if any, of the 314 creation document. 315 (3) Authority. This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated. 316 (4) Office. There shall be listed the official office or post box of the entity. 317 318 (5) *Membership*. The following information shall be in this section: (A) Number of members on the entity: 319 (B) If members on the entity are elected or appointed, and how a member 320 is elected or appointed; 321 (C) How vacancies are filled; and 322 (D) Qualifications for membership on the entity. 323 324 (i) In order to qualify for membership on an entity, a person shall meet the minimum age requirements set forth for status as a 325 326 qualified voter of the Nation, unless a law, policy, or directive sets 327 forth a minimum age requirement. (6) Termination or Removal. This section shall identify causes for termination or 328 removal, if any, in addition to those already identified in laws and/or policies of the 329 330 331 (7) Trainings and Conferences. This section shall describe any trainings and/or 332 conferences that the entity deems necessary for members to responsibly serve the 333 entity, if any. (b) "Article II. Officers" shall consist of the following: 334 (1) Chairperson and Vice-Chairperson. This section creates the chairperson and 335

vice-chairperson positions of the entity. Other officer positions may also be created

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(2) Responsibilities of the Chairperson. Because of the importance of this position,

all duties and responsibilities of the chairperson, as well as limitations of the

(3) Responsibilities of the Vice-Chairperson. Because of the importance of this position, all duties and responsibilities of the vice-chairperson, as well as

chairperson shall be specifically listed here.

343	limitations of the vice-chairperson shall be specifically listed here.
344	(4) Responsibilities of Additional Officers. There may be additional sections as
345	needed for every officer position created in subsection one (1) above. These
346	sections shall state all duties and responsibilities of the officer, as well as any
347	limitations of the officer.
348	(5) Selection of Officers. This section shall identify how a member of the entity
349	shall be selected for an official officer position in the entity.
350	(6) Budgetary Sign-Off Authority and Travel. This section shall identify the
351	entity's varying levels of budgetary sign-off authority, the members that are
352	authorized to sign-off at each level, and how the entity shall handle approving travel
353	on behalf of the entity.
354	(A) An entity shall follow the Nation's policies and procedures regarding
355	purchasing and sign-off authority.
356	(B) An entity shall approve a member's request to travel on behalf of the
357	entity by majority vote at a regular or emergency meeting of the entity.
358	(7) Personnel. This section shall state the entity's authority for hiring personnel,
359	if any, and the duties of such personnel.
360	(c) "Article III. Meetings" shall consist of the following:
361	(1) Regular meetings. This section shall identify when and where regular meetings
362	shall be held, and how the entity shall provide notice of the meeting agenda,
363	documents, and minutes.
364	(2) <i>Emergency meetings</i> . This section shall identify what constitutes an emergency
365	meeting, how emergency meetings shall be called, and how the entity shall provide
366	notice of the emergency meeting.
367	(A) All bylaws shall include a provision requiring that within seventy-two
368	(72) hours after an emergency meeting, the entity shall provide the Nation's
369	Secretary with notice of the meeting, the reason for the emergency meeting,
370	and an explanation of why the matter could not wait for a regular meeting.
371	(3) Joint Meetings. This section shall identify if joint meetings shall be held, the
372	frequency and location of joint meetings, and how the entity shall provide notice of
373	the meeting agenda, documents, and minutes.
374	(4) Quorum. This section shall identify how many members of an entity create a
375	quorum.
376	(5) Order of Business. This section sets out how the agenda will be set up.
377	(6) Voting. This section shall identify voting requirements, such as, but not limited
378	to:
379	(A) the percentages that shall be needed to pass different items;
380	(B) if, and when, the chairperson is allowed to vote;
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- 381 (C) if the use of an e-poll is permissible; and 382 (D) if the use of and e-poll is permissible, who will serve as the Chairperson's designee for the responsibility of conducting an e-poll, if a 383 384 designee is utilized. 385 386 387 and requirements of a member of the entity, and identify how the entity shall enforce these behavioral expectations. 388 389 390 391 392 393 394 395 396 alcohol. 397 media in regards to official business of the entity. 398 399 400 401 402 403 alleviate or mitigate the conflict of interest. 404 405 406 any in addition to those contained in this law. 407 408 409 410 411 412 identified by this section. 413 414 415 416 417 418 Business Committee Support Office. 419 420 421 identify how records of attachments shall be kept. 422 423 424
  - (d) "Article IV. Expectations" shall consist of the following information: (1) Behavior of Members. This section shall identify the behavioral expectations
    - (2) Prohibition of Violence. This section shall prohibit any violent intentional act committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property, and set forth any further expectations regarding the prohibition of violence.
    - (3) Drug and Alcohol Use. This section shall prohibit the use of alcohol and prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and
    - (4) Social Media. This section shall identify expectations for the use of social
    - (5) Conflict of Interest. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities resulting from disclosed conflicts of interest, and means by which a party can
  - (e) "Article V. Stipends and Compensation" shall consist of the following information:
    - (1) Stipends. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if
    - (2) Compensation. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.
  - (f) "Article VI. Records and Reporting" shall consist of the following information:
    - (1) Agenda Items. Agenda items shall be maintained in a consistent format as
    - (2) *Minutes*. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the
    - (3) Attachments. Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented. This section shall
    - (4) Oneida Business Committee Liaison. Entities shall regularly communicate with the Oneida Business Committee member who is their designated liaison. This

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section shall identify a format and frequency for communication which may be as the liaison and entity agree to, but not less than that required in any law or policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. The purpose of the liaison relationship is to uphold the ability of the liaison to act as a support to that entity.

(5) Audio Recordings. An entity shall audio record all meetings. This section shall state how the entity shall audio record meetings, and how the entity shall maintain the audio records.

(A) Exception. Audio recordings of executive session portions of a meeting shall not be required.

- (g) "Article VII. Amendments" consists of:
  - (1) Amendments to Bylaws. This section shall describe how amendments to the bylaws are made. Any amendments to bylaws shall conform to the requirements of this and any other policy of the Nation. Amendments to bylaws shall be approved by the Oneida Business Committee, in addition to the General Tribal Council when applicable, prior to implementation.

#### 105.11. Electronic Polling

- 105.11-1. An entity may utilize an e-poll when approval of an action may be required before the next available meeting agenda of the entity.
- 105.11-2. *Conducting an E-Poll*. The Chairperson of the entity, or designee, shall e-mail the e-poll to all members of the entity. Requests for an e-poll shall be sent only from an official e-mail address of the entity. The e-poll's message shall include the following information:
  - (a) The e-mail subject line shall begin with "E-poll Request:" and include a short title describing the purpose of the request.
  - (b) The body of the e-poll shall contain the following elements:
    - (1) An executive summary of the reason for the request and why the request cannot be presented at the next available meeting of the entity;
    - (2) A proposed motion which shall be in bold and identified in a separate paragraph by the words "Requested Action;"
    - (3) All attachments in \*.pdf format, which are necessary to understand the request being made; and
    - (4) A deadline date for a response to be returned regarding the results of the electronic poll which shall be in bold and identified in a separate paragraph by the words "Deadline for Response."
      - (A) E-poll requests shall be open for response not less than one (1) hour and no more than twenty-four (24) hours.
      - (B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.
- 105.11-3. *Response to an E-Poll*. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.

- (a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.
- 471 (b) E-polls for which insufficient responses were received by the deadline are considered
- to have failed to receive support, and result in a denied request.

  (c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.
  - (d) The Chairperson, or designee, shall monitor all responses and deadline dates for responses.
  - 105.11-4. *Entering an E-Poll in the Record*. Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:
    - (a) Original e-poll request and all supporting documentation;
    - (b) A summary of the e-poll results identifying each member of the entity and his or her response; and
    - (c) A copy of any comment by a member of the entity if comments are made beyond a vote.

## **105.12.** Reporting Requirements

- 105.12-1. *Minutes*. All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.
  - (a) Actions taken by an entity are valid upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.
  - (b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.
  - (c) No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.
- 105.12-2. *Standard Operating Procedures*. All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.
- 105.12-3. Quarterly Reports to the Oneida Business Committee. Entities shall provide quarterly reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:
  - (a) *Contact Information*. The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.
  - (b) *Meetings*. When and how often the entity is holding meetings and whether any emergency meetings have been held.
    - (1) If emergency meetings were held, the report shall indicate the basis of the

513 emergency for each meeting.

- (c) *Accomplishments*. Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.
- (d) Goals. Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.
- (e) *Budget*. The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.
- (f) Requests. Details of any requests to the Oneida Business Committee.
- (g) *Other*. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.
- 105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.
  - (a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.
  - (b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.
- 105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

# 105.13. Stipends, Reimbursement and Compensation

- 105.13-1. Stipends and reimbursement for expenses shall follow the procedures as set out in this section and according to procedures for payment as set out by the Nation, unless otherwise declined by the entity through its bylaws, or declined by a member.
- 105.13-2. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending the resolution. Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards. 105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than one (1<u>twelve (12</u>) meeting <u>stipendstipends</u> per <u>monthyear</u>.
  - (b) *Meeting Stipends for an Elected Entity*. An individual serving on an elected entity shall be paid no more than two (2twenty-four (24) meeting stipends per monthyear.
- 105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically

- (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
  - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
- 105.13-5. *Oneida Judiciary Hearings*. A member of an entity shall receive a Judiciary hearing stipend if the member's attendance at the Judiciary hearing is required by official subpoena.
- 105.13-6. *Hearings of an Entity*. A member of an entity that maintains hearing authority may obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.
- 570 105.13-7. *Other Stipends*. The Oneida Business Committee shall determine if, and when, any 571 other stipends are appropriate to compensate members of entities for their official actions. All 572 possible stipends shall be included in the Oneida Business Committee resolution which sets stipend 573 amounts.
  - 105.13-8. *Conferences and Training*. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:
    - (a) A member shall be eligible for a stipend for each full day the member is present at the conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
    - (b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.
    - (c) No stipend payments shall be made for those days spent traveling to and from the conference or training.
  - 105.13-9. *Business Expenses*. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.
  - 105.13-10. *Task Force and Ad Hoc Subcommittees*. Members of task force, ad hoc committees and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

#### 105.14. Confidential Information

- 105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order to protect the interest of the Nation and ensure that no persons engaged in by the Nation, nor their relatives or associates, benefit from the use of confidential information.
  - (a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.
  - (b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or

other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Nation and the entity.

(c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.

- (d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.
- 105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and can only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents must be made in accordance with the Nation's laws and policies regarding open records and open meetings.
- 105.14-3. *Official Oneida Nation E-mail Address*. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
  - (a) If a member is also an employee of the Nation, he or she shall receive a separate email address from his or her regular work e-mail address.
  - (b) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
  - (c) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.
  - (d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

#### 105.15. Conflicts of Interest

- 105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.
- 105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises, and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.
  - (a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action must be taken by the Nation regarding the status of the official.
- 105.15-3. *Ineligibility Due to Conflicts of Interest*. Due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed or elected entity:
  - (a) political appointees; and
  - (b) an employee of the Nation's Internal Audit Department, Finance Administration, or

645 Law Office.

#### 105.16. Use of the Nation's Assets

- 105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.
- 105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:
  - (a) all transactions are executed in accordance with management's authorization; and
  - (b) access to assets is permitted only in accordance with management's authorization; and
  - (c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.
- 105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

## 105.17. Dissolution of an Entity

- 105.17-1. *Dissolution of a Task Force or Ad Hoc Committee*. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.
- 105.17-2. *Dissolution of an Entity*. All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee.
- 669 105.17-3. *Notice of Dissolution*. Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida Business Committee shall provide the entity written notice of the dissolution.
  - 105.17-4. *Management of Records and Materials*. All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.
    - (a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

#### 105.18. Enforcement

- 105.18-1. Any member of an entity found to be in violation of this law may be subject to:
  - (a) sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;
  - (b) removal pursuant to any laws or policies of the Nation's governing removal, if the individual is a member of an elected entity; or
  - (c) termination of appointment by the Oneida Business Committee, if the individual is a

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689	member of an appointed entity.
690	End.
69½ 693 694 695 696 697 698 699	Adopted - BC-08-02-95-A Amended - BC-05-14-97-F Emergency Amended - BC-04-12-06-JJ Amended - BC-09-27-06-E (permanent adoption of emergency amendments) Amended - BC-09-22-10-C Amended - BC-09-26-18-C
700	Emergency Amended – BC-03-11-20-B
701	Emergency Amended – BC
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#### Title 1. Government and Finances – Chapter 105 Laotiyanl<hsla>sh&ha k<tyohkway<=t&=se> Their laws of the groups we have

#### **BOARDS, COMMITTEES, AND COMMISSIONS**

105.1. Purpose and Policy	105.10. Bylaws
105.2. Adoption, Amendment, Repeal	105.11 Electronic Polling
105.3. Definitions	105.12. Reporting Requirements
105.4. Creation of an Entity	105.13. Stipends, Reimbursement and Compensation
105.5. Applications	105.14. Confidential Information
105.6. Vacancies	105.15. Conflicts of Interest
105.7. Appointment to an Entity	105.16. Use of the Nation's Assets
105.8. Election to an Entity	105.17. Dissolution of an Entity
105.9. Oath of Office	105.18. Enforcement

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# 105.1. Purpose and Policy

- 105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.
  - (a) This law shall not apply to the Oneida Business Committee, or Standing Committees of the Oneida Business Committee.
  - (b) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.
- 105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

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#### 105.2. Adoption, Amendment, Repeal

- 17 105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C, BC-03-11-20-B, 18 and emergency amended by BC-\_\_-\_\_. 19
- 20 105.2-2. This law may be amended or repealed by the Oneida Business Committee or the General 21 Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 22 105.2-3. Should a provision of this law or the application thereof to any person or circumstances
- 23 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
- 24 to have legal force without the invalid portions.
- 25 105.2-4. In the event of a conflict between a provision of this law and a provision of another law, 26 the provisions of this law shall control.
- 27 105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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#### 105.3. Definitions

- 105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Application" means the form by which a person seeks to be appointed to fill a vacancy

on an entity.

- (b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.
- (c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
- (d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.
- (e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.
- (f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.
- (g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.
- (h) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.
- (i) "E-poll" means an electronic poll, which is the act of delivering an e-mail to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.
- (i) "Joint meeting" means a meeting with the Oneida Business Committee.
- (k) "Nation" means the Oneida Nation.
- (l) "Per Diem" means the payment made by the Nation to offset the costs of being on travel on behalf of the Oneida Nation.
- (m) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member's daily activities and operations.
- (n) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.
- (o) "Stipend" means the amount paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or

- her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation.
  - (p) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.
  - (q) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by clear and convincing evidence.
  - (r) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.
  - (s) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

### 105.4. Creation of an Entity

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- 92 105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida 93 Business Committee or General Tribal Council.
- 94 105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.
- 96 105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

### 105.5. Applications

- 105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.
  - (a) All applications shall include:
    - (1) a statement explaining the attendance requirements of section 105.12-3; and
    - (2) a section regarding disclosures of conflicts of interest.
  - (b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.
- 105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date.
- 114 105.5-3. Within eight (8) days after the posted deadline for filing applications the Business
- 115 Committee Support Office shall notify all persons who have filed an application of the date his or
- her application was received and if his or her application met the deadline to be considered for the
- election or appointment.
- 118 105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or
- policies governing elections. Applications for appointed positions shall be verified by the Business
- 120 Committee Support Office as needed or as required in the bylaws of the entity.

- 121 105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Oneida Business Committee may elect to:
  - (a) include within the pool of appointed persons late applications, or
  - (b) repost for an additional time period. In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.

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#### 105.6. Vacancies

- 105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.
- 105.6-2. A position on an entity shall be considered vacant in the following situations:
  - (a) *End of Term*. A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.
    - (1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.
  - (b) *Removal*. Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.
  - (c) *Termination of Appointment*. A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.
  - (d) Resignation. A resignation is effective upon:
    - (1) Deliverance of a letter to the Business Committee Support Office and to the Chairperson of the entity, or designee; or
    - (2) Acceptance by motion of the entity of a verbal resignation.
  - (e) New Positions. Vacancies on new entities are effective upon adoption of bylaws.
- 105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.
- 105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The Business Committee Support Office shall post notice of vacancies at the following times:
  - (a) End of Term. Automatically sixty (60) days prior to completion of the term.
  - (b) *Removal*. No later than the next Oneida Business Committee meeting following the effective date of the removal.
  - (c) *Resignation*. No later than the next Oneida Business Committee meeting following the Business Committee Support Office's receipt of notice of an effective resignation from the entity.
  - (d) New Positions. Upon one of the following conditions:
    - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or

(2) upon date specified when creating the entity.

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(e) Termination of appointment. No later than the next Oneida Business Committee meeting following the effective date of the termination.

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105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

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# 105.7. Appointment to an Entity

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105.7-1. Appointment Selection. The following procedures shall be used to determine how the applicant for an appointed position is selected:

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(a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:

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(1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and

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(2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made.

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(b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.

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(1) The entity's Chairperson may have until the executive session to review the application materials and provide the Oneida Business Committee a recommendation of an applicant for appointment.

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(c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:

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(1) choose an applicant for appointment, or

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ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants. (d) All appointments shall be made by the Oneida Business Committee during the open

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session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.

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(e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:

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(1) accept the selected applicant and vote to appoint the individual to the vacant position, or

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(2) reject the selected applicant and vote to oppose the appointment of the individual.

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(f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.

- 105.7-2. *Notification of Appointment*. Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.
  - (a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.
  - (b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: "The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."
- 105.7-3. *Declination of Appointment*. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.
  - (a) An individual may decline an appointment to an entity in the following ways:
    - (1) Delivery of an letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or
    - (2) The failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee.
  - (b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined in section 105.7-1 to select another applicant for appointment.
- 105.7-4. *Termination of Appointment*. An appointed member of an entity serves at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.
  - (a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.
  - (b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

# **105.8. Election to an Entity**

- 105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or apply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.
  - (a) When the Election Board notifies an applicant or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: "The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."
- 105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

#### 105.9. Oath of Office

- 105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.
  - (a) The appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.
- 105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.
- 105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded to the new member of the entity and the entity.
- 105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will carry out the duties and responsibilities as a member of the [entity name], and all recommendations shall be made in the best interest of the Oneida Nation as a whole.
- 105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware of their duty to the Nation and as members of the entity.

#### 105.10. Bylaws

- 105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.
  - (a) All existing entities must comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after

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292	adoption of this law.
293	(b) Bylaws must contain at least the minimum information required by law, although more
294	information is not prohibited.
295	(c) Exception. Task Forces and Ad Hoc Committees are excepted from the requirement
296	to have bylaws. However, these entities must have, at minimum, mission or goal
297	statements for completion of the task.
298	105.10-2. Articles. Bylaws shall contain, at a minimum, the following Articles:
299	(a) Article I. Authority.
300	(b) Article II. Officers.
301	(c) Article III. Meetings.
302	(d) Article IV. Expectations.
303	(e) Article V. Stipends and Compensation.
304	(f) Article VI. Records and Reporting.
305	(g) Article VII. Amendments.
306	105.10-3. Sections. Articles shall be divided into "sections" as set out.
307	(a) "Article I. Authority" shall consist of the following:
308	(1) Name. The full name of the entity shall be stated, along with any short name
309	that will be officially used.
310	(2) Establishment. This section shall state the citation and name, if any, of the
311	creation document.
312	(3) Authority. This section shall state the purpose for which the entity was created
313	and what, if any, authority the entity is delegated.
314	(4) Office. There shall be listed the official office or post box of the entity.
315	(5) <i>Membership</i> . The following information shall be in this section:
316	(A) Number of members on the entity;
317	(B) If members on the entity are elected or appointed, and how a member
318	is elected or appointed;
319	(C) How vacancies are filled; and
320	(D) Qualifications for membership on the entity.
321	(i) In order to qualify for membership on an entity, a person shall
322	meet the minimum age requirements set forth for status as a
323	qualified voter of the Nation, unless a law, policy, or directive sets
324	forth a minimum age requirement.
325	(6) Termination or Removal. This section shall identify causes for termination or
326	removal, if any, in addition to those already identified in laws and/or policies of the
327	Nation.
328	(7) Trainings and Conferences. This section shall describe any trainings and/or
329	conferences that the entity deems necessary for members to responsibly serve the
330	entity, if any.
331	(b) "Article II. Officers" shall consist of the following:
332	(1) Chairperson and Vice-Chairperson. This section creates the chairperson and
333	vice-chairperson positions of the entity. Other officer positions may also be created
334	here.
335	(2) Responsibilities of the Chairperson. Because of the importance of this position,
	1 O.C. 105 – Page 8

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- all duties and responsibilities of the chairperson, as well as limitations of the chairperson shall be specifically listed here.
- (3) Responsibilities of the Vice-Chairperson. Because of the importance of this position, all duties and responsibilities of the vice-chairperson, as well as limitations of the vice-chairperson shall be specifically listed here.
- (4) Responsibilities of Additional Officers. There may be additional sections as needed for every officer position created in subsection one (1) above. These sections shall state all duties and responsibilities of the officer, as well as any limitations of the officer.
- (5) Selection of Officers. This section shall identify how a member of the entity shall be selected for an official officer position in the entity.
- (6) Budgetary Sign-Off Authority and Travel. This section shall identify the entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and how the entity shall handle approving travel on behalf of the entity.
  - (A) An entity shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.
  - (B) An entity shall approve a member's request to travel on behalf of the entity by majority vote at a regular or emergency meeting of the entity.
- (7) *Personnel*. This section shall state the entity's authority for hiring personnel, if any, and the duties of such personnel.
- (c) "Article III. Meetings" shall consist of the following:
  - (1) Regular meetings. This section shall identify when and where regular meetings shall be held, and how the entity shall provide notice of the meeting agenda, documents, and minutes.
  - (2) *Emergency meetings*. This section shall identify what constitutes an emergency meeting, how emergency meetings shall be called, and how the entity shall provide notice of the emergency meeting.
    - (A) All bylaws shall include a provision requiring that within seventy-two (72) hours after an emergency meeting, the entity shall provide the Nation's Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular meeting.
  - (3) *Joint Meetings*. This section shall identify if joint meetings shall be held, the frequency and location of joint meetings, and how the entity shall provide notice of the meeting agenda, documents, and minutes.
  - (4) *Quorum*. This section shall identify how many members of an entity create a quorum.
  - (5) Order of Business. This section sets out how the agenda will be set up.
  - (6) *Voting*. This section shall identify voting requirements, such as, but not limited to:
    - (A) the percentages that shall be needed to pass different items;
    - (B) if, and when, the chairperson is allowed to vote;
    - (C) if the use of an e-poll is permissible; and
    - (D) if the use of and e-poll is permissible, who will serve as the

Chairperson's designee for the responsibility of conducting an e-poll, if a designee is utilized.

- (d) "Article IV. Expectations" shall consist of the following information:
  - (1) Behavior of Members. This section shall identify the behavioral expectations and requirements of a member of the entity, and identify how the entity shall enforce these behavioral expectations.
  - (2) *Prohibition of Violence*. This section shall prohibit any violent intentional act committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property, and set forth any further expectations regarding the prohibition of violence.
  - (3) Drug and Alcohol Use. This section shall prohibit the use of alcohol and prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and alcohol.
  - (4) *Social Media*. This section shall identify expectations for the use of social media in regards to official business of the entity.
  - (5) Conflict of Interest. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities resulting from disclosed conflicts of interest, and means by which a party can alleviate or mitigate the conflict of interest.
- (e) "Article V. Stipends and Compensation" shall consist of the following information:
  - (1) *Stipends*. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.
  - (2) Compensation. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.
- (f) "Article VI. Records and Reporting" shall consist of the following information:
  - (1) Agenda Items. Agenda items shall be maintained in a consistent format as identified by this section.
  - (2) *Minutes*. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the Business Committee Support Office.
  - (3) Attachments. Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented. This section shall identify how records of attachments shall be kept.
  - (4) Oneida Business Committee Liaison. Entities shall regularly communicate with the Oneida Business Committee member who is their designated liaison. This section shall identify a format and frequency for communication which may be as the liaison and entity agree to, but not less than that required in any law or policy

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on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. The purpose of the liaison relationship is to uphold the ability of the liaison to act as a support to that entity.

(g) "Article VII. Amendments" consists of:

(1) Amendments to Bylaws. This section shall describe how amendments to the bylaws are made. Any amendments to bylaws shall conform to the requirements of this and any other policy of the Nation. Amendments to bylaws shall be approved by the Oneida Business Committee, in addition to the General Tribal Council when applicable, prior to implementation.

#### **105.11. Electronic Polling**

105.11-1. An entity may utilize an e-poll when approval of an action may be required before the next available meeting agenda of the entity.

105.11-2. *Conducting an E-Poll*. The Chairperson of the entity, or designee, shall e-mail the e-poll to all members of the entity. Requests for an e-poll shall be sent only from an official e-mail address of the entity. The e-poll's message shall include the following information:

- (a) The e-mail subject line shall begin with "E-poll Request:" and include a short title describing the purpose of the request.
- (b) The body of the e-poll shall contain the following elements:
  - (1) An executive summary of the reason for the request and why the request cannot be presented at the next available meeting of the entity;
  - (2) A proposed motion which shall be in bold and identified in a separate paragraph by the words "Requested Action;"
  - (3) All attachments in \*.pdf format, which are necessary to understand the request being made; and
  - (4) A deadline date for a response to be returned regarding the results of the electronic poll which shall be in bold and identified in a separate paragraph by the words "Deadline for Response."
    - (A) E-poll requests shall be open for response not less than one (1) hour and no more than twenty-four (24) hours.
    - (B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.
- 105.11-3. *Response to an E-Poll*. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.
  - (a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.
  - (b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.
  - (c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.
  - (d) The Chairperson, or designee, shall monitor all responses and deadline dates for

responses.

- 105.11-4. *Entering an E-Poll in the Record.* Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:
  - (a) Original e-poll request and all supporting documentation;
  - (b) A summary of the e-poll results identifying each member of the entity and his or her response; and
  - (c) A copy of any comment by a member of the entity if comments are made beyond a vote.

#### **105.12.** Reporting Requirements

- 105.12-1. *Minutes*. All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.
  - (a) Actions taken by an entity are valid upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.
  - (b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.
  - (c) No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.
- 105.12-2. *Standard Operating Procedures*. All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.
- 105.12-3. Quarterly Reports to the Oneida Business Committee. Entities shall provide quarterly reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:
  - (a) *Contact Information*. The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.
  - (b) *Meetings*. When and how often the entity is holding meetings and whether any emergency meetings have been held.
    - (1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.
  - (c) *Accomplishments*. Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff
  - (d) Goals. Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.
  - (e) Budget. The amount of the entity's budget, the status of the budget at that quarter, the

- amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.
  - (f) Requests. Details of any requests to the Oneida Business Committee.
  - (g) *Other*. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.
  - 105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.
    - (a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.
    - (b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.
  - 105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

#### 105.13. Stipends, Reimbursement and Compensation

- 105.13-1. Stipends and reimbursement for expenses shall follow the procedures as set out in this section and according to procedures for payment as set out by the Nation, unless otherwise declined by the entity through its bylaws, or declined by a member.
- 105.13-2. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending the resolution. Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards. 105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a
- 105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than twelve (12) meeting stipends per year.
  - (b) *Meeting Stipends for an Elected Entity*. An individual serving on an elected entity shall be paid no more than twenty-four (24) meeting stipends per year.
- 105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
    - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
- 105.13-5. *Oneida Judiciary Hearings*. A member of an entity shall receive a Judiciary hearing stipend if the member's attendance at the Judiciary hearing is required by official subpoena.
- 555 105.13-6. Hearings of an Entity. A member of an entity that maintains hearing authority may

- obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of
- all functions related to the resolution of the matter notwithstanding the amount of time it takes to
- resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.
- 560 105.13-7. *Other Stipends*. The Oneida Business Committee shall determine if, and when, any other stipends are appropriate to compensate members of entities for their official actions. All
- 562 possible stipends shall be included in the Oneida Business Committee resolution which sets stipend 563 amounts.
  - 105.13-8. *Conferences and Training*. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:
    - (a) A member shall be eligible for a stipend for each full day the member is present at the conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
    - (b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.
    - (c) No stipend payments shall be made for those days spent traveling to and from the conference or training.
  - 105.13-9. *Business Expenses*. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.
  - 105.13-10. *Task Force and Ad Hoc Subcommittees*. Members of task force, ad hoc committees and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

#### 105.14. Confidential Information

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- 105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order to protect the interest of the Nation and ensure that no persons engaged in by the Nation, nor their relatives or associates, benefit from the use of confidential information.
  - (a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.
  - (b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Nation and the entity.
  - (c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.
  - (d) No member of an entity shall disclose confidential information acquired by reason of

his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.

105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and can only be removed or destroyed by approval from a majority vote of the entity at a

official Oneida e-mail address upon election or appointment for the purpose of conducting business

mail address from his or her regular work e-mail address.

electronically conduct any business of the entity.

the member having vacated the position.

(a) If a member is also an employee of the Nation, he or she shall receive a separate e-

(b) A member of an entity shall sign an acknowledgment form provided by the Nation's

Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such

(d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall

instruct the Management Information Systems department to disable the e-mail address for

A member of an entity shall not use any personal or work e-mail address to

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- duly called meeting. All removal or destruction of documents must be made in accordance with the Nation's laws and policies regarding open records and open meetings.

  105.14-3. Official Oneida Nation E-mail Address. Each member of an entity shall be provided an
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#### 105.15. Conflicts of Interest

acknowledgment forms.

of the entity electronically.

- 105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.
- 105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises, and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.
  - (a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action must be taken by the Nation regarding the status of the official.
- 105.15-3. *Ineligibility Due to Conflicts of Interest*. Due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed or elected entity:
  - (a) political appointees; and
  - (b) an employee of the Nation's Internal Audit Department, Finance Administration, or Law Office.

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#### 105.16. Use of the Nation's Assets

- 105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.
- 105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:
  - (a) all transactions are executed in accordance with management's authorization; and

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- (b) access to assets is permitted only in accordance with management's authorization; and
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- 688 Amended - BC-09-22-10-C 689

- (c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.
- 105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

#### 105.17. Dissolution of an Entity

- 105.17-1. Dissolution of a Task Force or Ad Hoc Committee. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.
- 105.17-2. Dissolution of an Entity. All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee.
- 105.17-3. Notice of Dissolution. Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida Business Committee shall provide the entity written notice of the dissolution.
- 105.17-4. Management of Records and Materials. All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.
  - (a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

#### 105.18. Enforcement

- 105.18-1. Any member of an entity found to be in violation of this law may be subject to:
  - (a) sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;
  - (b) removal pursuant to any laws or policies of the Nation's governing removal, if the individual is a member of an elected entity; or
  - (c) termination of appointment by the Oneida Business Committee, if the individual is a member of an appointed entity.
- Adopted BC-08-02-95-A Amended - BC-05-14-97-F
- Amended BC-09-27-06-E (permanent adoption of emergency amendments)
- Amended BC-09-26-18-C

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## **Oneida Nation**

Post Office Box 365

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Oneida, WI 54155

1	Amending	BC Resolution # Resolution BC-05-08-19-B Boards, Committees, and Commissions Law Stipends
2 3 4 5	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
6	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 42 42 42 42 42 42 42 42 42 42 42 42	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
	WHEREAS,	the Boards, Committees, and Commissions law ("the Law") was adopted by the Oneida Business Committee through resolution BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C, BC-03-11-20-B, and most recently emergency amended by resolution BC; and
	WHEREAS,	the Law provides stipends paid by the Oneida Nation to a person serving on a board, committee, and commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for the boards, committee, or commission for the betterment of the Nation; and
	WHEREAS,	the Law requires the Oneida Business Committee to set stipend amounts by resolution; and
	WHEREAS,	the Oneida Business Committee is required to periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending this resolution; and
	WHEREAS,	on September 26, 2018, the Oneida Business Committee adopted resolution BC-09-26-18-D titled, "Boards, Committees, and Commissions Law Stipends" which set forth the specific stipend amounts allowed to be paid to a member of a board, committee, or commission; and
	WHEREAS,	on May 8, 2019, the Oneida Business Committee adopted resolution BC-05-08-19-B titled, "Amending Resolution BC-09-26-18-D Boards, Committees, and Commissions Law Stipends' to allow the Oneida Nation School Board to be eligible to receive a stipend for participating in interviews and/or job description prescreens; and
	WHEREAS,	on March 17, 2020, the Oneida Business Committee adopted emergency amendments to the Law to address the requirements of holding stipend eligible meetings during the COVID-19 pandemic; and

whereas, the emergency amendments to the Law revised the meeting stipend limitation for appointed entities from up to "one (1) stipend per month" to up to "twelve (12) stipends per year," and for elected entities from up to "two (2) stipends per month" to up to "twenty-four (24) stipends per year"; and

WHEREAS,

**NOW THEREFORE BE IT RESOLVED,** that the Oneida Business Committee sets forth the following stipend amounts allowed to be paid to a member of a board, committee, or commission of the Nation:

- 1. Meetings of a Board, Committee, or Commission of the Nation. A member of a board, committee, or commission of the Nation shall receive a stipend for attending a duly called meeting of the board, committee, or commission in accordance with the Law.
  - a. Appointed Boards, Committees, and Commissions. A member of an appointed board, committee, or commission of the Nation shall receive a stipend of seventy-five dollars (\$75) for a duly called meeting of the board, committee, or commission for up to twelve (12) meetings per year.
    - i. Appointed boards, committees, and commissions of the Nation include the following:
      - 1. Anna John Resident Centered Care Community Board;
      - 2. Oneida Community Library Board;
      - 3. Environmental Resource Board:
      - 4. Oneida Nation Arts Board:
      - 5. Oneida Nation Veterans Affairs Committee:
      - 6. Oneida Personnel Commission;
      - 7. Oneida Police Commission;
      - 8. Oneida Pow-wow Committee;
      - 9. Pardon and Forgiveness Screening Committee; and
      - 10. Southeastern Oneida Tribal Services Advisory Board.
  - b. *Elected Boards, Committees, and Commissions.* A member of an elected board, committee, or commission of the Nation shall receive a stipend of one hundred dollars (\$100) for a duly called meeting of the boards, committee, or commission for up to twenty-four (24) meetings per year.
    - i. Elected boards, committees, and commissions of the Nation include the following:
      - 1. Oneida Nation Commission on Aging;
      - 2. Oneida Election Board;
      - 3. Oneida Land Claims Commission;
      - 4. Oneida Land Commission:
      - 5. Oneida Nation School Board:
      - 6. Oneida Trust Enrollment Committee; and
      - 7. Oneida Gaming Commission;
        - a. Although the Oneida Gaming Commission is an elected commission of the Nation, the Oneida Nation Gaming Ordinance provides that the compensation of Oneida Nation Gaming Commissioners is not subject to the Nation's Boards, Committees, and Commissions law.
- 2. Joint Meetings with the Oneida Business Committee. A member of a board, committee, or commission of the Nation shall receive a stipend for attending a duly called joint meeting between the board, committee, or commission and the Oneida Business Committee in accordance with the Law.

BC Resolution # \_\_\_\_\_ Amending Resolution BC-05-08-19-B Boards, Committees, and Commissions Law Stipends

for a duly called joint meeting.
b. *Elected Boards, Committees, and Commissions*. A member of an elected board, committee, or commission of the Nation shall receive a stipend of one hundred dollars (\$100) for a duly called joint meeting.

a. Appointed Boards, Committees, and Commissions. A member of an appointed board,

committee, or commission of the Nation shall receive a stipend of seventy-five dollars (\$75)

3. Oneida Judiciary Hearings. A member of a board, committee, or commission of the Nation shall receive a stipend of fifty dollars (\$50) for attending a hearing of the Oneida Judiciary if the member's attendance at the hearing is required by official subpoena.

4. Hearings of a Board, Committee, or Commission of the Nation. A member of a board, committee, or commission of the Nation shall receive a stipend of fifty dollars (\$50) for conducting an official hearing of the board, committee, or commission.

 5. *Miscellaneous Stipends*. The Oneida Business Committee shall have the discretion to determine any other stipends deemed appropriate.

 a. Pow-wow Activities. A member of the Oneida Pow-wow Committee shall receive a stipend of twenty-five dollars (\$25) per hour for services he or she provides during each Pow-wow, not to exceed two hundred dollars (\$200) per day, contingent upon available budgeted funds.

b. *Election Activities*. A member of the Oneida Election Board shall receive a stipend of twenty-five dollars (\$25) per hour, not to exceed two hundred dollars (\$200) per day, contingent upon available budgeted funds, for services he or she provides during an election including, but not limited to, managing the polling site, recounts, and lot drawings.

c. General Tribal Council Meetings. A member of the Oneida Election Board shall receive a stipend of one hundred dollars (\$100) for attendance and service provided at a General Tribal Council meeting of the Nation.

d. Interviews and Job Selection Pre-Screening. A member of the Oneida Personnel Commission and/or the Oneida Nation School Board shall receive a stipend of twenty-five dollars (\$25) for up to four (4) hours of participating in interviews and/or job description prescreens, and a stipend of fifty dollars (\$50) for more than four (4) hours of participating in interviews and/or job description pre-screens.

 6. Conferences and Training. A member of a board, committee, or commission of the Nation shall receive a stipend of one hundred dollars (\$100) per day for attendance at a conference or training that is required by law, bylaw, or resolution.

BE IT FINALLY RESOLVED, that this resolution hereby adopted and shall be effective immediately.

#### Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

#### **BC** Resolution #

## Amending Resolution BC-09-26-18-D05-08-19-B Boards, Committees, and Commissions Law Stipends

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

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

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

whereas, the Boards, Committees, and Commissions law ("the Law") was adopted by the Oneida Business Committee through resolution BC-505-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C, BC-03-11-20-B, and most recently BC-09-26-18-C; emergency amended by resolution BC- - - - ; and

whereas, the Law provides stipends paid by the Oneida Nation to a person serving on a board, committee, and commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for the boards, committee, or commission for the betterment of the Nation; and

**WHEREAS,** the Law requires the Oneida Business Committee to set stipend amounts by resolution; and

**WHEREAS,** the Oneida Business Committee is required to periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending this resolution; and

whereas, on September 26, 2018, the Oneida Business Committee adopted resolution BC-09-26-18-D titled, "Boards, Committees, and Commissions Law Stipends" which set forth the specific stipend amounts allowed to be paid to a member of a board, committee, or commission; and

whereas, on April 10 May 8, 2019, the Oneida Business Committee received a request from the Oneida Nation School Board to amend adopted resolution BC-05-08-19-B titled, "Amending Resolution BC-09-26-18-D Boards, Committees, and Commissions Law Stipends' to allow the Oneida Nation School Board to be eligible to receive a stipend for participating in the hiring process for Oneida Nation School System Personnel; and and interviews and/or job description prescreens; and

WHEREAS, the Oneida Nation School Board is required by the on\_March 21, 1988, memorandum of agreement between the Oneida Nation School Board and 17, 2020, the Oneida Business Committee adopted emergency amendments to perform all hiring, evaluations,

**BC** Resolution #

Amending Resolution BC-<del>09-26-18-D</del><del>05-08-19-B</del> Boards, Committees, and Commissions Law Stipends Page 2 of 3

promotions, suspensions and/or dismissals of all personnel employed in the operation of the Oneida Tribal Schoolthe Law to address the requirements of holding stipend eligible meetings during the COVID-19 pandemic; and

- WHEREAS, the Oneida Business Committee adopted a motion on April 10, 2019, to accept the request from the Oneida Nation School Board to amend resolution BC-09-26-18-D and to defer the request the Legislative Operating Committee and the Legislative Reference Office to bring back a recommendation which would support the request to include a stipend for HR functions; and
- whereas, the emergency amendments to the Law revised the meeting stipend limitation for appointed entities from up to "one (1) stipend per month" to up to "twelve (12) stipends per year," and for elected entities from up to "two (2) stipends per month" to up to "twenty-four (24) stipends per year"; and
- whereas, the Legislative Operating Committee and the Legislative Reference Office have has reviewed the matter and provided this resolution to amend and provided revisions to be consistent with the emergency amendments adopted through resolution BC-09-26-18-D.
  \_- \_ \_ ; and

**NOW THEREFORE BE IT RESOLVED,** that the Oneida Business Committee sets forth the following stipend amounts allowed to be paid to a member of a board, committee, or commission of the Nation:

- 1. Meetings of a Board, Committee, or Commission of the Nation. A member of a board, committee, or commission of the Nation shall receive a stipend for attending a duly called meeting of the board, committee, or commission in accordance with the Law.
  - a. Appointed Boards, Committees, and Commissions. A member of an appointed board, committee, or commission of the Nation shall receive a stipend of seventy-five dollars (\$75) for a duly called meeting of the board, committee, or commission for up to one (1) meetingtwelve (12) meetings per month year.
    - i. Appointed boards, committees, and commissions of the Nation include the following:
      - 1. Anna John Resident Centered Care Community Board;
      - 2. Oneida Community Library Board;
      - 3. Environmental Resource Board;
      - 4. Oneida Nation Arts Board:
      - 5. Oneida Nation Veterans Affairs Committee;
      - 6. Oneida Personnel Commission;
      - 7. Oneida Police Commission:
      - 8. Oneida Pow-wow Committee:
      - 9. Pardon and Forgiveness Screening Committee; and
      - 10. Southeastern Oneida Tribal Services Advisory Board.
  - b. *Elected Boards, Committees, and Commissions.* A member of an elected board, committee, or commission of the Nation shall receive a stipend of one hundred dollars (\$100) for a duly called meeting of the boards, committee, or commission for up to two (2twenty-four (24) meetings per monthyear.
    - i. Elected boards, committees, and commissions of the Nation include the following:
      - 1. Oneida Nation Commission on Aging;
      - 2. Oneida Election Board;
      - 3. Oneida Land Claims Commission;
      - 4. Oneida Land Commission;

BC Resolution #

Amending Resolution BC-09-26-18-D05-08-19-B Boards, Committees, and Commissions Law Stipends
Page 3 of 3

- Oneida Nation School Board:
- 6. Oneida Trust Enrollment Committee; and
- 7. Oneida Gaming Commission;
  - a. Although the Oneida Gaming Commission is an elected commission of the Nation, the Oneida Nation Gaming Ordinance provides that the compensation of Oneida Nation Gaming Commissioners is not subject to the Nation's Boards, Committees, and Commissions law.
- Joint Meetings with the Oneida Business Committee. A member of a board, committee, or commission of the Nation shall receive a stipend for attending a duly called joint meeting between the board, committee, or commission and the Oneida Business Committee in accordance with the Law.
  - a. Appointed Boards, Committees, and Commissions. A member of an appointed board, committee, or commission of the Nation shall receive a stipend of seventy-five dollars (\$75) for a duly called joint meeting.
  - b. *Elected Boards, Committees, and Commissions*. A member of an elected board, committee, or commission of the Nation shall receive a stipend of one hundred dollars (\$100) for a duly called joint meeting.
- 3. Oneida Judiciary Hearings. A member of a board, committee, or commission of the Nation shall receive a stipend of fifty dollars (\$50) for attending a hearing of the Oneida Judiciary if the member's attendance at the hearing is required by official subpoena.
- 4. Hearings of a Board, Committee, or Commission of the Nation. A member of a board, committee, or commission of the Nation shall receive a stipend of fifty dollars (\$50) for conducting an official hearing of the board, committee, or commission.
- 5. *Miscellaneous Stipends*. The Oneida Business Committee shall have the discretion to determine any other stipends deemed appropriate.
  - a. Pow-wow Activities. A member of the Oneida Pow-wow Committee shall receive a stipend of twenty-five dollars (\$25) per hour for services he or she provides during each Pow-wow, not to exceed two hundred dollars (\$200) per day, contingent upon available budgeted funds.
  - b. Election Activities. A member of the Oneida Election Board shall receive a stipend of tentwenty-five dollars (\$1025) per hour, not to exceed two hundred dollars (\$200) per day, contingent upon available budgeted funds, for services he or she provides during an election including, but not limited to, managing the polling site, recounts, and lot drawings.
  - c. General Tribal Council Meetings. A member of the Oneida Election Board shall receive a stipend of one hundred dollars (\$100) for attendance and service provided at a General Tribal Council meeting of the Nation.
  - d. Interviews and Job Selection Pre-Screening. A member of the Oneida Personnel Commission and/or the Oneida Nation School Board shall receive a stipend of twenty-five dollars (\$25) for up to four (4) hours of participating in interviews and/or job description prescreens, and a stipend of fifty dollars (\$50) for more than four (4) hours of participating in interviews and/or job description pre-screens.
- 6. Conferences and Training. A member of a board, committee, or commission of the Nation shall receive a stipend of one hundred dollars (\$100) per day for attendance at a conference or training that is required by law, bylaw, or resolution.

BE IT FINALLY RESOLVED, that this resolution hereby adopted and shall be effective immediately.



#### Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



#### **Statement of Effect**

Amending Resolution BC-05-08-19-B Boards, Committees, and Commissions Law Stipends

#### **Summary**

This resolution amends resolution BC-05-08-19-B titled, "Amending Resolution BC-09-26-18-D Boards, Committees, and Commissions Law Stipends" which sets forth specific stipend amounts allowed to be paid to a member of a board, committee, or commission of the Nation.

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

Date: March 16, 2020

#### Analysis by the Legislative Reference Office

The Boards, Committees, and Commissions law ("the Law") was adopted by the Oneida Business Committee for the purpose of governing boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1].

Stipends are paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation. [1 O.C. 105.3-1(n)].

The Law requires that the Oneida Business Committee set stipend amounts by resolution. [1 O.C. 105.13-2]. On September 26, 2018, the Oneida Business Committee adopted resolution BC-09-26-18-D titled, "Boards, Committees, and Commissions Law Stipends" which set forth the specific amounts for the various stipends a member of a board, committee, or commission may be eligible to receive.

The Oneida Business Committee is delegated the responsibility to periodically review the amounts provided for stipends, and based on the availability of funds, adjust those amounts accordingly by amending the stipend resolution. [1 O.C. 105.13-2].

On May 8, 2019, the Oneida Business Committee adopted resolution BC-05-08-19-B titled, "Amending Resolution BC-09-26-18-D Boards, Committees, and Commissions Law Stipends" to allow the Oneida Nation School Board to be eligible to receive a stipend for participating in interviews and/or job description prescreens.

On March 17, 2020, the Oneida Business Committee made emergency amendments to the Law to address the impact of the COVID-19 pandemic on the Nation's boards, committees, and commissions – specifically, the requirements of holding stipend eligible meetings during the COVID-19 pandemic.

This resolution amends resolution BC-05-08-19-B to adjust the meeting stipend limitation for appointed entities from up to "one (1) stipend per month" to up to "twelve (12) stipends per year," and for elected entities from up to "two (2) stipends per month" to up to "twenty-four (24) stipends per year"

#### **Conclusion**

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



# March 17, 2020, Legislative Operating Committee E-Poll Materials for the Adoption of Emergency Amendments to the Emergency Management and Homeland Security Law



#### **Good Morning Legislative Operating Committee,**

This e-mail serves as the e-poll for the materials for the adoption of emergency amendments to the Emergency Management and Homeland Security law.

#### **EXECUTIVE SUMMARY**

The world is currently facing a pandemic of coronavirus disease (COVID-19) after an outbreak began in Wuhan, China and quickly spread to many other countries throughout the world, including the United States. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. As of March 13, 2020, there were one thousand and six hundred and twenty-nine (1,629) cases reported through the United States, and eighteen (18) cases of positive tests in Wisconsin. The number of positive tests in Wisconsin, as well as across the country, continue to increase. On March 12, 2020, in accordance with Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

Emergency amendments to the Emergency Management and Homeland Security law (the "Law") are being sought to address the impact of the COVID-19 pandemic by creating and delegating authority to a COVID-19 Core Decision Making Team. The emergency amendments to the Law will:

- Create a COVID-19 Core Decision Making Team (COVID-19 Team) [3 O.C. 302.10-1];
- Identify what positions of the Nation serve on the COVID-19 Team [3 O.C. 302.10-1];
- Describe the authority delegated to the COVID-19 Team to declare exceptions to any law, policy, procedure, regulation, or standard operating procedure of the Nation [3 O.C. 302.10-2];
- Provide for the duration of authority for exceptions declared by the COVID-19 Team [3 O.C. 302.10-3]; and
- Describe how the COVID-19 Team will make its declarations [3 O.C. 302.10-4].

The emergency amendments to this Law are necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendments are needed allow the COVID-9 Team to act on behalf of the Nation on a daily, or even hourly basis, to protect the Reservation population against the public health crisis that is the COVID-19 pandemic.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately address the issues regarding internal operations and laws that are arising due to the COVID-19 pandemic.

An e-poll is necessary for this matter because the next Legislative Operating Committee meeting is scheduled for March 18, 2020, and immediate action is required by Legislative Operating Committee to approve the materials for the emergency adoption of amendments to the Emergency Management and Homeland Security law so the materials can be forwarded to the Oneida Business Committee for consideration during the March 17, 2020, emergency Oneida Business Committee meeting.

#### **REQUESTED ACTION**

To approve the following actions:

- Add the Emergency Management and Homeland Security law emergency amendments to the Active Files List with David P. Jordan as the sponsor; and
- Approve the Emergency Management and Homeland Security law emergency adoption packet and forward to the Oneida Business Committee for consideration.

#### **DEADLINE FOR RESPONSE**

March 17, 2020 at 8:40 a.m.

All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by Jennifer Webster, Daniel Guzman King, David P. Jordan, and Kirby Metoxen. Ernest Stevens III did not provide a response.



Tue 3/17/2020 7:45 AM

Jennifer A. Webster

RE: E-POLL REQUEST: Materials for the Adoption of Emergency Amendments to the Emergency Management and Homeland Security Law

To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxer

Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago

#### Approve



Tue 3/17/2020 7:55 AM

Daniel P. Guzman

E-POLL REQUEST: Materials for the Adoption of Emergency Amendments to the Emergency Management and Homeland Security Law

To Kirby W. Metoxen; David P. Jordan; LOC; Ernest L. Stevens; Jennifer A. Webste

Cc Jameson J. Wilson; Leyne C. Orosco; Clorissa N. Santiago; Rosa J. Laster; LOC; Jennifer A. Falck; Jessica L. Wallenfang; Fawn J. Billie

#### Approve

Sent from Workspace ONE Boxer



Tue 3/17/2020 8:04 AM

David P. Jordan

RE: E-POLL REQUEST: Materials for the Adoption of Emergency Amendments to the Emergency Management and Homeland Security Law

To LOC; Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan

Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago

#### Approve



Tue 3/17/2020 8:29 AM

Kirby W. Metoxen

Approve: E-POLL REQUEST: Materials for the Adoption of Emergency Amendments to the Emergency Management and Homeland Security Law

To LOC

i The sender responded: Approve.



#### Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



TO:

Oneida Business Committee

FROM:

David P. Jordan, LOC Chairperson

DATE:

March 17, 2020

RE:

Emergency Management and Homeland Security Law Emergency Amendments

Please find the following attached backup documentation for your consideration of the Emergency Management and Homeland Security Law Emergency Amendments:

- 1. Resolution: Emergency Amendments to the Emergency Management and Homeland Security Law Adding Section Identifying COVID-19 Core Decision-Making Team and Delegating Authority
- 2. Statement of Effect: Emergency Amendments to the Emergency Management and Homeland Security Law Adding Section Identifying COVID-19 Core Decision-Making Team and Delegating Authority
- 3. Emergency Management and Homeland Security Law Emergency Amendments Legislative Analysis
- 4. Emergency Management and Homeland Security Law (Redline)
- 5. Emergency Management and Homeland Security Law (Clean)

#### Overview

Emergency amendments to the Emergency Management and Homeland Security law (the "Law") are being sought to create and delegate authority to a COVID-19 Core Decision Making Team. The emergency amendments to the Law will:

- Create a COVID-19 Core Decision Making Team (COVID-19 Team) [3 O.C. 302.10-1];
- Identify what positions of the Nation serve on the COVID-19 Team [3 O.C. 302.10-1];
- Describe the authority delegated to the COVID-19 Team to declare exceptions to any law, policy, procedure, regulation, or standard operating procedure of the Nation [3 O.C. 302.10-2];
- Provide for the duration of authority for exceptions declared by the COVID-19 Team [3 O.C. 302.10-3]; and
- Describe how the COVID-19 Team will make its declarations [3 O.C. 302.10-4].

The world is currently facing a pandemic of COVID-19 after an outbreak began in Wuhan, China and quickly spread to many other countries throughout the world, including the United States. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. As of March 13, 2020, there were one thousand and six hundred and twenty-nine (1,629) cases reported throughout the United States, and eighteen (18) cases of positive tests in Wisconsin. The number of positive tests in Wisconsin, as well as across the country, continue to increase. On March 12, 2020, in accordance with the

Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency amendments to this Law are necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendments are needed allow the COVID-9 Team to act on behalf of the Nation on a daily, or even hourly basis, to protect the Reservation population against the public health crisis that is the COVID-19 pandemic.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this amendment would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately address the issues regarding internal operations and laws that are arising due to the COVID-19 pandemic.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

#### **Requested Action**

Approve the Resolution: Emergency Amendments to the Emergency Management and Homeland Security Law Adding Section Identifying COVID-19 Core Decision-Making Team and Delegating Authority



## **Oneida Nation**

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

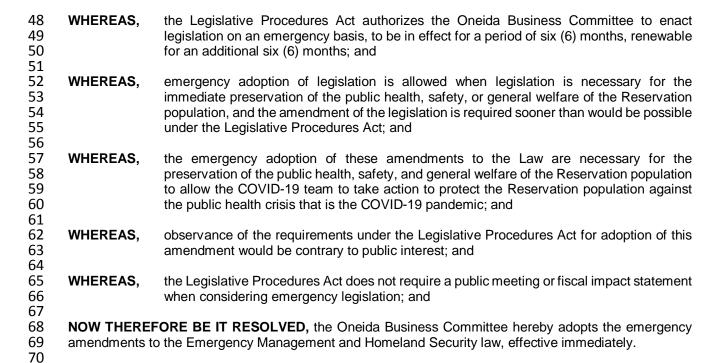
1		DC Decelution #
1 2 3	Emergency Section	BC Resolution # y Amendments to the Emergency Management and Homeland Security Law Adding on Identifying COVID-19 Core Decision-Making Team and Delegating Authority
4 5 6 7	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
8 9	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 42 42 42 42 42 42 42 42 42 42 42 42	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
	WHEREAS,	on March 12, 2020, Chairman Hill signed an order declaring a public health emergency based on the COVID-19 pandemic, <i>Declaration of Public Health Emergency</i> , and
	WHEREAS,	since approval of the declaration the number of cases in Wisconsin has increased from six (6) to forty-seven (47), with one (1) positive case identified in Outagamie County; and
	WHEREAS,	the Center for Disease Control has updated large gatherings reducing the number from two hundred and fifty (250) people to fifty (50) people; and
	WHEREAS,	since Governor Evers has signed Executive Order # 72, the Wisconsin Public Health Officer has issued an order prohibiting mass gatherings of fifty (50) people or more; and
	WHEREAS,	the Oneida Business Committee has declared a Tier IV budget contingency action which results in budget reductions resulting from the financial distress the Nation will be experiencing arising out of the pandemic; and
	WHEREAS,	the Emergency Management and Homeland Security Law ("the Law"), delegates authority to the Oneida Nation's Public Health Officer to take actions to protect the public health, including issuance of orders regarding gathering and quarantines; and
	WHEREAS,	there is no identification in the Law of how internal governmental operations can be adjusted and laws adjusted to reflect the state of the pandemic; and
	WHEREAS,	the Oneida Business Committee, in the budget contingency resolution, has identified exception to resolutions (budget contributions to endowments for example) and amendments to employee compensation; and
	WHEREAS,	there is a need for the Nation to respond to issues arising on a daily, and sometimes hourly basis; and
43 44	WHEREAS,	the Oneida Business Committee desires to create a "Core Decision Making Team" specifically for the COVID-19 pandemic that would authorize the team to declare

emergency exceptions to laws to protect the public health, safety, and general welfare of

the Nation's community, members, and employees; and

BC Resolution

Emergency Amendments to the Emergency Management and Homeland Security Law Adding Section Identifying COVID-19 Core Decision-Making Team and Delegating Authority Page 2 of 2





### Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



#### **Statement of Effect**

Emergency Amendments to the Emergency Management and Homeland Security Law Adding Section Identifying COVID-19 Core Decision-Making Team and Delegating Authority

#### **Summary**

This resolution adopts emergency amendments to the Emergency Management and Homeland Security law which create and delegate authority to a COVID-19 Core Decision Making Team.

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

Date: March 17, 2020

#### Analysis by the Legislative Reference Office

This resolution adopts emergency amendments to the Emergency Management and Homeland Security law ("the Law"). The purpose of the Law is to provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; provide for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; establish the use of the National Incident Management System; designate authority and responsibilities for public health preparedness [1 O.C. 105.1-1]. The emergency amendments to the Law will:

- Create a COVID-19 Core Decision Making Team (COVID-19 Team) [3 O.C. 302.10-1];
- Identify what positions of the Nation serve on the COVID-19 Team [3 O.C. 302.10-1];
- Describe the authority delegated to the COVID-19 Team to declare exceptions to any law, policy, procedure, regulation, or standard operating procedure of the Nation [3 O.C. 302.10-2];
- Provide for the duration of authority for exceptions declared by the COVID-19 Team [3 O.C. 302.10-3]; and
- Describe how the COVID-19 Team will make its declarations [3 O.C. 302.10-4].

The Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [1 O.C. 109.9-5].

The resolution provides various information on the COVID-19 pandemic that the world is now facing. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. As of March 13, 2020, there were one thousand and six hundred and twenty-nine (1,629) cases reported throughout the United States, and eighteen (18) cases of positive tests in Wisconsin. The number of positive tests in Wisconsin, as well as across the country, continue to increase.

On March 12, 2020, in accordance with the Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding

COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

The resolution provides that the emergency amendments to this Law are necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendments are needed allow the COVID-9 Team to act on behalf of the Nation on a daily, or even hourly basis, to protect the Reservation population against the public health crisis that is the COVID-19 pandemic.

Additionally, the resolution provides that observance of the requirements under the LPA for adoption of this amendment would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately address the issues regarding internal operations and laws that are arising due to the COVID-19 pandemic.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

#### **Conclusion**

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





#### Yotlihokt# Olihw@=ke

Matters that are concerning immediate attention EMERGENCY AMENDMENTS TO EMERGENCY MANAGEMENT AND HOMELAND SECURITY LAW LEGISLATIVE ANALYSIS

#### SECTION 1 EXECUTIVE SUMMARY

SECTION 1. EXECUTIVE SUMMARY	
	Analysis by the Legislative Reference Office
Intent of the	<ul> <li>Create a COVID-19 Core Decision Making Team (COVID-19 Team);</li> </ul>
Proposed	<ul> <li>Identify what positions of the Nation serve on the COVID-19 Team;</li> </ul>
Amendments	■ Describe the authority delegated to the COVID-19 Team to declare
	exceptions to any law, policy, procedure, regulation, or standard operating
	procedure of the Nation;
	Provide for the duration of authority for exceptions declared by the COVID-
	19 Team; and
	<ul> <li>Describe how the COVID-19 Team will make its declarations.</li> </ul>
Purpose	To provide for the development and execution of plans for the protection of
	residents, property, and the environment in an emergency or disaster; provide for
	the direction of emergency management, response, and recovery on the
	Reservation; as well as coordination with other agencies, victims, businesses,
	and organizations; establish the use of the National Incident Management
	System; and designate authority and responsibilities for public health
	preparedness. [3 O.C. 302.1-1]
Affected Entities	Oneida Business Committee, Legislative Operating Committee, General
	Manager, Gaming General Manager, Chief Financial Officer, Assistant Chief
	Financial Officer, Intergovernmental Affairs and Communications Director,
	Public Relations Director
<b>Public Meeting</b>	A public meeting is not required for emergency legislation [1 O.C. 109.8-1(b)]
	and 109.9-5(a)].
Fiscal Impact	A fiscal impact statement is not required for emergency legislation [1 O.C.
	109.9-5(a)].
Expiration of	Emergency amendments expire six (6) months after adoption and may be
Emergency	renewed for one additional six (6) month period. [1 O.C. 109.9-5(b)].
Amendments	

#### SECTION 2. LEGISLATIVE DEVELOPMENT

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- A. *Background*. The Emergency Management and Homeland Security law ("the Law") was first adopted by the Oneida Business Committee on July 15, 1998, and most recently amended on May 13, 2009. The Law provides for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; provides for the direction of emergency management, response, and recovery on the Reservation, as well as coordination with other agencies, victims, businesses, and organizations; establishes the use of the National Incident Management System; and designates authority and responsibilities for public health preparedness. [3 O.C. 302.1-1]
- **B.** *COVID-19 Pandemic*. The world is currently facing a pandemic of the coronavirus disease 2019 (COVID-19). The COVID-19 outbreak originated in Wuhan, China and has spread to many other

countries throughout the world, including the United States. The World Health Organization has identified that the spread of COVID-19 is now a pandemic resulting in many countries experiencing the effects of illness and health issues related to COVID-19 and economic impacts. As of March 13, 2020, there were one thousand and six hundred and twenty-nine (1,629) cases reported through the United States, and eighteen (18) cases of positive tests in Wisconsin.

- Declarations of Emergency.
  - Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" on March 12, 2020, regarding COVID-19 which sets into place the necessary authority should action need to be taken, and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
    - On March 17, 2020, the Oneida Business Committee will consider the adoption of a resolution declaring a Tier IV budget contingency action which results in budget reductions resulting from the financial distress the Nation will be experiencing arising out of the pandemic.
  - Governor Evers declared a public health emergency for the State of Wisconsin on March 12, 2020, based on COVID-19 cases in Wisconsin.
  - President Trump declared a national emergency for the United States over the COVID-19 outbreak on March 13, 2020.
- Center of Disease Control Precautions. The Center of Disease Control has identified that March, April, and May should be the time when the potential for the highest increases in the number of confirmed cases would occur, and issued the following precautions to avoid further spread of COVID-19:
  - Clean your hands often.
    - Wash your hands often with soap and water for at least twenty (20) seconds especially after you have been in a public place, or after blowing your nose, coughing, or sneezing.
    - If soap and water are not readily available, use a hand sanitizer that contains at least sixty percent (60%) alcohol. Cover all surfaces of your hands and rub them together until they feel dry.
    - Avoid touching your eyes, nose, and mouth with unwashed hands.
  - Avoid close contact.
    - Avoid close contact with people who are sick
    - Put distance between yourself and other people if COVID-19 is spreading in your community. This is especially important for people who are at higher risk of getting very sick.
- C. In response to the COVID-19 pandemic, emergency amendments to the Law are being sought to address how internal governmental operations can be adjusted and laws adjusted to reflect the state of the COVID-19 pandemic.

#### SECTION 3. CONSULTATION AND OUTREACH

- **A.** Representatives from the following departments or entities participated in the development of this Law and legislative analysis:
  - Oneida Law Office.

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

- **A.** These amendments are being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency law "where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the Reservation population and enactment or amendment of legislation is required sooner than would be possible under this law" [1 O.C. 109.9-5].
  - Emergency amendments are being pursued for the immediate preservation of the public health, safety, and general welfare of the Reservation population against the public health crisis that is the COVID-19 pandemic. Chairman Tehassi Hill declared a public health state of emergency for the Nation on March 12, 2020. The Law provides no identification of how internal governmental operations can be adjusted and laws adjusted to reflect the state of the COVID-19 pandemic. It has been determined that there is a need to respond to issues arising on a daily, and sometimes hourly basis to best protect the Reservation population from the COVID-19 pandemic.
  - Observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately address the issues regarding internal operations and laws that are arising due to the COVID-19 pandemic.
- **B.** The emergency amendments will expire six (6) months after adoption, with one (1) opportunity for a six (6) month extension of the emergency amendments. [1 O.C. 109.9-5(b)].
- **C.** The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact statement will eventually be required when considering permanent adoption of these amendments.
- **C.** The Legislative Operating Committee added these emergency amendments to the Active Files List on March 17, 2020.

#### SECTION 5. CONTENTS OF THE LEGISLATION

- A. Creation of the COVID-19 Team. The proposed emergency amendments create a COVID-19 Core Decision Making Team (COVID-19 Team) which exists by declaration of a public health emergency under this law [3 O.C. 302.10-1]. On March 12, 2020, Chairman Tehassi Hill declared a public health state of emergency for the Nation in accordance with this Law. [3 O.C. 302.8-1]. The COVID-19 Team consists of the Oneida Business Committee officers, Legislative Operating Committee Chari, General Manager, Gaming General Manager, Gaming Assistant Chief Financial Officer, Chief Financial Officer, Intergovernmental Affairs and Communications Director, and the Public Relations Director.
  - *Effect*. The proposed emergency amendments create the COVID-19 Team and identify the specific positions of the Nation that will comprise the COVID-19 Team.
- **B.** Delegation of Authority to the COVID-19 Team. The proposed emergency amendments provide what emergency authority the COVID-19 Team is delegated. [3 O.C. 302.10-2]. The COVID-19 Team shall have emergency authority to declare exceptions to the Nation's laws during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the community, members of the Nation, and employees of the Nation. [3 O.C. 302.10-2(a)]. The COVID-19 Team is delegated the authority to make these exceptions to the Nation's laws notwithstanding the requirements of the Legislative Procedures Act. This means that the COVID-19 Core Decision Making team does not have to follow the requirements of the Legislative Procedures Act. The COVID-19 Core Decision Making Team is also delegated emergency authority to declare an exception to any policy, procedure, regulation, or standard operating procedure of the Nation during

- the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees. [3 O.C. 302.10-2(b)]. The COVID-19 Team is delegated the authority to make these exceptions to the Nation's policies, procedures, regulations, or standard operating procedures notwithstanding any requirements of the policies, procedures, regulations, or standard operating procedures.
- Effect. The proposed emergency amendments outline the specific authority granted to the COVID-19 Team. The COVID-19 Team is granted the authority to declare exceptions to a law, policy, procedure, regulation, or standard operating procedure of the Nation, notwithstanding the requirements of the Legislative Procedures Act or any other policy, procedure, regulation, or standard operating procedure, in an effort to provide the COVID-19 Team the greatest flexibility in taking action to protect the health, safety, and general welfare of the Nation's community, members, and employees from the COVID-19 pandemic. There is a need for the Nation to be able to respond to issues arising on a daily, and sometimes hourly basis as a result of the COVID-19 pandemic.
- C. Declaration of an Exception. The proposed emergency amendments outline the requirements for making a declaration of an exception and the duration of authority for exceptions. [3 O.C. 302.10-3, 302.10-4]. Any declaration made by the COVID-19 Team must be written on the Nation's letterhead, provide the date the declaration was issued, contain a clear statement of the directives, provide the date the directive shall go into effect, be signed by the Oneida Business Committee Chairperson or Vice Chairperson in the Chairperson's absence, and be posted on the Nation's COVID-19 website. [3 O.C. 302.10-4(a)-(f)]. Declarations and actions taken by the COVID-19 Team shall be effective upon the date declared by the COVID-19 Team, and shall remain in effect for the duration of any declared emergency, or for a shorter time period if identified. [3 O.C. 302.10-3]. The Law also delegates authority to the Oneida Business Committee to change or extend any emergency action taken by the COVID-19 Team. [3 O.C. 302.10-3].
  - *Effect*. The proposed emergency amendments provide more information on how the COVID-19 Team will make declarations of an exception to a law, policy, procedure, regulation, or standard operating procedure of the Nation, and for how long that declaration will remain in effect.

#### SECTION 6. EXISTING LEGISLATION

- **A.** The proposed emergency amendments to the Law have the follow impact on existing legislation of the Nation.
  - Legislative Procedures Act. The Legislative Procedures Act was adopted by the General Tribal Council on January 7, 2013, for the purpose of providing a standard process for the adoption of laws of the Nation which includes taking into account comments from members of the Nation and input from agencies of the Nation. [1 O.C. 109.1-1, 109.1-2].
    - The Legislative Procedures Act provides a process for the adoption of emergency legislation when the legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population and the enactment or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].
      - The Legislative Operating Committee is responsible for first reviewing the emergency legislation and for forwarding the legislation to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].

- The proposed emergency legislation is required to have a legislative analysis completed and attached prior to being sent to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
  - A legislative analysis is a plain language analysis describing the important features of the legislation being considered and factual information to enable the Legislative Operating Committee to make informed decisions regarding legislation. A legislative analysis includes a statement of the legislation's terms and substance; intent of the legislation; a description of the subject(s) involved, including any conflicts with Oneida or other law, key issues, potential impacts of the legislation and policy considerations. [1 O.C. 109.3-1(g)].
- Emergency legislation does not require a fiscal impact statement to be completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
- Upon the determination that an emergency exists the Oneida Business Committee can adopt emergency legislation. The emergency legislation becomes effective immediately upon its approval by the Oneida Business Committee. [1 O.C. 109.9-5(b)].
- Emergency legislation remains in effect for a period of up to six (6) months, with an opportunity for a one-time emergency law extension of up to six (6) months. [1 O.C. 109.9-5(b)].
- Section 302.10-2(a) of the proposed emergency amendments to this Law conflict with section 109.9-5 of the Legislative Procedures Act. The Legislative Procedures Act provides a clear process for how the Nation is expected to handle emergency legislation. The proposed emergency amendments allow the COVID-19 Team to declare exceptions to laws of the Nation notwithstanding any requirements of the Legislative Procedures Act.
- Although the proposed emergency amendments conflict with the Legislative Procedures Act, the Oneida Business Committee is being asked to consider the adoption of these emergency amendments due to the fact that the Nation needs to be able to address its internal governmental operations and laws as they relate to the COVID-19 pandemic on a daily, or even hourly basis in order to provide the best effort of protection the health, safety, and general welfare of the Reservation population.
- The proposed emergency amendments allocation of authority to the COVID-19 Team to declare exceptions to the Nation's laws during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees will supersede the requirements of the Legislative Procedures Act when the Nation has declared a public health emergency.

#### SECTION 7. OTHER CONSIDERATIONS

- **A.** *Deadline for Permanent Adoption of Amendments.* The emergency amendments will expire six (6) months after adoption, with one (1) opportunity for an extension of an additional six (6) month period.
  - *Conclusion:* The Legislative Operating Committee will need to consider the development and adoption of permanent amendments to this Law within the next six (6) to twelve (12) months.

187 **B.** *Fiscal Impact*. A fiscal impact statement is not required for emergency legislation.

■ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

# Title 3. Health and Public Safety – Chapter 302 <u>EMERGENCY MANAGEMENT AND HOMELAND SECURITY</u> Yotlihokt# Olihw@ke

Matters that are concerning immediate attention

#### **EMERGENCY MANAGEMENT AND HOMELAND SECURITY**

302 1 Du	nose and Policy	7

302.2. Adoption, Amendment, Conflicts

302.3. Definitions

302.4. Emergency Management/Homeland Security

302.5. Oneida Nation Emergency Planning Committee (ONEPC)

302.6. Tribal Cooperation

302.7. Public Health Emergencies and Communicable Disease

302.8. When an Emergency is Proclaimed

302.9. Enforcement and Penalties

302.10. COVID-19 Core Decision Making Team

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#### 302.1. —Purpose and Policy

302.1-1. The purposes of this law are to:

- (a) provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; and
- (b) provide for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; and
- (c) establish the use of the National Incident Management System (NIMS); and
- (d) designate authority and responsibilities for public health preparedness.

302.1-2. It is the policy of this law to provide:

- (a) a description of the emergency management network of the TribeNation; and
- (b) authorization for specialized activities to mitigate hazardous conditions and for the preparation of Tribal emergency response management plans, as well as to address concerns related to isolation and/or quarantine orders, emergency care, and mutual aid; and
- (c) for all expenditures made in connection with such emergency management activities to be deemed specifically for the protection and benefit of the inhabitants, property, and environment of the Reservation.

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#### 302.2. —Adoption, Amendment, Conflicts

302.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-15-98-A and amended by BC-12-20-06-G, BC-05-13-09-F<sub>-</sub>, and emergency amended by BC-\_\_-\_-

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- 302.2-2. This law may be amended <u>pursuant to the procedures set out in the Oneida Administrative Procedures Actor repealed</u> by the Oneida Business Committee <u>and/or-Oneida General Tribal Council-pursuant to the procedures set out in the Legislative Procedures Act.</u>
- 302.2-3. 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.
- 302.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal
- 33 or modify any existing law, ordinance, policy, regulation, rule, resolution, or motion.
- 34 302.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of WisconsinNation.

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#### 302.3. —Definitions

- 38 302.3-1. This section shall govern the definitions of words or phrases as used within this law.
  39 All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Biological Agent" means an infectious disease or toxin that has the ability to adversely affect human health in a variety of ways, from mild allergic reactions to serious medical conditions, and including death.
  - (b) "Communicable Disease" means any disease transmitted from one person or animal to another directly by contact with excreta or other discharges from the body, or indirectly via substances or inanimate objects that may cause a public health emergency.
  - (c) "Community/Public Health Officer" means an agent of the OCHS, or his or her designee(s), who is responsible for taking the appropriate actions in order to prevent a public health emergency from occurring on the Reservation.
  - (d) "COVID-19" means a mild to severe respiratory illness that is caused by a coronavirus, is transmitted chiefly by contact with infectious material, and is characterized especially by fever, cough and shortness of breath and may progress to pneumonia and respiratory failure.
  - (e) "Director" means the Director of the <u>Tribe's Nation's</u> Emergency Management/Homeland Security Agency.
  - (ef) "Emergency Management Network" means the entities, volunteers, consultants, contractors, outside agencies, and any other resources the TribeNation may use to facilitate inter-agency collaboration, identify and share resources, and better prepare for local incidents and large-scale disasters.
  - (fg) "Emergency Operations Plan" means the plan established to coordinate mitigation, preparedness, response, and recovery activities for all emergency or disaster situations within the Reservation.
  - (gh) "Entity" means any Tribal agency, board, committee, commission, or department. (hi) "Fair Market Value" means the everyday cost of a product in an ordinary market, absent of a disaster.
  - (ij) "Isolation" means the separation of persons or animals presumably or actually infected with a communicable disease, or that are disease carriers, for the usual period of communicability of that disease in such places and under such conditions as will prevent the direct or indirect transmission of an infectious agent to susceptible people or to those who may spread the agent to others.
  - (jk) "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the TribeNation.
  - (k(1) "Nation" means the Oneida Nation.

- (m) "National Incident Management System" or "NIMS" means the system mandated by Homeland Security Presidential Directive 5 (HSPD 5) that provides a consistent nationwide approach for federal, state, local, and tribal governments to work effectively and efficiently together to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.
- (ln) "OCHS" means the Oneida Community Health Services, which is authorized to issue compulsory vaccinations, require isolation, and quarantine individuals in order to protect the public health.
- (m)o) "Oneida Nation Emergency Planning Committee" or "ONEPC" means the committee that assists the Director in the implementation of this law.
- (np) "Proclaim" means to announce officially and publicly.

85	(eq) "Public Health Emergency" means the occurrence or imminent threat of an illness
86	or health condition which:
87	(1) is a quarantinable disease, or is believed to be caused by bioterrorism or a
88	biological agent; and
89	(2) poses a high probability of any of the following:
90	(A) a large number of deaths or serious or long-term disability among
91	humans; or
92	(B) widespread exposure to a biological, chemical, or radiological agent
93	that creates a significant risk of substantial future harm to a large number of
94	people.
95	(pr)"Quarantine" means the limitation of freedom of movement of persons or animals that
96	have been exposed to a communicable disease or chemical, biological, or radiological
97	agent, for a period of time equal to the longest usual incubation period of the disease or
98	until there is no risk of spreading the chemical, biological, or radiological agent. The
99	limitation of movement shall be in such manner as to prevent the spread of a communicable
100	disease or chemical, biological, or radiological agent.
101	(qs) "Reservation" means all land within the exterior boundaries of the Reservation of
102	the Oneida Tribe of Indians of Wisconsin Nation, as created pursuant to the 1838 Treaty
103	with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.
104	(r) "Tribe" or "Tribal" means the Oneida Tribe of Indians of Wisconsin.
105 106	(s(t) "Vital Resources" means food, water, equipment, sand, wood, or other materials obtained for the protection of life, property, and/or the environment during a proclaimed
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107	emergency.
109	302.4. —Emergency Management/Homeland Security
110	302.4-1. There is hereby created an Emergency Management/Homeland Security Agency
111	which is responsible for planning and coordinating the response to a disaster or emergency that
112	occurs within the boundaries of the Reservation.
113	302.4-2. The Director shall be responsible for coordinating and planning the operational
114	response to an emergency and is hereby empowered to:
115	(a) organize and coordinate efforts of the emergency management network of the
116	Tribe Nation.
117	(b) implement the Emergency Operations Plan as adopted by the Oneida Business
118	Committee.
119	(c) facilitate coordination and cooperation between entities and resolve questions that may
120	arise among them.
121	(d) incorporate the HSPD 5, issued on February 28, 2003 which requires all Federal, state,
122	local, and tribal governments to administer the best practices contained in the NIMS.
123	(e) coordinate the development and implementation of the NIMS within the TribeNation.
124	(f) ensure that the following occurs:
125	(1) an Emergency Operations Plan is developed and maintained, and includes

procured, supplied, inventoried, and accounted for.
(g) establish the line of authority as recorded in the Emergency Operations Plan as adopted by the Oneida Business Committee.

(2) emergency resources, equipment, and communications systems are developed,

training provisions for applicable personnel.

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- (h) enter into mutual aid and service agreements with tribal, local, state, and federal governments, subject to Oneida Business Committee approval.
  - 302.4-3. In the event of a proclamation of an emergency on the Reservation, the Director is hereby empowered:
    - (a) to obtain vital resources and to bind the TribeNation for the fair market value thereof, upon approval of the Emergency Management/Homeland Security purchasing agent, who is identified in the Emergency Operations Plan. If a person or business refuses to provide the resource(s) required, the Director may commandeer resources for public use and bind the TribeNation for the fair market value thereof. In the event the purchasing agent is unavailable, the chain of command, as approved by the Oneida Business Committee, shall be followed.
    - (b) to require emergency activities of as many Tribal members and/or employees as deemed necessary.
    - (c) to execute all of the ordinary powers of the Director, all of the special powers conferred by this law or by resolution adopted pursuant thereto, all powers conferred on the Director by any agreement approved by the Oneida Business Committee, and to exercise complete emergency authority over the Reservation.
    - (d) to coordinate with tribal, federal, state, and local authorities.

#### 150 **302.5.** — Oneida Nation Emergency Planning Committee (ONEPC)

- 151 302.5-1. The ONEPC shall consist of representatives from entities and a community
- representative as identified in the ONEPC bylaws as approved by the Oneida Business Committee.
- 153 302.5-2. The ONEPC shall meet as necessary to assist the Director in drafting and maintaining the Emergency Operations Plan.
- 302.5-3. At the request of the Director, the ONEPC shall provide assistance to the Director in the implementation of the provisions of this law or any plan issued thereunder.

#### 302.6. —Tribal Cooperation

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- 302.6-1. All entities shall comply with reasonable requests from the Director relating to emergency planning, emergency operations, and federal mandate compliance.
- 161 302.6-2. A person who is disabled or dies while serving as a public safety officer, as defined in
- the Public Safety Officers' Benefits Program, the spouse of that person and/or any children of
- that person may be eligible for benefits as determined by the Bureau of Justice Assistance under
- the Public Safety Officers' Benefits Program, 42 U.S.C. ch. 46, subch. XII.

#### 302.7. —Public Health Emergencies and Communicable Disease

- 167 302.7-1. In order to prevent a public health emergency, the Director and the Community/Public
- Health Officer shall take action to limit the spread of any communicable disease, in accordance with this law.
- 170 302.7-2. If the Community/Public Health Officer suspects or is informed of the existence of any
- communicable disease, the Community/Public Health Officer shall investigate and make or cause
- examinations to be made, as are deemed necessary.
- 173 302.7-3. The Community/Public Health Officer may quarantine, isolate, require restrictions, or
- take other communicable disease control measures as necessary. Any individual, including an
- authorized individual, who enters an isolation or quarantine premises may be subject to isolation
- or quarantine under this law.

- 177 (a) The list of quarantinable diseases shall be specified in a resolution adopted by the Oneida Business Committee as recommended by the Community/Public Health Officer.
  - (b) The Community/Public Health Officer shall immediately quarantine, isolate, or take other communicable disease control measures upon an individual if the Community/Public Health Officer receives a diagnostic report from a physician or a written or verbal notification from an individual or his or her parent or caretaker that gives the Community/Public Health Officer a reasonable belief that the individual has a communicable disease that is likely to cause a public health emergency.
  - (c) When the Community/Public Health Officer deems it necessary that an individual be quarantined or otherwise restricted in a separate place, the Community/Public Health Officer shall have that individual removed to such a designated place, if it can be done without danger to the individual's health.

**Cross-reference:** See also Resolution Identifying Quarantinable Diseases BC-05-13-09-G.

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- 302.7-4. The Community/Public Health Officer shall act as necessary to protect the public, including requesting the Director to take steps to have a public health emergency proclaimed, as identified in 302.8.
- 302.7-5. If an individual is infected with a communicable disease and the Community/Public Health Officer determines it is necessary to limit contact with the individual, all persons may be forbidden from being in direct contact with the infected individual, except for those persons having a special written permit from the Community/Public Health Officer.
- 198 302.7-6. The <u>Tribe's Nation's</u> law enforcement agency shall work with the Community/Public Health Officer to execute the Community/Public Health Officer's orders and properly guard any place if quarantine or other restrictions on communicable disease are violated or intent to violate is manifested.
  - 302.7-7. Expenses for necessary medical care, food, and other articles needed for an infected individual shall be charged against the individual or whoever is liable for the individual's support. The OCHS is responsible for the following costs accruing under this section unless the costs are payable through third party liability or through any benefit system:
    - (a) the expense for law enforcement assistance under 302.7-4.
    - (b) the expense of maintaining quarantine and isolation of the quarantined area.
    - (c) the expense of conducting examinations and tests made under the direction of the Community/Public Health Officer.
    - (d) the expense of care for dependent persons of the infected individual.
  - 302.7-8. When a public health emergency is proclaimed, the Community/Public Health Officer may do all of the following, as necessary:
    - (a) order an individual to receive a vaccination, unless the vaccination is reasonably likely to lead to serious harm to the individual or the individual, for reason of religion or conscience, refuses to obtain the vaccination.
    - (b) isolate or quarantine individuals, including those who are unable or unwilling to receive the vaccination under (a).
    - (c) prevent any individual, except for those individuals authorized by the Community/Public Health Officer, from entering an isolation or quarantine premises.

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#### 302.8. —When an Emergency is Proclaimed

302.8-1. The Oneida Business Committee shall be responsible for proclaiming or ratifying the existence of an emergency and for requesting a gubernatorial or presidential declaration.

- 224 302.8-2. The Director may request that the Oneida Business Committee proclaim the existence
- of an emergency. In the event the Oneida Business Committee is unable to proclaim or ratify the
- existence of an emergency, the Director may proclaim an emergency which shall be in effect until
- such time the Oneida Business Committee can officially ratify this declaration. The Oneida
- 228 Business Committee may proclaim the existence of an emergency without a request from the
- 229 Director, if warranted.

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- 230 302.8-3. The emergency management network of the Reservation shall be as specified in the
- Emergency Operations Plan, as adopted by the Oneida Business Committee.
- 232 302.8-4. The provisions of Chapter 34, Oneida Tribal Regulation of Domestic Animals
- 233 Ordinance, shall not apply during a proclaimed emergency. During a proclaimed emergency, the
- 234 Conservation Department shall be responsible for the care, disposal, and sheltering of all
- abandoned domestic animals and livestock.
- 236 302.8-5. No proclamation of an emergency by the Oneida Business Committee or the Director
- may last for longer than thirty (30) days, unless renewed by the Oneida Business Committee. After
- an emergency has subsided, the Director shall prepare, or shall work in conjunction with the
- 239 appropriate entity to prepare, an after-action report to be presented to the Oneida Business
- 240 Committee, any interested entity, and the public. This report shall be presented to the required
- parties no longer than sixty (60) days after the emergency has subsided, unless an extension is
- granted by the Oneida Business Committee.

#### 302.9. —Enforcement and Penalties

- 302.9-1. It shall be a violation of this law for any person to willfully obstruct, hinder, or delay the implementation or enforcement of the provisions of this law or any plan issued thereunder, whether or not an emergency has been proclaimed.
  - (a) Violators of this law may be subject to a fine of not more than \$200 per violation to be issued by the Oneida Police Department and paid to the <u>TribeNation</u>. Employees of the <u>TribeNation</u> who violate this law during their work hours or who refuse to follow the Emergency Operations Plan may be subject to disciplinary action instead of a fine.
- 302.9-2. All fines assessed under this section shall be paid within sixty (60) days of issuance of the citation, unless the person files an appeal with the Judiciary before the fine is to be paid.
- 302.9-3. Employees of the <u>TribeNation</u> who are disciplined under this law may appeal the disciplinary action in accordance with the personnel policies and procedures of the <u>TribeNation</u>.

#### 302.10. COVID-19 Core Decision Making Team

- 302.10-1. Creation of Core Decision Making Team. There is hereby created a COVID-19 Core Decision Making Team (COVID-19 Team) which shall exist by declaration of a public health emergency under this law. The COVID-19 Team shall be made up of the following persons:
  - (a) Oneida Business Committee Officers which includes the Chairperson, Vice Chairperson, Treasurer, Secretary;
  - (b) Legislative Operating Committee Chairperson;
- (c) General Manager;
  - (d) Gaming General Manager;
  - (e) Gaming Assistant Chief Financial Officer;
  - (f) Chief Financial Officer;
- 268 (g) Intergovernmental Affairs and Communications Director; and
  - (h) Public Relations Director.

- 270 302.10-2. Delegation of Authority. The COVID-19 Team shall have emergency authority to take 271 the following actions.
  - (a) Notwithstanding any requirements of the Legislative Procedures Act, declare exceptions to the Nation's laws during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees.
  - (b) Notwithstanding any requirements in any policy, procedure, regulation, or standard operating procedures, declare exceptions to any policy, procedure, regulation, or standard operating procedure during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees.
  - 302.10-3. Duration of Authority for Exceptions Declared by the COVID-19 Team. Any actions taken under authority granted in this section shall be effective upon the date declared by the COVID-19 Team and shall be effective for the duration of any declared emergency, or for a shorter time period if identified.
    - (a) The Oneida Business Committee may change or extend any emergency actions taken by the COVID-19 Team.
  - 302.10-4. Declarations. All declarations made by the COVID-19 Team shall:
- 288 (a) be written on the Nation's letterhead;
- 289 (b) provide the date the declaration was issued:
  - (c) contain a clear statement of the directives:
- 291 (d) provide the date the directive shall go into effect:
- 292 (e) be signed by the Oneida Business Committee Chairperson, or Vice Chairperson in the 293 Chairperson's absence; and
- 294 (f) be posted on the Nation's COVID-19 web site.

296 End.

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298 Adopted - BC-7-15-98-A 299 Amended -BC-12-20-06-G

300 Emergency Amended –BC-4-30-09-A (Influenza A (H1N1))

301 Amended-BC-5-13-09-F

302 Emergency Amended – BC- - - -

#### Title 3. Health and Public Safety – Chapter 302 Yotlihokt# Olihw@ke

Matters that are concerning immediate attention

#### EMERGENCY MANAGEMENT AND HOMELAND SECURITY

<ul><li>302.1. Purpose and Policy</li><li>302.2. Adoption, Amendment, Conflicts</li><li>302.3. Definitions</li><li>302.4. Emergency Management/Homeland Security</li></ul>	<ul><li>302.6. Tribal Cooperation</li><li>302.7. Public Health Emergencies and Communicable Disease</li><li>302.8. When an Emergency is Proclaimed</li><li>302.9. Enforcement and Penalties</li></ul>
302.4. Emergency Management/Homeland Security 302.5. Oneida Nation Emergency Planning Committee (ONEPC)	302.9. Enforcement and Penalties 302.10. COVID-19 Core Decision Making Team

## **302.1. Purpose and Policy**

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- 302.1-1. The purposes of this law are to:
  - (a) provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; and
  - (b) provide for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; and
  - (c) establish the use of the National Incident Management System (NIMS); and
  - (d) designate authority and responsibilities for public health preparedness.
- 302.1-2. It is the policy of this law to provide:
  - (a) a description of the emergency management network of the Nation; and
  - (b) authorization for specialized activities to mitigate hazardous conditions and for the preparation of Tribal emergency response management plans, as well as to address concerns related to isolation and/or quarantine orders, emergency care, and mutual aid; and
  - (c) for all expenditures made in connection with such emergency management activities to be deemed specifically for the protection and benefit of the inhabitants, property, and environment of the Reservation.

#### 302.2. Adoption, Amendment, Conflicts

- 302.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-15-98-A and amended by BC-12-20-06-G, BC-05-13-09-F, and emergency amended by BC-\_\_-\_-
- 302.2-2. 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.
- 28 302.2-3. 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.
- 302.2-4. 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.
- 33 302.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### **302.3.** Definitions

- 36 302.3-1. This section shall govern the definitions of words or phrases as used within this law.
  37 All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Biological Agent" means an infectious disease or toxin that has the ability to

- adversely affect human health in a variety of ways, from mild allergic reactions to serious medical conditions, and including death.
  - (b) "Communicable Disease" means any disease transmitted from one person or animal to another directly by contact with excreta or other discharges from the body, or indirectly via substances or inanimate objects that may cause a public health emergency.
  - (c) "Community/Public Health Officer" means an agent of the OCHS, or his or her designee(s), who is responsible for taking the appropriate actions in order to prevent a public health emergency from occurring on the Reservation.
  - (d) "COVID-19" means a mild to severe respiratory illness that is caused by a coronavirus, is transmitted chiefly by contact with infectious material, and is characterized especially by fever, cough and shortness of breath and may progress to pneumonia and respiratory failure.
  - (e) "Director" means the Director of the Nation's Emergency Management/Homeland Security Agency.
  - (f) "Emergency Management Network" means the entities, volunteers, consultants, contractors, outside agencies, and any other resources the Nation may use to facilitate inter-agency collaboration, identify and share resources, and better prepare for local incidents and large-scale disasters.
  - (g) "Emergency Operations Plan" means the plan established to coordinate mitigation, preparedness, response, and recovery activities for all emergency or disaster situations within the Reservation.
  - (h) "Entity" means any Tribal agency, board, committee, commission, or department.
  - (i) "Fair Market Value" means the everyday cost of a product in an ordinary market, absent of a disaster.
  - (j) "Isolation" means the separation of persons or animals presumably or actually infected with a communicable disease, or that are disease carriers, for the usual period of communicability of that disease in such places and under such conditions as will prevent the direct or indirect transmission of an infectious agent to susceptible people or to those who may spread the agent to others.
  - (k) "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
  - (1) "Nation" means the Oneida Nation.

- (m) "National Incident Management System" or "NIMS" means the system mandated by Homeland Security Presidential Directive 5 (HSPD 5) that provides a consistent nationwide approach for federal, state, local, and tribal governments to work effectively and efficiently together to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.
- (n) "OCHS" means the Oneida Community Health Services, which is authorized to issue compulsory vaccinations, require isolation, and quarantine individuals in order to protect the public health.
- (o) "Oneida Nation Emergency Planning Committee" or "ONEPC" means the committee that assists the Director in the implementation of this law.
- (p) "Proclaim" means to announce officially and publicly.
- (q) "Public Health Emergency" means the occurrence or imminent threat of an illness or health condition which:

(1)	is a quarantinable di	isease, or is	believed to be	caused by	bioterrorism	or a
biolo	ogical agent; and					
(2)	nosas a high probabil	ity of any of	the following:			

- (2) poses a high probability of any of the following:
  - (A) a large number of deaths or serious or long-term disability among humans; or
  - (B) widespread exposure to a biological, chemical, or radiological agent that creates a significant risk of substantial future harm to a large number of people.
- (r) "Quarantine" means the limitation of freedom of movement of persons or animals that have been exposed to a communicable disease or chemical, biological, or radiological agent, for a period of time equal to the longest usual incubation period of the disease or until there is no risk of spreading the chemical, biological, or radiological agent. The limitation of movement shall be in such manner as to prevent the spread of a communicable disease or chemical, biological, or radiological agent.
- (s) "Reservation" means all land within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (t) "Vital Resources" means food, water, equipment, sand, wood, or other materials obtained for the protection of life, property, and/or the environment during a proclaimed emergency.

#### 302.4. Emergency Management/Homeland Security

- 302.4-1. There is hereby created an Emergency Management/Homeland Security Agency which is responsible for planning and coordinating the response to a disaster or emergency that occurs within the boundaries of the Reservation.
- 302.4-2. The Director shall be responsible for coordinating and planning the operational response to an emergency and is hereby empowered to:
  - (a) organize and coordinate efforts of the emergency management network of the Nation.
  - (b) implement the Emergency Operations Plan as adopted by the Oneida Business Committee.
  - (c) facilitate coordination and cooperation between entities and resolve questions that may arise among them.
  - (d) incorporate the HSPD 5, issued on February 28, 2003 which requires all Federal, state, local, and tribal governments to administer the best practices contained in the NIMS.
  - (e) coordinate the development and implementation of the NIMS within the Nation.
  - (f) ensure that the following occurs:
    - (1) an Emergency Operations Plan is developed and maintained, and includes training provisions for applicable personnel.
    - (2) emergency resources, equipment, and communications systems are developed, procured, supplied, inventoried, and accounted for.
  - (g) establish the line of authority as recorded in the Emergency Operations Plan as adopted by the Oneida Business Committee.
  - (h) enter into mutual aid and service agreements with tribal, local, state, and federal governments, subject to Oneida Business Committee approval.
- 302.4-3. In the event of a proclamation of an emergency on the Reservation, the Director is hereby empowered:

- (a) to obtain vital resources and to bind the Nation for the fair market value thereof, upon approval of the Emergency Management/Homeland Security purchasing agent, who is identified in the Emergency Operations Plan. If a person or business refuses to provide the resource(s) required, the Director may commandeer resources for public use and bind the Nation for the fair market value thereof. In the event the purchasing agent is unavailable, the chain of command, as approved by the Oneida Business Committee, shall be followed.
  - (b) to require emergency activities of as many Tribal members and/or employees as deemed necessary.
  - (c) to execute all of the ordinary powers of the Director, all of the special powers conferred by this law or by resolution adopted pursuant thereto, all powers conferred on the Director by any agreement approved by the Oneida Business Committee, and to exercise complete emergency authority over the Reservation.
  - (d) to coordinate with tribal, federal, state, and local authorities.

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#### **302.5.** Oneida Nation Emergency Planning Committee (ONEPC)

- 302.5-1. The ONEPC shall consist of representatives from entities and a community representative as identified in the ONEPC bylaws as approved by the Oneida Business Committee.
- 151 302.5-2. The ONEPC shall meet as necessary to assist the Director in drafting and maintaining the Emergency Operations Plan.
- 302.5-3. At the request of the Director, the ONEPC shall provide assistance to the Director in the implementation of the provisions of this law or any plan issued thereunder.

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#### **302.6.** Tribal Cooperation

- 302.6-1. All entities shall comply with reasonable requests from the Director relating to emergency planning, emergency operations, and federal mandate compliance.
- 302.6-2. A person who is disabled or dies while serving as a public safety officer, as defined in the Public Safety Officers' Benefits Program, the spouse of that person and/or any children of
- that person may be eligible for benefits as determined by the Bureau of Justice Assistance under the Public Safety Officers' Benefits Program, 42 U.S.C. ch. 46, subch. XII.

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#### 302.7. Public Health Emergencies and Communicable Disease

- 302.7-1. In order to prevent a public health emergency, the Director and the Community/Public Health Officer shall take action to limit the spread of any communicable disease, in accordance with this law.
- 302.7-2. If the Community/Public Health Officer suspects or is informed of the existence of any communicable disease, the Community/Public Health Officer shall investigate and make or cause examinations to be made, as are deemed necessary.
- 302.7-3. The Community/Public Health Officer may quarantine, isolate, require restrictions, or take other communicable disease control measures as necessary. Any individual, including an authorized individual, who enters an isolation or quarantine premises may be subject to isolation or quarantine under this law.
  - (a) The list of quarantinable diseases shall be specified in a resolution adopted by the Oneida Business Committee as recommended by the Community/Public Health Officer.
  - (b) The Community/Public Health Officer shall immediately quarantine, isolate, or take other communicable disease control measures upon an individual if the 3 O.C. 302 Page 4

- 179 Community/Public Health Officer receives a diagnostic report from a physician or a 180 written or verbal notification from an individual or his or her parent or caretaker that gives the Community/Public Health Officer a reasonable belief that the individual has a 182 communicable disease that is likely to cause a public health emergency.
  - (c) When the Community/Public Health Officer deems it necessary that an individual be quarantined or otherwise restricted in a separate place, the Community/Public Health Officer shall have that individual removed to such a designated place, if it can be done without danger to the individual's health.

**Cross-reference:** See also Resolution Identifying Quarantinable Diseases BC-05-13-09-G.

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- The Community/Public Health Officer shall act as necessary to protect the public, including requesting the Director to take steps to have a public health emergency proclaimed, as identified in 302.8.
- 192 302.7-5. If an individual is infected with a communicable disease and the Community/Public 193 Health Officer determines it is necessary to limit contact with the individual, all persons may be 194 forbidden from being in direct contact with the infected individual, except for those persons 195 having a special written permit from the Community/Public Health Officer.
- 196 302.7-6. The Nation's law enforcement agency shall work with the Community/Public Health Officer to execute the Community/Public Health Officer's orders and properly guard any place if 197 198 quarantine or other restrictions on communicable disease are violated or intent to violate is 199 manifested.
  - 302.7-7. Expenses for necessary medical care, food, and other articles needed for an infected individual shall be charged against the individual or whoever is liable for the individual's support. The OCHS is responsible for the following costs accruing under this section unless the costs are payable through third party liability or through any benefit system:
    - (a) the expense for law enforcement assistance under 302.7-4.
    - (b) the expense of maintaining quarantine and isolation of the quarantined area.
    - (c) the expense of conducting examinations and tests made under the direction of the Community/Public Health Officer.
    - (d) the expense of care for dependent persons of the infected individual.
  - When a public health emergency is proclaimed, the Community/Public Health Officer may do all of the following, as necessary:
    - (a) order an individual to receive a vaccination, unless the vaccination is reasonably likely to lead to serious harm to the individual or the individual, for reason of religion or conscience, refuses to obtain the vaccination.
    - (b) isolate or quarantine individuals, including those who are unable or unwilling to receive the vaccination under (a).
    - (c) prevent any individual, except for those individuals authorized by the Community/Public Health Officer, from entering an isolation or quarantine premises.

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#### 302.8. When an Emergency is Proclaimed

- 220 302.8-1. The Oneida Business Committee shall be responsible for proclaiming or ratifying the existence of an emergency and for requesting a gubernatorial or presidential declaration. 221
- 222 302.8-2. The Director may request that the Oneida Business Committee proclaim the existence 223 of an emergency. In the event the Oneida Business Committee is unable to proclaim or ratify the 224 existence of an emergency, the Director may proclaim an emergency which shall be in effect 225 until such time the Oneida Business Committee can officially ratify this declaration. The Oneida

- Business Committee may proclaim the existence of an emergency without a request from the
- 227 Director, if warranted.
- 228 302.8-3. The emergency management network of the Reservation shall be as specified in the
- Emergency Operations Plan, as adopted by the Oneida Business Committee.
- 230 302.8-4. The provisions of Chapter 34, Oneida Tribal Regulation of Domestic Animals
- 231 Ordinance, shall not apply during a proclaimed emergency. During a proclaimed emergency, the
- 232 Conservation Department shall be responsible for the care, disposal, and sheltering of all
- abandoned domestic animals and livestock.
- 234 302.8-5. No proclamation of an emergency by the Oneida Business Committee or the Director
- 235 may last for longer than thirty (30) days, unless renewed by the Oneida Business Committee.
- After an emergency has subsided, the Director shall prepare, or shall work in conjunction with
- 237 the appropriate entity to prepare, an after-action report to be presented to the Oneida Business
- Committee, any interested entity, and the public. This report shall be presented to the required
- parties no longer than sixty (60) days after the emergency has subsided, unless an extension is
- granted by the Oneida Business Committee.

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#### **302.9.** Enforcement and Penalties

- 302.9-1. It shall be a violation of this law for any person to willfully obstruct, hinder, or delay the implementation or enforcement of the provisions of this law or any plan issued thereunder, whether or not an emergency has been proclaimed.
  - (a) Violators of this law may be subject to a fine of not more than \$200 per violation to be issued by the Oneida Police Department and paid to the Nation. Employees of the Nation who violate this law during their work hours or who refuse to follow the Emergency Operations Plan may be subject to disciplinary action instead of a fine.
- 302.9-2. All fines assessed under this section shall be paid within sixty (60) days of issuance of the citation, unless the person files an appeal with the Judiciary before the fine is to be paid.
- 302.9-3. Employees of the Nation who are disciplined under this law may appeal the disciplinary action in accordance with the personnel policies and procedures of the Nation.

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#### 302.10. COVID-19 Core Decision Making Team

- 302.10-1. *Creation of Core Decision Making Team*. There is hereby created a COVID-19 Core Decision Making Team (*COVID-19 Team*) which shall exist by declaration of a public health emergency under this law. The COVID-19 Team shall be made up of the following persons:
  - (a) Oneida Business Committee Officers which includes the Chairperson, Vice Chairperson, Treasurer, Secretary;
  - (b) Legislative Operating Committee Chairperson;
  - (c) General Manager;
  - (d) Gaming General Manager;
  - (e) Gaming Assistant Chief Financial Officer;
  - (f) Chief Financial Officer;
  - (g) Intergovernmental Affairs and Communications Director; and
  - (h) Public Relations Director.
- 302.10-2. *Delegation of Authority*. The COVID-19 Team shall have emergency authority to take the following actions.
  - (a) Notwithstanding any requirements of the Legislative Procedures Act, declare exceptions to the Nation's laws during the emergency period which will be of immediate

- impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees.

  (b) Notwithstanding any requirements in any policy, procedure, regulation, or standard
  - (b) Notwithstanding any requirements in any policy, procedure, regulation, or standard operating procedures, declare exceptions to any policy, procedure, regulation, or standard operating procedure during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees.
  - 302.10-3. *Duration of Authority for Exceptions Declared by the COVID-19 Team*. Any actions taken under authority granted in this section shall be effective upon the date declared by the COVID-19 Team and shall be effective for the duration of any declared emergency, or for a shorter time period if identified.
    - (a) The Oneida Business Committee may change or extend any emergency actions taken by the COVID-19 Team.
- 285 302.10-4. *Declarations*. All declarations made by the COVID-19 Team shall:
- 286 (a) be written on the Nation's letterhead;
- 287 (b) provide the date the declaration was issued;
  - (c) contain a clear statement of the directives;
- 289 (d) provide the date the directive shall go into effect;
- 290 (e) be signed by the Oneida Business Committee Chairperson, or Vice Chairperson in the Chairperson's absence; and
- 292 (f) be posted on the Nation's COVID-19 web site.

294 *End.* 

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296 Adopted - BC-7-15-98-A 297 Amended -BC-12-20-06-G

- Emergency Amended –BC-4-30-09-A (Influenza A (H1N1))
- 299 Amended-BC-5-13-09-F
- 300 Emergency Amended BC- - -

# March 25, 2020, Legislative Operating Committee E-Poll Approval of the Oneida Personnel Policies and Procedures Emergency Adoption Packet



**Good Afternoon Legislative Operating Committee,** 

This e-mail serves as the e-poll for the approval of the Oneida Personnel Policies and Procedures emergency adoption packet.

#### **EXECUTIVE SUMMARY**

The world is currently facing a pandemic of coronavirus disease (COVID-19) after an outbreak began in Wuhan, China and quickly spread to many other countries throughout the world, including the United States. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. On March 12, 2020, in accordance with Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. The declaration of a public health emergency by the Nation and the potential financial impacts of the COVID-19 pandemic met the Budget Management and Control law's requirement that the Nation be under extreme financial distress for the budget contingency plan to be implemented. The Oneida Business Committee adopted resolution BC-03-17-20-A which declared that Tier IV budget contingency measures are implemented which required a four percent (4%) reduction in overall expenditures and budgets. On April 8. 2020, the Oneida Business Committee will consider the adoption of a resolution to declare that Tier V budget contingency measures be implemented.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5].

Emergency amendments to the Oneida Personnel Policies and Procedures are being sought to limit the amount of personal and/or vacation time an employee may be paid out at the time of separation or

termination of employment with the Nation. The emergency amendments to the Oneida Personnel Policies and Procedures will:

- Limit the amount of credit for accrued vacation or personal time an employee who is terminated during the probation period will receive on his or her final paycheck to forty (40) hours [Section III(D)(3)(b)];
- Limit the amount an employee will be paid for any unused personal or vacation days upon termination from the Nation to forty (40) hours [Section IV(A)(5)(h)]; and
- Remove the burden for a supervisor to show that a denial of a personal day or vacation day be based upon interference with the business of the Nation, and instead allow a supervisor to deny use of a personal or vacation time for any business-related reason [Section IV(A)(5)(I)].

The emergency amendments to the Oneida Personnel Policies and Procedures are necessary for the preservation of the general welfare of the Reservation population. The emergency amendments limit the fringe benefit of being paid out personal and vacation time in the event of separation from employment with the Nation up to forty (40) hours in an effort to protect the general welfare of the Reservation population by maintaining essential governmental services and employment during a time when no revenues are generated through gaming operations.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately preserve funding for necessary governmental services and activities as a result of the COVID-19 pandemic.

An e-poll is necessary for this matter because the April 1, 2020, Legislative Operating Committee meeting has been canceled due to the COVID-19 pandemic, and immediate action is required by Legislative Operating Committee to approve the materials for the emergency adoption of amendments to the Oneida Personnel Policies and Procedures so the materials can be forwarded to the Oneida Business Committee for consideration during the April 8, 2020, Oneida Business Committee meeting.

#### **REQUESTED ACTION**

Approve the Oneida Personnel Policies and Procedures emergency adoption packet and forward to the Oneida Business Committee for consideration.

#### **DEADLINE FOR RESPONSE**

March 25, 2020 at 5:30 p.m.

All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King. Ernest Stevens III did not provide a response.

#### Re: E-POLL REQUEST: Approval of the Oneida Personnel Policies and Procedures Emergency Adoption Packet ≪ Reply All → Forward David P. Jordan To LOC; Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan Wed 3/25/2020 3:47 PM Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago (i) If there are problems with how this message is displayed, click here to view it in a web browser. approve RE: E-POLL REQUEST: Approval of the Oneida Personnel Policies and Procedures Emergency Adoption Packet Reply ≪ Reply All → Forward Kirby W. Metoxen Wed 3/25/2020 3:48 PM To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago Approve Kirby Metoxen Kirby Metoxen, Councilman kmetox@oneidanation.org Work Phone: (920) 869-4441 (920) 869-4040 000000 ONEIDA A good mind. A good heart. A strong fire. The information contained in this e-mail is confidential and privileged. If you are not the intended recipient, please be advised that any use, copying, or dissemination of this information is prohibited. Please destroy this e-mail and immediately notify us of the erroneous transmission. RE: E-POLL REQUEST: Approval of the Oneida Personnel Policies and Procedures Emergency Adoption Packet ≪ Reply All ← Reply → Forward Jennifer A. Webster Wed 3/25/2020 3:49 PM To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago Approve, Jenny RE: E-POLL REQUEST: Approval of the Oneida Personnel Policies and Procedures Emergency Adoption Packet ≪ Reply All → Forward Daniel P. Guzman To Kirby W. Metoxen; David P. Jordan; LOC; Jennifer A. Webster; Ernest L. Stevens Wed 3/25/2020 4:08 PM Cc Jameson J. Wilson; Leyne C. Orosco; Clorissa N. Santiago; Rosa J. Laster; Jennifer A. Falck; Jessica L. Wallenfang; Fawn J. Billie

Approve

Sent from Workspace ONE Boxer



# Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-365



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson

DATE: April 8, 2020

RE: Oneida Personnel Policies and Procedures Emergency Amendments

Please find the following attached backup documentation for your consideration of Oneida Personnel Policies and Procedures Emergency Amendments:

- 1. Resolution: Emergency Amendments to the Personnel Policies and Procedures Amending Personal and Vacation Time
- 2. Statement of Effect: Emergency Amendments to the Personnel Policies and Procedures Amending Personal and Vacation Time
- 3. Oneida Personnel Policies and Procedures Emergency Amendments Legislative Analysis
- 4. Oneida Personnel Policies and Procedures (Redline)
- 5. Oneida Personnel Policies and Procedures (Clean)

#### Overview

Emergency amendments to the Oneida Personnel Policies and Procedures are being sought to limit the amount of personal and/or vacation time an employee may be paid out at the time of separation or termination of employment with the Nation. The emergency amendments to the Oneida Personnel Policies and Procedures will:

- Limit the amount of credit for accrued vacation or personal time an employee who is terminated during the probation period will receive on his or her final paycheck to forty (40) hours [Section III(D)(3)(b)];
- Limit the amount an employee will be paid for any unused personal or vacation days upon termination from the Nation to forty (40) hours [Section IV(A)(5)(h)]; and
- Remove the burden for a supervisor to show that a denial of a personal day or vacation day be based upon interference with the business of the Nation, and instead allow a supervisor to deny use of a personal or vacation time for any business-related reason [Section IV(A)(5)(1)].

The world is currently facing a pandemic of COVID-19 after an outbreak began in Wuhan, China and quickly spread to many other countries throughout the world, including the United States. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. State governors, including the State of Wisconsin, have declared public health emergencies and state public health officers have issued orders, for example, closing public schools, limiting public gatherings, and closing restaurants and bars except for take-out orders.

On March 12, 2020, in accordance with the Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding

COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

Since the declaration of a public health emergency, the Oneida Business Committee has taken action to protect the health and welfare of the members, employees and the community, including instituting expenditure restrictions to preserve resources for the provision of governmental services to members most at risk, closure of the Nation's gaming operations, and insuring that employees will continued to be paid during the public health emergency as long as the Nation's resources will allow.

The declaration of a public health emergency by the Nation and the potential financial impacts of the COVID-19 pandemic met the Budget Management and Control law's requirement that the Nation be under extreme financial distress for the budget contingency plan to be implemented. The Oneida Business Committee adopted resolution BC-03-17-20-A which declared that Tier IV budget contingency measures are implemented which required a four percent (4%) reduction in overall expenditures and budgets. On April 8. 2020, the Oneida Business Committee will consider the adoption of a resolution to declare that Tier V budget contingency measures be implemented.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency amendments to the Oneida Personnel Policies and Procedures are necessary for the preservation of the general welfare of the Reservation population. The emergency amendments limit the fringe benefit of being paid out personal and vacation time in the event of separation from employment with the Nation up to forty (40) hours in an effort to protect the general welfare of the Reservation population by maintaining essential governmental services and employment during a time when no revenues are generated through gaming operations.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately preserve funding for necessary governmental services and activities as a result of the COVID-19 pandemic.

The emergency amendments to the Oneida Personnel Policies and Procedures will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

#### **Requested Action**

Approve the Resolution: Emergency Amendments to the Personnel Policies and Procedures Amending Personal and Vacation Time



## **Oneida Nation**

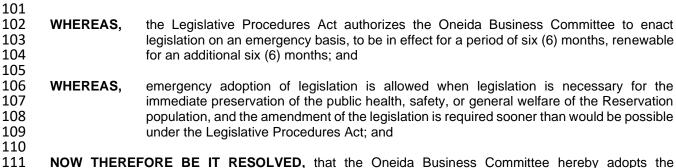
Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

1 2 3 4	BC Resolution # Emergency Amendments to the Personnel Policies and Procedures Amending Personal and Vacation Time				
5 6 7	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and			
8 9	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and			
10 11 12	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and			
13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 46 47 47 47 47 47 47 47 47 47 47 47 47 47	WHEREAS,	the federal government has proclaimed a public health emergency related to the spread of the COVID-19 virus and has identified that the spread of the virus has resulted in large numbers of individuals becoming ill and high mortality rates, impacts to the stock markets, and businesses; and			
	WHEREAS,	state governors, including the State of Wisconsin, have declared public health emergencies and state public health officers have issued orders, for example, closing public schools, limiting public gatherings, and closing restaurants and bars except for take-out orders; and			
	WHEREAS,	on March 12, 2020, Chairman Hill declared a public health state of emergency, and the Oneida Business Committee took actions to take steps to protect the health and welfare of the members, employees and the community, including instituting expenditure restrictions to preserve resources for the provision of governmental services to members most at risk, closure of the Nation's gaming operations, and insuring that employees will continued to be paid during the public health emergency as long as the Nation's resources will allow; and			
	WHEREAS,	the Oneida Business Committee adopted resolution BC-03-17-20-A which declared that Tier IV budget contingency measures are implemented which required a four percent (4%) reduction in overall expenditures and budgets; and			
	WHEREAS,	the Oneida Business Committee adopted resolution # BC-0420, which declared that Tier V budget contingency measures are implemented and directed expenditure reductions regarding non-essential government functions and instituted lay-offs regarding non-critical personnel; and			
	WHEREAS,	the Treasurer has implemented a COVID-19 Finance Team (Finance Team) to monitor the financial status of the Nation and make recommendations regarding expenditure restrictions for the remainder of FY2020, budgeting for FY2021, development of directions for a continuing resolution for FY2021, and other actions necessary to ensure governmental services can continue to be provided to those most in need and at risk regarding COVID-19 and the health impacts of the virus; and			



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**NOW THEREFORE BE IT RESOLVED,** that the Oneida Business Committee hereby adopts the emergency amendments to the Oneida Personnel Policies and Procedures effective immediately.

**NOW THEREFORE BE IT FURTHER RESOLVED,** that any Standard Operating Procedure that conflicts with these emergency amendments are hereby amended to conform to these emergency amendments.

**NOW THEREFORE BE IT FURTHER RESOLVED,** that the Finance Office is directed to set aside one hundred thousand dollars (\$100,000) each week to accumulate a total of two million dollars (\$2,000,000) for this liability.



#### Oneida Nation Oneida Business Committee

Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



#### **Statement of Effect**

Emergency Amendments to the Personnel Policies and Procedures Amending Personal and Vacation Time

#### Summary

This resolution adopts emergency amendments to the Oneida Personnel Policies and Procedures which limit the amount of personal and/or vacation time an employee may be paid out upon termination of employment with the Nation to up to forty (40) hours.

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

Date: March 25, 2020

#### Analysis by the Legislative Reference Office

This resolution adopts emergency amendments to the Oneida Personnel Policies and Procedures. The purpose of the Oneida Personnel Policies and Procedures is to provide for the Nation's employee related policies and procedures including recruitment, selection, compensation and benefits, employee relations, safety and health, program and enterprise rules and regulations, and record keeping. The emergency amendments to the Oneida Personnel Policies and Procedures will:

- Limit the amount of credit for accrued vacation or personal time an employee who is terminated during the probation period will receive on his or her final paycheck to forty (40) hours [Section III(D)(3)(b)];
- Limit the amount an employee will be paid for any unused personal or vacation days upon termination from the Nation to forty (40) hours [Section IV(A)(5)(h)]; and
- Remove the burden for a supervisor to show that a denial of a personal day or vacation day be based upon interference with the business of the Nation, and instead allow a supervisor to deny use of a personal or vacation time for any business-related reason [Section IV(A)(5)(1)].

The Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [1 O.C. 109.9-5].

The resolution provides various information on the COVID-19 pandemic that the world is now facing. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts.

On March 12, 2020, in accordance with the Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. On March 17, 2020, the Oneida Business Committee adopted resolution BC-03-17-20-A which declared that Tier IV budget contingency measures are implemented which required a four percent (4%) reduction in overall expenditures and budgets.

On April 8. 2020, the Oneida Business Committee will consider the adoption of a resolution to declare that Tier V budget contingency measures be implemented.

The resolution provides that the emergency amendments to this Law are necessary for the preservation of the general welfare of the Reservation population. The emergency amendments limit the fringe benefit of being paid out personal and vacation time in the event of separation from employment with the Nation to up to forty (40) hours in an effort to protect the general welfare of the Reservation population by maintaining essential governmental services and employment during a time when no revenues are generated through gaming operations.

Additionally, the resolution provides that observance of the requirements under the LPA for adoption of this amendment would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately preserve funding for necessary governmental services and activities as a result of the COVID-19 pandemic.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

The resolution also provides the clarification that any standard operating procedure that conflicts with these emergency amendments shall be hereby amended to conform to these emergency amendments.

The Finance Office is also directed to set aside one hundred thousand dollars (\$100,000) each week to accumulate a total of two million dollars (\$2,000,000) for this liability.

#### Conclusion

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





# EMERGENCY AMENDMENTS TO ONEIDA PERSONNEL POLICIES AND PROCEDURES LEGISLATIVE ANALYSIS

#### **SECTION 1. EXECUTIVE SUMMARY**

Analysis by the Legislative Reference Office				
Intent of the Proposed Amendments	<ul> <li>Limit the amount of credit for accrued vacation or personal time an employee who is terminated during the probation period will receive on his or her final paycheck to forty (40) hours;</li> <li>Limit the amount an employee will be paid for any unused personal or vacation days upon termination from the Nation to forty (40) hours; and</li> <li>Remove the burden for a supervisor to show that a denial of a personal day or vacation day be based upon interference with the business of the Nation, and instead allow a supervisor to deny use of a personal or vacation time for any business-related reason.</li> </ul>			
Purpose	To provide for the Nation's employee related policies and procedures including recruitment, selection, compensation and benefits, employee relations, safety and health, program and enterprise rules and regulations, and record keeping.			
Affected Entities	Oneida Nation employees			
Public Meeting	A public meeting is not required for emergency legislation [1 O.C. 109.8-1(b) and 109.9-5(a)].			
Fiscal Impact	A fiscal impact statement is not required for emergency legislation [1 O.C. 109.9-5(a)].			
Expiration of Emergency Amendments	Emergency amendments expire six (6) months after adoption and may be renewed for one additional six (6) month period. [1 O.C. 109.9-5(b)].			

#### **SECTION 2. LEGISLATIVE DEVELOPMENT**

- **A.** *Background*. The Oneida Personnel Policies and Procedures provide for the Nation's employee related policies and procedures including recruitment, selection, compensation and benefits, employee relations, safety and health, program and enterprise rules and regulations, and record keeping.
- **B.** *COVID-19 Pandemic*. The world is currently facing a pandemic of the coronavirus disease 2019 (COVID-19). The COVID-19 outbreak originated in Wuhan, China and has spread to many other countries throughout the world, including the United States. The World Health Organization has identified that the spread of COVID-19 is now a pandemic resulting in many countries experiencing the effects of illness and health issues related to COVID-19 and economic impacts.
  - Declarations of Emergency.
    - Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" on March 12, 2020, regarding COVID-19 which sets into place the necessary authority should action need to be taken, and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
      - Since the public health emergency was declared, the Oneida Business Committee
        has taken action to protect the health and welfare of the members, employees and
        the community, including instituting expenditure restrictions to preserve resources

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59 60 61 for the provision of governmental services to members most at risk, closure of the Nation's gaming operations, and insuring that employees will continued to be paid during the public health emergency as long as the Nation's resources will allow.

- The Oneida Business Committee adopted resolution BC-03-17-20-A which declared that Tier IV budget contingency measures be implemented in accordance with the Budget Management and Control law. Tier IV budget contingency measures included a four percent (4%) reduction in overall expenditures and budgets.
- On April 8, 2020, the Oneida Business Committee will consider the adoption of a resolution which would declare that Tier V budget contingency measures be implemented and direct expenditure reductions regarding non-essential government functions and institute lay-offs regarding non-critical personnel.
- Governor Evers declared a public health emergency for the State of Wisconsin on March 12, 2020, based on COVID-19 cases in Wisconsin.
  - The State of Wisconsin has now closed public schools, limited public gatherings, and closed restaurants and bars except for take-out orders or delivery.
- President Trump declared a national emergency for the United States over the COVID-19 outbreak on March 13, 2020.
- Center of Disease Control Precautions. The Center of Disease Control has identified that March, April, and May should be the time when the potential for the highest increases in the number of confirmed cases would occur, and issued the following precautions to avoid further spread of COVID-19:
  - Clean your hands often.
    - Wash your hands often with soap and water for at least twenty (20) seconds especially after you have been in a public place, or after blowing your nose, coughing, or sneezing.
    - If soap and water are not readily available, use a hand sanitizer that contains at least sixty percent (60%) alcohol. Cover all surfaces of your hands and rub them together until they feel dry.
    - Avoid touching your eyes, nose, and mouth with unwashed hands.
  - Avoid close contact.
    - Avoid close contact with people who are sick
    - Put distance between yourself and other people if COVID-19 is spreading in your community. This is especially important for people who are at higher risk of getting very sick.
- C. In response to the COVID-19 pandemic, emergency amendments to the Oneida Personnel Policies and Procedures are being sought to address references regarding paying out personal and vacation time upon separation from employment.

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

- A. Representatives from the following departments or entities participated in the development of this Law and legislative analysis:
  - Oneida Law Office.

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

- **A.** These amendments are being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency law "where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the Reservation population and enactment or amendment of legislation is required sooner than would be possible under this law." [1 O.C. 109.9-5].
  - Emergency amendments are being pursued for the immediate preservation of the general welfare of the Reservation population against the public health crisis that is the COVID-19 pandemic and its resulting effects. Chairman Tehassi Hill declared a public health state of emergency for the Nation on March 12, 2020. Adopting emergency amendments to the Oneida Personnel Policies and Procedures to limit the fringe benefit of being paid out personal and vacation time in the event of separation from employment with the Nation is necessary to maintain essential governmental services and employment during a time when no revenues are generated through gaming operations.
  - Observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately preserve funding for necessary governmental services and activities as a result of the COVID-19 pandemic.
- **B.** The emergency amendments will expire six (6) months after adoption, with one (1) opportunity for a six (6) month extension of the emergency amendments. [1 O.C. 109.9-5(b)].
- **C.** The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact statement will eventually be required when considering permanent adoption of these amendments.
- C. The Legislative Operating Committee added the Oneida Personnel Policies and Procedures to the Active Files List on February 6, 2019, to address investigative enforcement. On April 10, 2019, the Oneida Business Committee directed the Legislative Operating Committee to complete the legislative process to remove section IV(A)(5)(n) regarding Trade Back for Cash from the Personnel Policies and Procedures. Now, emergency amendments are being pursued to address paying out personal and vacation time upon separation from employment.

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

A. Limitations on Payments for Accrued Personal and Vacation Time Upon Termination. The proposed emergency amendments provide that an employee who is terminated during the probation period will receive up to forty (40) hours of accrued vacation or personal days in their final paycheck. [Section III(D)(3)(b)]. Previously this section of the Personnel Policies and Procedures provided that the employee, upon termination during the probation period, would receive credit for accrued vacation or personal days in their final paycheck. There was no limitation on the amount of vacation or personal days an employee would receive credit for in his or her final paycheck. Additionally, the proposed emergency amendments provide that upon termination from Tribal employment, employees will be paid up to forty (40) hours for any unused personal and/or vacation days. [Section IV(A)(5)(h)]. Previously, the Personnel Policies and Procedures provided that upon termination from Tribal employment, employees will be paid for any unused personal and/or vacation days. There was no limitation on the amount of unused vacation or personal days an employee would be paid for upon termination.

- Effect. The proposed emergency amendments limit the amount of personal and/or vacation time an employee may be paid out upon termination from employment with the Nation to up to forty (40) hours. Allowing personal and vacation time to be paid out in the event of termination or separation from employment with the Nation is a fringe benefit that the Nation has offered its employees. The Finance Team estimates that the cost of the fringe benefit of personal and vacation time accruals, if paid out, is estimated to be at six million and five hundred thousand dollars (\$6,500,000). Due to the COVID-19 pandemic and the resulting closures of the Nation's gaming operations, it has been determined that it is necessary to maintain essential governmental services and maintain employment during a time when no revenues are generated through gaming operations. Although it is very difficult to balance the recognition of employee benefits and the cost of such benefits versus being able to meet payroll demands for employees and provide governmental services, the Finance Team has expressed that for every hour of fringe the Nation attempts to continue, the time the Nation is able to keep services running is significantly shortened causing potential harm to members and the community. These emergency amendments are being sought to allow for the Nation's services to continue by limiting the fringe benefit to up to forty (40) hours of accrued personal and/or vacation time paid out to individual employees at the conclusion of the lay-off period or upon separation from employment. This limitation of up to forty (40) hours still provides some measure of assistance to the employee and his or her family.
- **B.** Supervisor Denial of Use of Personal or Vacation Time. The proposed emergency amendments provide that a supervisor may deny use of personal or vacation time for any business-related reason. [Section IV(A)(5)(l)]. Previously, this section of the Personnel Policies and Procedures provided that the burden shall be on the supervisor to show that a denial of a personal day or a vacation day is based upon interference with the business of the Tribe.
  - Effect. The proposed amendment to the Personnel Policies and Procedures eliminates the burden of demonstrating an interference with the business of the Tribe when the supervisor denies the use of personal and/or vacation time. Instead, the supervisor can make a denial of the use of personal and/or vacation time based on any business-related reason. This amendment makes it easier for a supervisor to deny the use of personal and/or vacation time. It has been determined that it is essential that the Nation maintain governmental services and employment through the COVID-19 pandemic.

#### **SECTION 6. EXISTING LEGISLATION**

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- **A.** *Related Legislation*. The following laws of the Nation are related to the emergency amendments to this Law:
  - Legislative Procedures Act. The Legislative Procedures Act was adopted by the General Tribal Council on January 7, 2013, for the purpose of providing a standard process for the adoption of laws of the Nation which includes taking into account comments from members of the Nation and input from agencies of the Nation. [1 O.C. 109.1-1, 109.1-2].
    - The Legislative Procedures Act provides a process for the adoption of emergency legislation when the legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population and the enactment or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].

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- The Legislative Operating Committee is responsible for first reviewing the emergency legislation and for forwarding the legislation to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
- The proposed emergency legislation is required to have a legislative analysis completed and attached prior to being sent to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
  - A legislative analysis is a plain language analysis describing the important features of the legislation being considered and factual information to enable the Legislative Operating Committee to make informed decisions regarding legislation. A legislative analysis includes a statement of the legislation's terms and substance; intent of the legislation; a description of the subject(s) involved, including any conflicts with Oneida or other law, key issues, potential impacts of the legislation and policy considerations. [1 O.C. 109.3-1(g)].
- Emergency legislation does not require a fiscal impact statement to be completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
- Upon the determination that an emergency exists the Oneida Business Committee can adopt emergency legislation. The emergency legislation becomes effective immediately upon its approval by the Oneida Business Committee. [1 O.C. 109.9-5(b)].
- Emergency legislation remains in effect for a period of up to six (6) months, with an opportunity for a one-time emergency law extension of up to six (6) months. [1 O.C. 109.9-5(b)].
- Adoption of these proposed emergency amendments would conform with the requirements of the Legislative Procedures Act.
- Emergency Management and Homeland Security law. The Emergency Management and Homeland Security law provides for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; and provides for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; and establishes the use of the National Incident Management System; and designates authority and responsibilities for public health preparedness. [3 O.C. 302.1-1].
  - The Emergency Management and Homeland Security law provides that the Oneida Business Committee shall be responsible for proclaiming or ratifying the existence of an emergency. [3 O.C. 302.8-1]. A public health emergency is defined as the occurrence or imminent threat of an illness or health condition which:
    - (1) is a quarantinable disease, or is believed to be caused by bioterrorism or a biological agent; and
    - (2) poses a high probability of any of the following:
      - (A) a large number of deaths or serious or long-term disability among humans; or (B) widespread exposure to a biological, chemical, or radiological agent that creates a significant risk of substantial future harm to a large number of people. [3 O.C. 302.3-1(o)].

 Chairman Tehassi Hill's March 12, 2020, "Declaration of Public Health State of Emergency" conform with the requirements of the Emergency Management and Homeland Security law.

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#### **SECTION 7. OTHER CONSIDERATIONS**

- **A.** *Deadline for Permanent Adoption of Amendments.* The emergency amendments will expire six (6) months after adoption, with one (1) opportunity for an extension of an additional six (6) month period.
  - *Conclusion:* The Legislative Operating Committee will need to consider the development and adoption of permanent amendments to this Law within the next six (6) to twelve (12) months.
- **B.** Consideration of Additional Amendments. The proposed emergency amendments to the Personnel Policies and Procedures are limited solely to the limitation of how much personal and vacation time may be paid out to an employee upon separation from employment with the Nation. However, there may be other areas of the Personnel, Policies and Procedures that could benefit from further amendments. In February 2019, the Nation's Human Resources Department requested amendments to the Personnel Policies and Procedures to address investigative enforcement. Then in April 2019, the Oneida Business Committee directed the Legislative Operating Committee to complete the legislative process to remove section IV(A)(5)(n) regarding Trade Back for Cash from the Personnel Policies and Procedures.
  - Conclusion: During development of permanent amendments to the Personnel Policies and Procedures, the Legislative Operating Committee should review and consider the requests for additional amendments.
- C. Fiscal Impact. A fiscal impact statement is not required for emergency legislation.
  - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

## PERSONNEL POLICIES AND PROCEDURES MANUAL

#### **SECTION I – Introduction**



Welcome to the Oneida Nation. We are pleased to have you join us as a partner on a team of people dedicated to providing quality service that enhances the quality of life of the Oneida community. The role you play in your position is important to the overall effort required by your department to meet the goals and objectives of the Oneida Nation. We encourage you to take advantage of the opportunities presented to you, as an employee, to grow and develop both personally and professionally.

The purpose of this "Employee Manual" is to provide you with a ready source of information about employee related Oneida tribal policies and procedures. Although we have tried to make this manual as comprehensive as possible; it does not, and cannot, include policies which address every situation that may arise. The Oneida Nation reserves the right to modify, alter, change or cancel existing policies and procedures or adopt new procedures and policies at any time.

The policies and procedures set forth in this manual apply to all employees. As an employee of the Oneida Nation, you are required to know and abide by these policies and procedures. Tribal departments may have specific and additional procedures enhancing the general policies stated in this manual. Each employee is expected to learn his/her department's procedures and comply with them. In the event of any conflict between policies in this manual and departmental procedure, the policies in this manual supersede. Each employee is also expected to conform to the professional standards of his/her occupation. Questions regarding this manual, or any employee related policies, should be directed to your supervisor, department head, or to the Human Resources Department at (920) 496-7900.

The Oneida Nation is proud to have you on our staff and we look forward to a fulfilling and successful team relationship.



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#### **SECTION II - RECRUITING**

#### A. RECRUITING

- 1. Recruiting Strategy
  - a. The Oneida Tribe shall implement a Recruiting Strategy to increase the potential for hiring the best-qualified and most capable employees possible.
    - 1) The Recruiting Strategy shall target as the first priority applicants in accordance with the Oneida and Indian Preference Policy.
    - 2) The Recruiting Strategy shall have a nationwide focus and will use:
      - a) The Kalihwisaks (national distribution);
      - b) The Oneida Higher Education Office's network of post-secondary school students;
      - c) Local and regional media and public employment agencies.

#### 2. Applicant Pool

- a. The Oneida Tribe shall establish and maintain an Applicant Pool consisting of individuals who have expressed an interest in working for the Oneida Tribe.
  - 1) The Applicant Pool will consist of files containing:
    - a) A Tribal Application Form;
    - b) A summary of career goals and job preferences.
  - 2) The Applicant Pool will be regularly reviewed to:
    - a) Update individual files:
    - b) Remove files where indicated.
  - 3) The Applicant Pool will be cross-referenced by job preferences.
    - a) Notices of job vacancies and an Application Form will be sent to all Applicant Pool members as appropriate.
  - 4) All Applicant Pool members shall have the right to review and update their file upon request.
  - 5) Applicant Pool members shall be apprised of the Tribe's Indian Preference Policy.

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#### B. LABOR POOLS

- 1. Supervisors that wish to establish a job classification as a Labor Pool Position will work with the HRD to establish the job classification.
- 2. Each Labor Pool Position shall be advertised as on-going recruitment pool. The HRD shall maintain an updated list of qualified candidates for each Labor Pool Position.
- 3. The HRD will accept all job applications and verify that each applicant is qualified according to the established job description. All qualified applicants will then be placed in a pool according to the Tribe's Oneida and Indian Preference Policy and the date the application was received. All applicants will be notified of acceptance into or rejection from the pool.
  - a. PRESCREENING OF LABOR POOL POSITIONS (HR Interpretation 11-13-12) Applicants who were previously employed by the Oneida Tribe and were terminated for reasons of misconduct or performance issues will be screened out for a period of twelve (12) months following the date of discharge.



- 76 4. The HRD will keep an updated list of qualified applicants for each job position.
  - 5. When a vacancy occurs in a Labor Pool Position, the supervisor will notify the HRD of the position to be filled. The HRD Office shall then refer the top three (3) applicants to the immediate supervisor. The top three applicants shall be based first on the Oneida and Indian Preference Policy and, second, the date an application was received. The immediate supervisor will notify the HRD of their selection and the HRD will then offer the position to the applicant. After the position is filled, all ranked candidates will move up on the list. (HR Interpretation 7-11-13)
  - 6. If the applicant refuses the position, the HRD Office will then offer it to the next applicant until the position is filled.
  - 7. If the applicant refuses the job, the applicant may withdraw from the Labor Pool or, if he or she declines to withdraw from the Labor Pool, the date of refusal will be considered the date the application was received and the applicant will be placed in the Labor Pool list according to B.3.
  - 8. Indian (Oneida) Preference will be adhered to in all hiring decisions.

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#### C. EMERGENCY/TEMPORARY POSITIONS

- 1. The HRD will periodically recruit individuals who are interested in filling temporary positions which consist of the following classifications:
  - a. Emergency/Temp
  - b. Limited Term
  - c. Seasonal
  - d. Substitute/Relief
  - e. Youth Worker
  - f. Student/Intern

#### 2. Creation of Positions

- a. Creation of positions in the above Temporary Employee Classifications will require that these positions be budgeted for the current fiscal year, or proof through documentation that the budget is adequate to incorporate these positions.
- b. The positions must be developed in conjunction with the HRD; assuring that all Policies and Procedures are adhered to. Creation of temporary classification requires the approval of the Director, Area Manager, and HRD Manager, or elected official of the Oneida Tribe.
- c. All newly created temporary positions must be processed through the Wage and Salary system before a position can be filled with a temporary employee.

#### 3. Recruitment/Selection

- a. Recruitment/selection of applicants for all temporary positions requires a completed Temporary Personnel Requisition form with an updated job description attached.
- b. The HRD will provide a list of qualified candidates according to the job descriptions to the immediate supervisor. The immediate supervisor will select from the approved list adhering to Indian Preference.
- c. The HRD will contact the selected candidate and offer the position, following the proper procedures to put the incumbent on payroll.



117		d.	The selected candidate will sign a statement accepting conditions of temporary
118			employment, and length of employment where applicable.
119		e.	Temporary employees will be paid within the Grade in which the job is classified and salary
120			will be negotiated within the first three (3) steps of respective grade.
121 122			1) Any negotiated salary beyond step three will require written justification and approval form the respective General Manager. (H.R. Interpretation, 12-8-16)
123		f.	Temporary employees are welcome to apply for any regular position within the Tribe that
124			becomes available during the term of their employment.
125		g.	Temporary employees that are terminated due to documented cause will have the right to
126		Ü	the appeal process as outlined in the Personnel Policies and Procedures.
127 128		h.	All temporary employees are subject to lay-off based upon department job needs and budgets. (HR Interpretation – 11-25-13)
129		i.	Supervisors are required to do proficient planning within their respective span of control; as
130		١.	such they must also enforce separation dates and will be monitored by HRD for compliance.
131		j.	Supervisors must select the most appropriate category of classification for the job.
132		J.	Moving from one classification to another is prohibited.
133	4	Rei	nefits
134	••	a.	The following employee classifications will be eligible for benefits as defined in the section
135		ű.	of the Personnel Policies and Procedures as medical, dental, vacation and personal accrual,
136			holiday pay, premium pay.
137			1) Limited Term
138			2) Seasonal
139		h.	The following employee classifications will be eligible for benefits as defined in this section
140			of the Personnel Policies and Procedures as Mandatory Benefits and Holiday pay.
141			1) Emergency/Temporary
142			2) Substitute/Relief
143			3) Seasonal Worker (only during their first season)
144		c.	The following employee classifications will be eligible for benefits as defined in this section
145			of the Personnel Policies and Procedures as Mandatory Benefits.
146			1) Youth Worker
147			2) Student/Intern
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#### SECTION III – SELECTION POLICY

A. ONEIDA PREFERENCE AND INDIAN PREFERENCE STATEMENT OF POLICY

Federal policy since 1834 accords hiring preference to Indians. The purpose of this preference is

threefold: 1) to give Indians a greater participation in self-government; 2) to further the Government's

trust obligation; and 3) to increase the positive effect of having Indians administer matters that affect

Indian tribal life. (GTC Resolution - 5-23-11-A)

More recently, legislation such as the Civil Rights Act (1964) and the Education Amendments of 1972 (passed after the Equal Employment Opportunity Act) continued to specifically provide for preferential hiring of Indians by Indian Tribes.

As an employer, the Tribe seeks to employ individuals who possess the skills, abilities and background to meet the employment needs of the Tribe.

As a sovereign Indian Tribe and a unique cultural group, the Oneida Tribe has determined that a highly desirable employment characteristic is knowledge of Oneida culture that can be attained only by membership (or eligibility for membership) in the Oneida Tribe. Further, the Tribe recognizes the unique, shared culture of Native American Indians and has determined that a desirable employment characteristic is status as a member of an American Indian Tribe. At a minimum, the Tribe has determined that some knowledge of Indian culture is a desirable employment characteristic.

Accordingly, the Oneida Tribe establishes the following policy in regard to Indian Preference for selecting employees to provide services that meet the needs of the Oneida people. This Indian Preference policy shall be specific to staffing decisions made under the Personnel Policies and Procedures and shall not be construed to have an application outside of these policies and procedures.

The Oneida Tribe of Indians of Wisconsin is an equal employment opportunity employer and follows non-discriminatory policies and procedures in personnel decisions. (HR Interpretation 5-19-14) However, the Oneida Tribe exists to serve the needs of the Oneida people and therefore accords Oneida Preference to enrolled Oneida Tribal Members where such preference is not otherwise prohibited. All General Managers and top administrative positions, as defined by HRD, shall be held by enrolled Tribal members. In all other instances, the Tribe applies the following priorities of Indian Preference in staffing decisions:

- 1 Enrolled Oneida Tribal member;
- 2 Oneida Indians eligible for enrollment in the Oneida Tribe;
- 3 Documented first generation Oneida descendant;
  - 4 Other Native American Indian;
- 5 Other (non-Indian). (HR Interpretation 6-24-11)

This policy will apply in decisions where the basic requirements for employment are met.



#### 197 B. HIRING PROCEDURE 198 1 Statement of Policy 199 a. The Oneida Tribe of Indians of Wisconsin is an equal employment opportunity employer and 200 follows nondiscriminatory policies in hiring. 201 b. The Oneida Tribe is a firm advocate of the 1964 Civil Rights Act (as amended) and the 1968 202 Indian Civil Rights Act (as amended) and will make every effort to ensure compliance with 203 each Act; however: 204 c. The Oneida Tribe follows the principles of Indian Preference in the implementation of hiring 205 practices (see the Oneida Preference and Indian Preference Statement of Policy). 206 d. The members of the Personnel Commission and all Tribal employees who supervise other 207 Tribal employees shall undergo training in EEO and Tribal laws, rules and regulations. 208 1) Training will be knowledge - and skills-based 209 2) All Personnel Commission members and Tribal supervisors will undergo periodic retraining in EEO and Tribal laws, rules and regulations 210 211 e. No person shall be recommended for a position if a conflict of interest or nepotism is created. Nepotism is created by the following relationships: (HR Interpretation 08-13-12) 212 213 a) Father Father-in-law i) 214 b) Mother j) Mother-in-law c) Husband Brother-in-law 215 k) 216 d) Wife I) Sister-in-law 217 e) Brother m) Son-in-law 218 f) Sister Daughter-in-law n) 219 Grandparent g) Son m) 220 Grandchild h) Daughter n) 221 2. **Hiring Procedures** 222 a. HRD Office Responsibilities 223 Unless specifically noted, the HRD Office will have responsibility for implementing the policies and procedures guiding the selection of Tribal employees. 224 225 b. Personnel Commission Role 226 The Oneida Tribe established the Personnel Commission to represent the Oneida 227 Community-at-large in the selection of tribal employees. 228 a) The Personnel Commission is directed to: 229 Seek out the best-matched applicants for each available position; 230 ii. Consider only job-related factors (such as education, experience, past job 231 performance, skills and abilities, and compatibility with the position and 232 potential co-workers) when selecting candidates. c. Identification of Vacancies and Development of Job Descriptions (Work Standard, 11-16-11) 233 234 Supervisors may inform the HRD Office of pending vacancies as soon as they are 235 identified. 236



238		2)	For existing positions, the HRD Manager (or designate), the supervisor and the Area
239			Manager (at his/her option) will review the job description to ensure compliance with:
240			a) The Tribal job structure;
241			b) The needs and requirements of the job.
242		3)	For new positions, the HRD Manager, the appropriate Area Manager, and the supervisor
243			shall develop the job description.
244			a) The new job description shall conform to the Tribal job structure.
245			b) The new job description will be reviewed by the General Manager.
246			(HR Interpretation, 12-8-16)
247		4)	All job descriptions shall contain the following information:
248			a) Job title, division/department, location, supervisor's title;
249			b) Posting date, application deadline, preferred starting date, date of job, description
250			review;
251			c) Pay level (grade, step, hourly rate);
252			d) A brief job summary;
253			e) Duties and responsibilities;
254			f) Qualifications;
255			g) Inquiry address;
256			h) Statement of compliance with EEO and Indian Preference policies.
257	d.	App	plications
258		1)	All inquiries for job vacancies will be responded to with a Tribal Application Form which
259			will consist of:
260			a) Job vacancy title;
261			b) Applicant biographical data;
262			c) A request for a resume (where applicable).
263		2)	The Application Form shall be accompanied by a Statement of Policy regarding Oneida
264			Preference and Indian Preference.
265		3)	Hand-delivered applications will be accepted at the HRD Office until 4:30 p.m. on the
266			deadline date; mailed applications must be postmarked on or before the deadline date.
267		4)	All applications will be acknowledged.
268	e.	Ad۱	vertising
269		1)	Position vacancies will be advertised as widely as possible including:
270			a) The Kalihwisaks;
271			b) Statewide, through print and electronic media and public employment agencies;
272			c) Through targeted recruiting efforts including:
273			i. Major metropolitan areas (i.e. Milwaukee, Chicago, Minneapolis, etc.)
274			ii. The Bureau of Indian Affairs;
275			iii. The Oneida Higher Education Office.
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- d) Other postings targeted toward special recruiting categories (such as professions) shall be carried out at the discretion of the HRD Office with the advice and consent of the affected department.
- 2) Unless otherwise prohibited by external grant source or federal law, the first posting for a position vacancy shall be limited to enrolled Oneida members and shall be posted for a minimum of seven (7) calendar days.
- The second posting for a position vacancy shall be posted for a minimum of ten (10) calendar days and shall be open to the general public, unless the position must be filled by an enrolled Oneida Tribal member. (HR Interpretation 8-9-11)
- 4) All vacancies requiring re-posting shall be referred back to B-2.c (Identification of Vacancies and Development of Job description) to begin the re-posting process.
- f. Screening of Applicants (HR Interpretation 11-16-12) (HR Interpretation 10-22-12)
  - 1) A Screening Committee consisting of the HRD Manager (or designate), the position supervisor, the Area Manager (at his/her option), and a member of the Personnel Commission shall be convened to conduct the screening of applicants. The Screening process will begin as soon as practical following the closing of the position. This Committee will:
    - a) Verify that all applications are complete, are accurate and were submitted on time.
      - i. Applications that are incomplete, inaccurate, or were not submitted on or before the posted deadline date may be screened out.
    - b) Analyze the job description to establish screening criteria. These criteria will include qualifications listed on the job description determined by the supervisor and Area Manager to be essential to the job. (T.O.E. WS 5-6-13)
    - c) Screen verified applications
    - d) Recommend a list of applicants to be interviewed.
  - 2) The HRD Office shall notify screened out applicants within five (5) working days after the initial screening and reserve these applications in the general recruiting pool.
  - 3) The HRD Office will arrange for interviews with the listed candidates.
- g. Candidate Interviews
  - An Interview Committee will be convened and will consist of the members of the Screening Committee except that the HRD Manager will be replaced with a second member of the Personnel Commission. The Interview Committee will:
    - a) Construct an interview format consisting of:
      - i. A set of questions related to the screening criteria qualifications;
      - ii. An interview rating scale designed to objectively evaluate each candidate's qualifications.
    - b) Interview candidates and evaluate each individually
  - 2) The HRD Manager (or designee) will total the evaluation rating scale to rank order of the candidates.



320		h.	Sele	ection (Interpretation - Disqualification of Applicant 10-24-2013)
321			1)	The supervisor shall select one of the top two (2) candidates as ranked through the
322				rating scale. (HR Interpretation - 10-17-12)
323				a) The supervisor may conduct an additional personal interview with the top two (2)
324				candidates.
325				b) The selection decision shall be governed by the Oneida Preference and Indian
326				Preference Policy. (HR Interpretation - 6-6-11)
327				c) The HRD Office will notify the selected candidate and offer the candidate the job
328				within five (5) working days of the selection decision by the supervisor.
329				i. Should the supervisor's first choice refuse the offer, the HRD Office will offer
330				the job to the second ranked candidate.
331			2)	Should both of the top two ranked candidates refuse the job offer, the supervisor may:
332				a) Repeat the process outlined in B.2.h.1. above; or
333				b) Re-post the position.
334			3)	The HRD Office will notify those candidates interviewed but not selected of the
335				decision to hire the best-qualified candidate.
336			4)	All newly hired employees will be listed in the HR newsletter.
337	C.	TRAN	SFER	S AND PROMOTIONS POLICY - The Oneida Tribe encourages transfers and promotions
338		withir	n and	among units in order to make the best possible use of human resources to meet Tribal
339		goals	and o	objectives. Supervisors and employees are encouraged to work together to create an
340		enviro	onme	nt in which employees constantly strive to improve their skills and abilities and mangers
341		const	antly	seek to provide challenging and rewarding work experiences.
342		1. Pr	ocedi	ure
343		a.	Inte	ernal Posting and Bidding
344			1)	Open positions as determined by a supervisor and his/her Area Manager will be posted
345				internally for five (5) working days. This internal posting will be concurrent with the
346				external (public) posting of positions.
347				a) Positions will be posted in prominent locations in each Tribal building
348			2)	Tribal employees may bid for transfers by notifying their immediate supervisor and
349				submitting an Application Form to the HRD Office.
350				a) The HRD Manager will inform all affected Area Managers of each transfer bid.
351			3)	At the end of the five (5) day internal posting period, the HRD Manager will schedule a
352				conference with the open position's supervisor and the Area Manager.
353				a) The conference committee will consist of the supervisor, the Area Manager and the
354				HRD Manager (or designate) acting as this Committee will:
355				i. Establish selection criteria; and
356				ii. Review each bid.
357				b) The Committee may select the best-qualified applicant but is not required to
358				choose an applicant to fill the open position from those employees who have
359				submitted an application for a transfer or promotion.
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- c) If the Committee does not fill the position from the transfer/promotion process, the process will continue through the full advertising, screening and interview steps.
  - i. Any decision will be governed by the Indian Preference Policy.
- 4) Employees who are transferred or promoted will not lose any benefits; however:
  - a) An employee may be required to continue serving in his/her present position until a replacement can be found;
  - b) An employee who is transferred to a position lower on the Tribal Job Structure will be paid at the grade level corresponding to the new position;
  - c) An employee must have completed one year of service to the Tribe before being
    eligible for a promotion or transfer (requests for transfers for documented medical
    conditions will be handled on a case by case basis and only when in the best
    interests of both the employee and the Tribe);
  - d) The newly transferred or promoted employee shall be required to complete a three
     (3) month probation period (all conditions of the Tribe's Probation Policy shall apply).

#### b. Applicant Pool Process

- 1) New and vacant positions will be advertised through the Tribal Applicant Pool.
- 2) The job description will be sent to persons whose applications are maintained in the Applicant Pool.
  - a) The Tribal Applicant Pool will consist of open (unspecified) applications from Tribal members who wish to be considered for employment by the Tribe.
  - b) Advertising through the Tribal Applicant Pool will follow the format and time conditions set forth in the Hiring Policy.

#### 2. Reassignments

- a. Title Reassignments
  - 1) Title Reassignments may be made by supervisors to:
    - a) More accurately describe or define an existing job; or
    - b) Make minor adjustments in jobs within a unit or operating division.
  - 2) Title Reassignments may be made at any time with the approval of the Area Manager and HRD Manager.
- b. Job Reassignments
  - 1) Job Reassignments may be made by supervisors to make more efficient and effective use of human resources.
  - 2) Job Reassignments may be supervisor-initiated or employee-initiated but must be made in the best interests of the operating unit.
  - 3) Job Reassignments may be made at any time with the approval of the Area Manager and after a review of each affected job by the Personnel Evaluation Committee.
- c. Interim Job Reassignments (Work Standard 7-11-13)



### PROBATION (Work Standard 1-20-2011)

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- 1. The first three (3) months after an employee's starting date shall be considered a period of probation. At the end of six (6) weeks, the employee's performance shall be reviewed with him/her by the supervisor by completing an employee evaluation.
  - a. At the end of the three-month probation period, a second performance evaluation will be conducted. This evaluation will recommend the end of probation and regular status for the employee, an extension of probation, or termination for cause.
- 2. Status as a Probationary Employee
  - a. Probationary employees will be paid at five percent (5%) below the posted pay rate for the position.
    - 1) New employees hired under a negotiated salary will receive a salary one step below the agreed upon salary during the probationary period.
  - b. Probationary employees will accrue vacation/personal days during the probation period and will receive holiday pay.
  - c. Probationary employees may be terminated for cause at any time during the probation period. Cause must consist of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position. This termination is subject to appeal. (BC Action 3-20-92)
- 3. Completion of Probation Period
  - a. Satisfactory completion of probation will result in the employee receiving the regular salary for the position.
  - b. Employees who are terminated during the probation period will receive credit forup to forty (40) hours of accrued vacation/personal days in their final paycheck.
  - c. Extensions of probation periods will not affect accrual of or use of benefits as explained under D.2.



### **SECTION IV - COMPENSATION AND BENEFITS**

#### A. SALARY

- 1. Tribal Job and Salary Structure
  - a. An ongoing plan will be instituted based on standard employee grades and step levels to assure that a uniform approach is taken to establish equitable salary and wage levels.
  - b. Employee performance evaluations will be a resource in determining whether an employee receives an increase in pay for the upcoming year. An overall satisfactory rating must be attained in order to be granted an increase in pay.
  - c. Merit increase shall be granted upon the recommendation of the supervisor, the Area Manager, the HRD Manager and the General Manager.

# 2. Workday (Work Standard, 10-17-12)

- a. The regular Tribal workday is from 8:00 a.m. to 4:30 p.m. with an hour for lunch. The exception to these hours occurs only if the program/enterprise hours must vary for the purpose of providing service (such as retail hours beyond 4:30 p.m.). Shifts will be developed as needed, and the shift hours will then become the regular workday for assigned employees for that program/enterprise.
- b. Employees are expected to be at work each scheduled work day.
  - 1) Employees who do not report for work because of inclement weather or unforeseen circumstances will not be paid for that day. Employees may elect to use personal day(s) to cover this absence. (Work Standard, 11-8-12)
  - 2) In case of an unavoidable delay or absence, the supervisor must be notified no later than thirty (30) minutes after the scheduled starting time. Employees are encouraged to notify their supervisor before their scheduled starting time.
    - i. Employees failing to report to their assigned jobs or failing to call in within the thirty (30) minute time allowed will be subject to disciplinary action.
    - ii. Permission to leave early must be obtained by the employee from his/her supervisor.

#### 3. Overtime

- a. Any and all overtime will be kept to a minimum and must be approved by the Supervisor and Area Manager.
  - 1) In the case of potential overtime that may occur at night, on holidays or on weekends, supervisors will delegate this authority to a specific employee and outline specific situations and actions that warrant overtime.
- b. All overtime must be reported to the supervisor for evaluation.
- c. Overtime will be approved only if the program or enterprise budget is capable of paying it.
- d. Overtime will be approved only for hours worked in excess of forty (40) hours per week.

  Personal/vacation days and holidays will not count toward the forth (40) hour requirements.
- e. Tribal employees are expected to work overtime if required. Time and one-half will be paid for this overtime.
- f. Exempt employees are not eligible for overtime.
  - 1) The HRD Office will maintain a list of exempt employees.



- 4. Holidays (Work Standard, 4-15-11) 485 a. Tribal holidays consist of the following: 486 1) One-half day Christmas Eve 487 488 2) Christmas Day 489 3) New Year's Day 490 4) Memorial Day 491 5) Veteran's Day 492 6) Independence Day 493 7) Labor day 494 8) Thanksgiving Day 495 9) Indian Day (day after Thanksgiving) 10) One-half day Good Friday 496 497 11) Code Talker's Day (Oneida Day, Friday prior to Memorial Day) (BC Resolution - 12-11-13A) 498 499 500 501 502 503 paid holiday. 504
  - b. To be eligible for a paid holiday, employees must work the preceding and following scheduled work days (except for employees who are on a prescheduled work leave or an approved extended sick leave.) Employees who are granted a sick day directly prior to a holiday must certify that they were capable of working the holiday in order to qualify for a
  - c. All regular employees will be given holiday pay for the maximum pay of eight (8) hours per
  - d. Holidays falling on a Saturday will be observed the preceding Friday; holidays falling on a Sunday will be observed on the following Monday. (2017 Holiday Observance Calendar) (2016 Holiday Observance Calendar)
  - e. The Oneida Tribe acknowledges its responsibility to make a reasonable accommodation to employees who wish time off to observe religious holidays. Requests for such time off will be granted where possible, based on the scheduling and staffing needs of affected departments. Employees wishing to take time off work for religious observances should inform their supervisor as early as possible. Employees may use personal time for such requests if eligible; otherwise the time off will be treated as unpaid leave.
  - 5. Vacation/Personal Days
    - a. Every Tribal employee, except temporary employees, shall be allowed personal and vacation days with pay to the extent that personal days and vacation are accumulated. Temporary employees shall be allowed personal and vacation days in accordance with Section II.C.4. (GTC Resolution - 7-02-12-A)
    - b. The amount of personal and vacations days shall be determined by continuous service for the Tribe. A "lay-off" from tribal employment shall not be considered in interruption in continuous service where the lay-off is in accordance with the Tribe's Layoff Policy, nor shall a preapproved leave of absence. (Accruals Interpretation, 3-6-12)
    - c. Except as provided for in section g, the accrual of personal days shall be as follows: (BC Resolution, 4-13-11F)



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526		1) 0-3 years of service - 6 days per year;
527		2) 4-7 years of service - 8 days per year;
528		3) 8-14 years of service - 10 days per year;
529		4) 15+ years of service - 12 days per year;
530	d.	Except as provided for in section g, the accrual of vacation days shall be as follows:
531		1) 0-3 years of service - 12 days per year
532		2) 4-7 years of service - 15 days per year;
533		3) 8-15 years of service - 20 days per year;
534		4) 15+ years of service - 25 days per year.
535	e.	Part-time employees accrue personal and vacation days for time actually worked at a ratio
536		of a full-time employee.
537 538	f.	Service is defined as working for Programs/Enterprises which are contracted by the Tribe of specifically sponsored by the Tribe.
539	σ	Vacation and personal days shall be capped at 280 hrs. (BC Resolution, 11-10-10D) An employee
540	ρ.	shall cease to accrue vacation and personal hours when he or she has reached 280 total
541		hours. Supervisors shall notify their employees when said employees have accumulated 200
542		total hours of vacation and personal time.
543		An employee may trade back accumulated vacation and personal hours in accordance
544		with Section IV.A.5.n. below. (GTC Resolution – 5-23-11-B)
545	h	Upon termination from Tribal employment, employees will be paid up to forty (40) hours for
546	•••	any unused personal and/or vacation days.
547		Employees who have used the Tribally-sponsored loan program will be required to
548		honor the terms of the loan agreement.
549	i.	Personal Days can be used for any reason so long as the request is approved by the
550		employee's supervisor at least twenty-four (24) hours in advance (unless the absence is due
551		to illness or unforeseen circumstances).
552		In the case of illness or unforeseen circumstance, the supervisor shall be notified no
553		later than fifteen (15) minutes before the scheduled starting time.
554		2) Programs and enterprises may institute stricter standards of notification. These
555		standards will be submitted to and approved by the Personnel Department.
556	i.	An employee shall notify his/her supervisor of an intent to use personal days in the
557	٦.	following ways:
558		1) Three (3) to five (5) days - one (1) week advance notification
559		2) Six (6) days or more - two (2) weeks advance notification.
560	k.	An employee shall notify his/her supervisor one (1) day in advance if he/she will take off one
561		(1) or two (2) days of vacation. Programs and enterprises may institute stricter standards of
562		notification.
563		1) Three (3) to five (5) days of vacation require a one (1) week advance notification.
564		2) Six (6) or more days of vacation require at least two (2) weeks advance notification.
		=, = (2) or more days or radation require at least two (2) weeks advance notification.



565 I. The burden shall be on the A supervisor to show that a denial may deny use of a personal day 566 or a vacation day is based upon interference with thetime for any business of the Tribe-567 related reason. 568 m. Personal or Vacation Days cannot be taken when an employee is on probation. 569 n. Trade-back for Cash - Each fiscal year, the Oneida Business Committee shall analyze fiscal 570 conditions to determine whether employees may trade back personal and/or vacation hours for cash that fiscal year. (Work Standard, 10-11-11) 571 572 1) If the Oneida Business Committee approves trade-back for cash, they shall also 573 determine whether (a) and/or (b) applies: 574 All employees will have the opportunity to trade-back hours one time that year. 1. By August 15, each employee who has accumulated twenty-four (24) hours 575 576 or more of vacation and/or personal days may opt to trade in his/her hours 577 for cash. 578 2. Employees will receive their trade back on or before September 30 of that 579 year. 580 Only those employees who are unable to utilize their personal and/or vacation time 581 due to working conditions, such as a shortage in staffing, as determined by the HRD 582 Manager or designee, will have the opportunity to trade back hours on a quarterly basis. 583 584 1. Employees will receive their trade back within sixty (60) days after opting to 585 trade back hours. 586 2) When trade-back for cash is approved by the Oneida Business Committee, the following 587 standards shall apply: 588 Employees must decide which status (vacation or personal or both) from which their 589 trade-back will be drawn. 590 Employees may not trade for cash more than eighty (80) hours in one year. (GTC Resolution 5-23-11-B) 591 592 o. Additional Duties Compensation p. Travel Time Compensation (Work Standard - 3-20-13) 593 594 595 B. INSURANCES (see separate publication) for information on Tribal Insurance plans. (Separating Employees WS 5-6-13) 596 597 C. RETIREMENT PLAN (See separate publication for information on Tribal Retirement Plan). 598 D. LEAVES 599 1. Meeting Attendance 600 a. Approval for attending any meetings inside normal working hours must be approved in advance by the employee's immediate supervisor. (BC Action, 5-16-89) 601 602 b. Employees who receive stipends or honoraria in excess of \$50.00 for attending meetings 603 during working hours will forfeit the amount in excess of \$50.00 from their regular

for such expenses.

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paycheck. Stipends for travel or per diem will not be deducted if accompanied by receipts

c. Stipends or honoraria for intra-tribal meetings during normal working hours will results in the employee's paycheck being reduced by the full amount of the stipend.

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### 2. Funeral Leave (Work Standard, 8-2-11)

a. All regular employees will be given a three (3) day leave without loss of pay for funeral services for immediate family. Immediate family includes:

Husband	Mother	Brother great-	grandparent
Wife	Father	Sister	great-grandchildren
Mother-in-law	Son	Grandparent	Spouse's great-grandparents
Father-in-law	Daughter	Grandchild	Spouse's grandparents
Daughter-in-law	Sister-in-law	Brother-in-law	

- b. Three (3) day leave for other persons will be given only if the employee is responsible for making funeral arrangements, subject to prior approval of supervisor.
- c. All other funeral leave will be limited to no more than one (1) day with pay subject to the notification and approval of the immediate supervisor. (Management Directive, 12-17-2009)

# 3. Leave of Absence (Work Standard, 6-10-14)

- a. A leave of absence without pay may be granted to employees for a justifiable reason (including caring for a child, spouse or parent with a serious health condition) and when in the best interest of the Tribe.
  - 1) Leaves of absence will not exceed three (3) months.
    - All leaves of absence must be approved by the supervisor, Area Manager, HRD Manager and General Manager. (HR Interpretation, 12-8-16)
    - ii. Requests must be documented and submitted to the supervisor with as much advance notice as possible.
    - iii. Disposition of requests will be made on the basis of staffing requirements.
  - Upon returning, the employee will be reinstated in the former position with full status and benefits. Holiday, vacation, and sick leave will not be accrued during the leave of absence.
  - 3) No later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position. Notice must be presented to the supervisor.
    - Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process. (HR Interpretation 11-21-11)

#### 4. Maternity Leave

- a. Maternity leave will be granted for a period of six (6) weeks without pay.
  - 1) An employee may elect to cover any portion of this time by using accumulated sick days.
  - 2) Any maternity-related absences for longer than six (6) weeks must be taken as a medical leave of absence.

#### 5. Military Leave



647 govern Military Leave. 648 649 650 b. A Military Leave of Absence is afforded employees entering active duty without accumulation of holiday, vacation or personal time during the period of leave. Any 651 652 accumulated benefits prior to leave will be maintained for the employee. 653 c. Time off for inactive duty training, examinations to determine fitness for duty and funeral 654 honors duty shall be afforded to employees without the accumulation or loss of holiday, 655 vacation or personal time. An employee will receive pay from the Tribe for any hours work that the employee was required to miss due to reservist training. 656 1) Any pay received for performing any of the above duties shall be deducted from the 657 employee's pay. (GTC Resolution - 1-26-08A) 658 659 6. Jury Duty 660 a. During a period of jury duty, an employee will receive pay from the Tribe for any hours of 661 work missed due to jury duty. 662 1) Jury duty pay will be deducted from the employee's paycheck when determining the 663 amount of pay 2) No overtime will be allowed in determining employee pay while serving on jury duty. 664 7. Educational Leave (BC Action, 5-4-90) 665 a. A leave of absence for education purposes will not exceed one (1) year. 666 8. Parent Policy Leave (BC Action, 3-2-94A) 667 a. Employees who are parents, guardians, or those individuals specifically referred to as 668

a. In addition to the following provisions, the Tribe's Military Service Protection Act shall

1) These four (4) hours shall not accumulate.

month

- b. Approval to utilize the four (4) hours must be obtained from the supervisor.
  - 1) An employee shall request his/her supervisor to utilize this leave with a minimum of twenty-four (24) hours' notice.

"immediate family" as defined in Section IV, page 6 of these Personnel Policies and

Procedures which includes husband, wife, mother, father, brother, sister, son, daughter,

mother-in-law, father-in-law, grandparent and grandchild may request to participate in their

child(ren)'s educationally sanctioned events not to exceed four (4) hours per employee per

- 2) The Supervisor may request verification of
  - i. Guardianship of the child(ren) and/or
  - ii. The attendance of the employee at their child(ren)'s educationally sanctioned event.
- c. The burden shall be on the supervisor to show that a denial of the Parent Policy Leave which is based upon interference with the business of the Tribe.
- d. This leave shall not be paid as overtime. The supervisor may have the option to use flex time to cover this time off to attend their child(ren)'s educationally sanctioned events.



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e. All employees, except Emergency/Temporary, Youth Workers, Student Interns, and Seasonal 686 Workers during their first season, and Substitute Reliefs are eligible to participate in this 687 688 benefit. 689 690 **SECTION V – EMPLOYEE RELATIONS** A. ORIENTATION POLICY 693 The Oneida Tribe reflects the unique culture and character of the Oneida Nation. The Tribe recognizes 694 695 that this may present special problems and difficulties for a new employee. The Tribe therefore 696 provides an Orientation Program designed to ease the new employee's transition into a job and enable 697 the new employee to become effective and productive as quickly as possible. 698 1. Orientation Program Outline 699 a. Overview 700 b. Tribal Government and Procedures 701 c. Key Policies and Procedures 702 d. Benefits 703 e. Safety, Health and Security 704 f. Departmental Orientation 705 2. Responsibilities 706 a. The HRD Office will administer the General Orientation Program 707 708 Programs. 709

- 1) The HRD Office will assist Divisions in administering Departmental Orientation
- b. The HRD Office will develop and establish an Employee Mentor Program with each Division.
  - 1) Employee Mentors will be responsible for conducting the Departmental Orientation.
  - 2) Employee Mentors will assist new employees throughout their probation period as a source of references and referrals.
- c. The HRD Office will annually review the General Orientation Program and each Departmental Orientation Program to:
  - 1) Evaluate the effectiveness of each Program,
  - 2) Modify programs as necessary.
  - 3) Requirements
    - a) The HRD Office will provide a copy of the Employee Policy and Procedures Manual to new employees before (if possible) the scheduled starting date.
    - b) The General Orientation Program will be completed in appropriate stages within the first month of the new employee's starting date.
      - The Departmental Orientation will be completed within the first week of the starting date.
    - The HRD Office will administer a NEW Employee Reporting Form to provide information for the purposes of maintaining a Tribal wide skills assessment inventory and a management succession plan.



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#### B. EVALUATIONS

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- 1. Evaluation reports will be used in determining all promotions, transfers and salary adjustments.
- 2. Annual evaluation reports for each employee will be submitted to the HRD Office by August 1 of each year. (Work Standard 6-4-14)
  - a. Evaluation reports will be retained in each employee's personnel file.
- 3. All Tribal employees will be evaluated at least once a year.
  - a. Employee performance evaluations will be conducted by each employee's immediate supervisor. The Business Committee will conduct the performance evaluation of the General Manager. (HR Interpretation 12-8-16)
  - b. The supervisor will discuss the evaluation with each employee. The evaluation will then be signed by the employee and the supervisor and forwarded to the HRD Office.
- 4. Satisfactory evaluations may result in the employee receiving an increase in pay within their grade level provided that the employee has not attained the highest step within the grade.
  - a. Unsatisfactory evaluations will result in probation status for the employee. The supervisor shall provide documentation to the Area Manager and to the employee detailing the deficiency(s). A repeat evaluation will be conducted three (3) months after the unsatisfactory evaluation. This second evaluation will result in the employee:
    - 1) Being removed from probation and receiving a salary increase if the second evaluation results in an overall satisfactory rating; or
    - 2) Receiving appropriate disciplinary actions if the second evaluation also results in an unsatisfactory rating.
  - Employees may appeal unsatisfactory evaluations to the HRD Manager. The HRD Manager will consult with the supervisor and the employee to negotiate an appropriate resolution (Work Standard 6-21-11)

#### C. CAREER DEVELOPMENT

- Tribal employees are encouraged to develop their skills and abilities by pursuing education at a local educational institution. (BC Action – 9-9-92)
  - a. Tribal employees must provide a general Career Development Plan to the supervisor listing the goals and objectives of the training and education to be undertaken.
- 2. Tribal employees may be eligible for assistance for one (1) course per semester. The employee must attempt to arrange to take the class outside his/her normal working hours.
  - a. Where a class conflicts with the employee's work schedule, the needs of the Tribal unit take precedence; however, the supervisor shall attempt to accommodate the employee's request.
  - b. In no case shall the accommodation exceed actual class hours plus reasonable travel time.
  - c. Employees must obtain the approval of their immediate supervisor to take a course on Tribal time.
- 3. The supervisor's approval and estimated cost must be submitted to the HRD Office, the Area Manager and the General Manager. (HR Interpretation 12-8-16)
- 4. The cost of the books, tuition and fees for the course shall be paid by the Tribe through funds budgeted in programs or through the Higher Education program.



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- a. Reimbursement for books, tuition and fees is contingent upon the employee receiving at least a C (2.0 on a 4.0 point scale).
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- b. Employees who receive less than the required grade point will be required to reimburse the program for whatever costs were incurred.

### D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

774 Disciplinary procedures provide a systematic process for handling problem employees. (Work Standard – 5-6-13) Disciplinary procedures serve to correct unacceptable behavior and to protect the 775 776 Tribe. Grievance procedures provide a systematic process for hearing and evaluating job related 777 disputes. Grievance procedures serve to protect employees from inconsistent and unfair treatment. 778 In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion 779 and judicious good sense to resolve complaints between employees, exercise disciplinary

prerogatives, and handle grievances. (HR Interpretation - 2-4-13) (HR Interpretation - 1-29-14)

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- 1. Complaints
  - a. Should an employee have a disagreement with another employee, he/she may lodge an informal (verbal) or formal (written) complaint with the employee's supervisor.
  - b. The supervisor will investigate the complaint and attempt to resolve the disagreement.
  - c. If the employee lodging the complaint is dissatisfied with the attempted resolution, he/she may ask the Area Manager to attempt a resolution.
  - d. There is no further appeal of this process.

#### 2. Disciplinary Actions

- a. Disciplinary actions will be initiated by an immediate supervisor for the purpose of correcting unacceptable work performance. The supervisor will always discuss the action with the employee being disciplined to ensure that the employee:
  - 1) Understands the reason for the disciplinary action;
  - 2) Understands the expected work performance in light of the disciplinary action;
  - 3) Understands the consequences of continued unacceptable behavior.
- b. A supervisor shall initiate disciplinary actions commensurate with the seriousness of the unsatisfactory performance. A supervisor must consider each disciplinary action in progressive order and justify a deviance from that recommended progression.
- c. The actions listed below are examples of unacceptable work performance and do not constitute a comprehensive or exhaustive list. The actions in parentheses are guidelines for a supervisor to use in administering disciplinary actions. (W = written warning; S = suspension; T = termination):
  - 1) Work Performance
    - a) Insubordination (including disobedience) or failure/refusal to carry out assignments or instructions. (W/S/T)
    - b) Loafing, loitering, sleeping or engaging in personal business. (W/S/T)
    - c) Unauthorized disclosure of confidential information or records. (S/T)



808		d)	Falsifying records or giving false information to departments and/or employees
809			responsible for Recordkeeping. (S/T)
810		e)	Failure to provide accurate and complete information where such information is
811			required by an authorized person. (S/T)
812		f)	Failure to comply with health, safety and sanitation requirements, rules and
813			regulations. (W/S/T)
814		g)	Negligence in the performance of assigned duties. (W/S/T)
815	2)	Att	endance and Punctuality
816		a)	Failure to report promptly and observe work schedules (such as starting time,
817			quitting time, rest and meal breaks) without the specific approval of the supervisor.
818			(W/S/T)
819		b)	A pattern of unexcused or excessive absenteeism and/or tardiness. (W/S/T)
820	3)	Use	e of Property
821		a)	Unauthorized or improper use of Tribal property or equipment (for example, Tribal
822			vehicles, telephone, mail services, etc.) (W/S/T)
823		b)	Unauthorized possession, removal or willful destruction of Tribal or another
824			employee's property (including improper use of possession of uniforms,
825			identification cards, badges, permits or weapons). (Willful destruction of property
826			may subject the violator to applicable liability laws.) (T)
827		c)	Unauthorized use, lending, borrowing or duplicating of Tribal keys. (T)
828		d)	Unauthorized entry of Tribal property, including unauthorized entry outside of
829			assigned hours of work or entry into restricted areas without prior supervisory
830			approval. (S/T)
831		e)	Theft or property shall include theft, embezzlement, cheating, defrauding, pilfering,
832			robbery, extortion, racketeering, swindling or any of these actions, or conspiracy to
833			commit such actions with Tribal employees or other persons against the Tribe, its
834			guests, employee, members, customers and/or clients while on or about Tribal
835			premises. (S/T) (BC Action – 12-2-88)
836	4)	Per	rsonal Actions and Appearance
837		a)	Threatening, attempting, or doing bodily harm to another person. (T)
838		b)	Intimidating, interfering with or using abusive language toward customers, clients,
839			co-workers or others. (S/T)
840		c)	Making false or malicious statements concerning other employees, supervisors or
841			program heads. (W/S/T)
842		d)	Use of alcohol or illegal controlled substances during work hours. (S/T)
843			(GTC Resolution – 01-05-09A)
844		e)	Reporting for work under the influence of alcohol or illegal controlled substances.
845			(S/T) (GTC Resolution – 01-05-09A)
846		f)	Failure to immediately report any work-related injuries to the immediate supervisor
847			(W/S)



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- g) Direct involvement in political campaigning during scheduled work hours. Violations include:
  - . Use of Tribal employment title in Tribal campaign activities. (W/S/T)
    - 1. Political materials include: leaflets, brochures, etc. which solicit support for candidates for office.
    - 2. Resolutions or petitions which propose that a political action be initiated.
    - 3. Leaflets, newsletters, or other written materials the purpose of which is to espouse political views or opinions.
- h) The acceptance of gifts or gratuities for personal gain in the course of official duties. (Customers are allowed to tip Bingo workers, Oneida Tobacco Enterprise workers, and Museum Workers.) (W/S/T)
- i) Inappropriate dress or personal hygiene which adversely affects the proper performance of duties or constitutes a health or safety hazard. (W/S)
- j) Failure to exercise proper judgment. (W/S/T)
- k) Failure to be courteous in dealing with fellow employees or the general public. (W/S/T)
- Any of the following acts by employees: Arson, bribery, perjury, obstruction or interference with an investigation authorized by the Oneida Tribe. (S/T) (BC Action – 12-2-88)
- m) The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or controlled substances on or about Tribal premises. (S/T)

  (BC Action 12-2-88)
- n) Any violation of duly adopted Tribal ordinances. (W/S/T) (BC Action 12-2-88)
- 5) Sexual Harassment Policy

It is the Oneida Tribe's Policy that all employees have a right to work in an environment free of discrimination which includes freedom from harassment, more specifically sexual harassment. The Oneida Tribe considers sexual harassment, in whatever form, in the workplace to be a serious violation of an individual's dignity and personal rights. In all matters, where complaint of sexual harassment is lodged against an employee, the Oneida Tribe has a duty and obligation to conduct a thorough investigation using discretion, good judgment and the principles and practice of strict confidentiality. If sexual harassment has been committed, the progressive disciplinary process is as follows (W/S/T).

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals, or (3) such conduct has



the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

- a) Sexual Harassment (W/S/T)
  - i. Procedure
    - a. Should an employee have a complaint, he/she should file a formal (written) complaint with the Human Resources Department.
    - b. The Human Resources Department is obligated to investigate the complaint which is to be held in the strictest confidence. This investigation shall be done within five (5) working days from receiving the formal written complaint.
    - c. After investigating the complaint and the Human Resources Department finds cause to take disciplinary action due to sexual harassment violation, the employee will be disciplined accordingly by their supervisor. This disciplinary action shall be initiated within five (5) working days from the date the supervisor receives the report from the Human Resource Department. (BC Actions 7-16-93)
- 3. Accumulated Disciplinary Actions Warranting Termination (HR Interpretation 1-29-14) (Provided that the Drug and Alcohol Free Workplace Policy shall govern disciplinary actions warranting termination for drug and alcohol related violations.) (GTC Resolution 01-05-09A)
  - a. The accumulation of three (3) upheld warning notices within any twelve (12) month period.(T)
  - b. The accumulation of two (2) upheld suspensions within any twelve (12) month period. (T)
  - c. The accumulation of three (3) of any combination of upheld warning notices and/or upheld suspensions within any twelve (12) month period. (T)
- 4. Substance Abuse Disciplinary Procedure Section was deleted. (GTC Resolution 01-05-09-A) Click here for Drug and Alcohol Free Workplace Policy.
- 5. Disciplinary Procedure (Disciplinary Flowchart)

The following procedure shall be adhered to whenever disciplinary action is taken.

- a. Supervisor becomes aware of unsatisfactory work performance or violation.
  - 1) Supervisor investigates through a meeting with the employees and determines whether disciplinary action is warranted.
- b. If disciplinary action is warranted, within five (5) working days the supervisor will fill out the five (5) part disciplinary action form stating the behavior for which the action is being taken, the time and date of its occurrence, and the specific policy section under which action is being taken.
- c. The form will be discussed with the employee and a corrective action will be identified.
- d. The employee being disciplined will sign the form.



- 1) Should an employee being disciplined refuse to discuss the action with his/her supervisor, the supervisor shall so note this, with date of refusal, on the form and distribute as in 5.e.
- e. Copies will be given to the employee, the HRD Manager, the supervisor, the Area Manager and General Manager within twenty-four (24) hours of the conference with the employee. (HR Interpretation 12-8-16)
- f. Should a disciplinary action result in the suspension or termination of an employee, the following guidelines shall apply:
  - 1) The supervisor shall consult with the HRD Manager to mutually determine the length of the suspension.
    - a) Suspensions will be limited to a maximum of three (3) weeks.
    - b) Suspension/terminations that are overturned in the appeal process shall result in the employee receiving back pay for the days he/she was suspended/terminated.

# 6. Grievance (Grievance Flowchart)

An employee who receives a disciplinary action which he/she believes is unfair may grieve the action. The Grievance process (including appeals of disciplinary action) shall be conducted with utmost consideration for due process (within the time limits set forth herein) but will allow and account for recognized Tribal holidays and unforeseen circumstances (such as illnesses, deaths in the immediate family of principals, etc.). The HRD office will make every attempt to ensure that grievance procedures are concluded within forty-five (45) workings days; however, extensions granted for reasonable unforeseen circumstances (as determined by the HRD Manager) may extend the process The Grievance process will be governed by the following guidelines: (HR Interpretation – 8-19-2011) (HR Interpretation – 1-29-2014)

- a. For all disciplinary actions, regardless of severity:
  - 1) The employee (petitioner) must file an appeal in writing.
    - a) The employee may seek the assistance of a spokesperson or advocate at any time after the disciplinary action has been issued in order to aid in the resolution of the grievance process.
    - b) The appeal must be filed with the Area Manager and the HRD Manager (or designee) within ten (10) working days from the day the employee receives the disciplinary action.
  - 2) The Area Manager, for all disciplinary action investigations, will have ten (10) working days from the receipt of the employee's appeal to complete the investigation. One extension of no more than five (5) working days may be requested of and granted by the HRD Manager (or designee) at his or her discretion.
  - 3) The Area Manager will do one of the following:
    - a) Uphold the disciplinary action; or
    - b) Modify the disciplinary action; or
    - c) Overturn the disciplinary action. If a suspension or termination is overturned, the employee (petitioner) shall be reinstated with full back pay.



- 4) The Area Manager will file a decision with the employee and the HRD Manager (or designee) and will include a reason for the decision, an explanation of the decision and the action to be taken as a result of it.
- b. The employee may appeal the Area Manager's decision to the Oneida Personnel Commission. The appeal must be filed with the Oneida Personnel Commission within ten (10) working days from employee's receipt of the Area Manager's decision. Upon receipt of the appeal the Commission shall, within one business day, notify the HRD Manager (or designee) that an appeal has been filed by the employee. (GTC Resolution – 2-28-04A)
  - 1) Copies of all information of the subject case upon which the disciplinary action was upheld by the Area Manager will be hand delivered to the members of the Personnel Commission. The Personnel Commission will hear an appeal only if one or both of the following conditions exist:
    - a) The decision of the Area Manager is clearly against the weight of the evidence and/or
    - b) Procedural irregularities were exhibited during the appeal process that may have been harmful to one of the parties to the grievance.
  - 2) If one or both of the above conditions are present, the HRD Office will convene the Personnel Commission to hear the grievance.
    - a) If neither of the above conditions is present, the Personnel Commission will deny the appeal for a hearing and affirm the decision of the Area Manager.
  - 3) At least five (5) working days prior to the hearing date, the petitioner, respondent and Personnel Commission will receive notification of the hearing date.
  - 4) Copies of all information on the subject case upon which the disciplinary action was upheld will be hand-delivered to the members of the Personnel Commission at least two (2) working days prior to the appeal date. The petitioner and respondent will have access to this information in the HRD Office at least two (2) days prior to the appeal date.
    - a) If new evidence which was previously unavailable is introduced at any point during the Personnel Commission appeal process, the Commission hearing will be suspended and the case will be remanded to the Area Manager for reconsideration.
      - i. The Area Manager will reconsider his/her decision in light of the new evidence and issue a decision within three (3) working days.
      - ii. This procedure may be invoked only once. Thereafter, the appeal process will continue to a conclusion based on the information originally presented and the newly introduced evidence.
  - 5) The petitioner shall have the right to be represented by an advocate if he/she so chooses. The expenses of the advocate shall be the total responsibility of the petitioner. The respondent and/or area manager who is party to the grievance action shall have



1008		access to an advocate
1009		engage outside profes
1010		shall have access to pr
1011		a) Should the petition
1012		scheduled hearing
1013 1014		<ul><li>be upheld and the</li><li>b) Should the respon</li></ul>
1014		scheduled hearing
1016		be overturned.
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1019	6)	The decision of the Per
1020	-,	presented to them bef
1021		any new evidence (if ir
1022	7)	The decision of the Per
1023	•	may:
1024		a) Uphold the discipli
1025		b) Overturn the discip
1026		i. Reinstate the
1027		ii. Reinstate the
1028	8)	The petitioner and res
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1030		hearing.
1031		a) Notification of the
1032		i. The final deci
1033		ii. The reason(s)
1034		iii. The action to
1035	9)	The HRD Office shall:
1036		a) Keep all records of
1037		b) Provide copies of a
1038		rules to interested
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for consultation and/or representation. Should the petitioner sional legal representation, the respondent and/or area manager ofessional legal representation.

- ner and his/her representative both fail to appear for any without justifiable cause, the decision of the Area Manager shall grievance dismissed.
- ident and his/her representative both fail to appear for any without justifiable cause, the decision of the Area Manager shall
- rsonnel Commission shall be based solely on the information fore the appeal hearing, the record of the prior proceedings and ntroduced appropriately through the provisions of 6.b.4.a. above).
- rsonnel Commission shall be final. The Personnel Commission
  - inary action; or
  - plinary action and:
    - employee (petitioner) with full back pay for any lost time;
    - employee (petitioner) without back pay.
- pondent have a right to a speedy hearing and decision; therefore, Il decision will be made within five (5) working days following the
  - final decision will include:
    - ision;
    - for the final decision; and
    - be taken as a result of the final decision.
  - f the hearing;
  - administrative advocacy rules, procedural rules, and time line parties.



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1055 1056	SECTION VI – SAFETY AND HEALTH
1057	A. POLICY
1058	The personal safety and health of each employee, customer and client of the Oneida Tribe is of primary
1059	importance. The prevention of injuries and illnesses is of such importance that it will take precedence
1060	over operating productivity whenever necessary.
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1062	The Oneida Tribe will maintain a safety and health program conforming to the best practices available.
1063	To be successful, this program will work to develop the proper attitudes toward on the-job injury and
1064	illness prevention on the part of supervisors and employees. This program will strive to develop a high
1065	level of cooperation in all safety and health matters between supervisors and employees and among
1066	employees.
1067	
1068	The objective of this program is a safe and healthy environment that will reduce the number of job-
1069	related injuries and illnesses to an absolute minimum. The Tribe's goal is zero
1070	accidents and illnesses.
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1072	B. PROCEDURES
1073	The Tribal Safety Committee will adopt and enforce through the Personnel Department
1074	procedures related to the education of the Tribal work force in matters of safety and health.
1075	These procedures will include all education and prevention activities, assessments and
1076	evaluations, and reporting.
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# <u>SECTION VII – PROGRAM/ENTERPRISE RULES & REGULATIONS</u>

- A. Enterprises and programs may establish internal rules and regulations to facilitate the administration of Tribal Personnel Policies and Procedures.
  - 1. In no case will these internal rules and/or regulations conflict with or take the place of Tribal Personnel Policies and Procedures.
  - 2. Enterprises and programs which establish internal rules and regulations will file a copy of the rules and regulations with the Personnel Department.



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1128 1129	SEC	CTIO	N VIII – RECORD KEEPING
1129 1130			NNEL OFFICE
1131	, · · ·	1.	Basic records to be retained include:
1132			a. Reference Data
1133			b. Job Descriptions
1134			c. Resumes and Applications
1135			d. Interview notes/selection information
1136			e. Resignations
1137			f. Employee tax exemption claims
1138			<ul><li>g. Disciplinary action information</li><li>h. Performance evaluations</li></ul>
1139			
1140			i. Insurance coverage/changes
1141			j. Transfers
1142		2	The Developed Office shall be a conductive a consulate record of each annulate
1143		2.	The Personnel Office shall keep and maintain a complete record of each employee
1144			throughout his/her term of employment.
1145			a. Tribal employees shall have access to their employment file.
1146			b. Employment files kept by the Personnel Office shall be considered confidential
1147			information. Release of any information to a third party must have the consent
1148			of the employee in writing.
1149	В.	ACCO	OUNTING DEPARTMENT
1150		1.	Basic records to be retained include:
1151			a. Attendance records
1152			b. Employee Time Sheets
1153			c. Earnings - in the form of computer printouts
1154			d. Travel - in the form of complete travel authorization forms.
1155			1) Time sheets and travel reports shall be filled out by every employee for pay
1156			period, collected by the program head, and forwarded to the Department.
1157		2.	The Accounting Department shall retain all records for a period of seven (7)
1158			years. (Archived 29, October 2010) (BC Action, 10-14-09B)



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# PERSONNEL POLICIES AND PROCEDURES MANUAL

### **SECTION I – Introduction**



Welcome to the Oneida Nation. We are pleased to have you join us as a partner on a team of people dedicated to providing quality service that enhances the quality of life of the Oneida community. The role you play in your position is important to the overall effort required by your department to meet the goals and objectives of the Oneida Nation. We encourage you to take advantage of the opportunities presented to you, as an employee, to grow and develop both personally and professionally.

The purpose of this "Employee Manual" is to provide you with a ready source of information about employee related Oneida tribal policies and procedures. Although we have tried to make this manual as comprehensive as possible; it does not, and cannot, include policies which address every situation that may arise. The Oneida Nation reserves the right to modify, alter, change or cancel existing policies and procedures or adopt new procedures and policies at any time.

The policies and procedures set forth in this manual apply to all employees. As an employee of the Oneida Nation, you are required to know and abide by these policies and procedures. Tribal departments may have specific and additional procedures enhancing the general policies stated in this manual. Each employee is expected to learn his/her department's procedures and comply with them. In the event of any conflict between policies in this manual and departmental procedure, the policies in this manual supersede. Each employee is also expected to conform to the professional standards of his/her occupation. Questions regarding this manual, or any employee related policies, should be directed to your supervisor, department head, or to the Human Resources Department at (920) 496-7900.

The Oneida Nation is proud to have you on our staff and we look forward to a fulfilling and successful team relationship.



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### **SECTION II - RECRUITING**

#### A. RECRUITING

### 1. Recruiting Strategy

- a. The Oneida Tribe shall implement a Recruiting Strategy to increase the potential for hiring the best-qualified and most capable employees possible.
  - 1) The Recruiting Strategy shall target as the first priority applicants in accordance with the Oneida and Indian Preference Policy.
  - 2) The Recruiting Strategy shall have a nationwide focus and will use:
    - a) The Kalihwisaks (national distribution);
    - b) The Oneida Higher Education Office's network of post-secondary school students;
    - c) Local and regional media and public employment agencies.

#### 2. Applicant Pool

- a. The Oneida Tribe shall establish and maintain an Applicant Pool consisting of individuals who have expressed an interest in working for the Oneida Tribe.
  - 1) The Applicant Pool will consist of files containing:
    - a) A Tribal Application Form;
    - b) A summary of career goals and job preferences.
  - 2) The Applicant Pool will be regularly reviewed to:
    - a) Update individual files:
    - b) Remove files where indicated.
  - 3) The Applicant Pool will be cross-referenced by job preferences.
    - a) Notices of job vacancies and an Application Form will be sent to all Applicant Pool members as appropriate.
  - 4) All Applicant Pool members shall have the right to review and update their file upon request.
  - 5) Applicant Pool members shall be apprised of the Tribe's Indian Preference Policy.

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#### B. LABOR POOLS

- 1. Supervisors that wish to establish a job classification as a Labor Pool Position will work with the HRD to establish the job classification.
- 2. Each Labor Pool Position shall be advertised as on-going recruitment pool. The HRD shall maintain an updated list of qualified candidates for each Labor Pool Position.
- 3. The HRD will accept all job applications and verify that each applicant is qualified according to the established job description. All qualified applicants will then be placed in a pool according to the Tribe's Oneida and Indian Preference Policy and the date the application was received. All applicants will be notified of acceptance into or rejection from the pool.
  - a. PRESCREENING OF LABOR POOL POSITIONS (HR Interpretation 11-13-12) Applicants who were previously employed by the Oneida Tribe and were terminated for reasons of misconduct or performance issues will be screened out for a period of twelve (12) months following the date of discharge.



- The HRD will keep an updated list of qualified applicants for each job position.
  - 5. When a vacancy occurs in a Labor Pool Position, the supervisor will notify the HRD of the position to be filled. The HRD Office shall then refer the top three (3) applicants to the immediate supervisor. The top three applicants shall be based first on the Oneida and Indian Preference Policy and, second, the date an application was received. The immediate supervisor will notify the HRD of their selection and the HRD will then offer the position to the applicant. After the position is filled, all ranked candidates will move up on the list. (HR Interpretation 7-11-13)
  - 6. If the applicant refuses the position, the HRD Office will then offer it to the next applicant until the position is filled.
    - 7. If the applicant refuses the job, the applicant may withdraw from the Labor Pool or, if he or she declines to withdraw from the Labor Pool, the date of refusal will be considered the date the application was received and the applicant will be placed in the Labor Pool list according to B.3.
    - 8. Indian (Oneida) Preference will be adhered to in all hiring decisions.

### C. EMERGENCY/TEMPORARY POSITIONS

- 1. The HRD will periodically recruit individuals who are interested in filling temporary positions which consist of the following classifications:
  - a. Emergency/Temp
  - b. Limited Term
  - c. Seasonal

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- d. Substitute/Relief
- e. Youth Worker
- f. Student/Intern
- 2. Creation of Positions
  - a. Creation of positions in the above Temporary Employee Classifications will require that these positions be budgeted for the current fiscal year, or proof through documentation that the budget is adequate to incorporate these positions.
  - b. The positions must be developed in conjunction with the HRD; assuring that all Policies and Procedures are adhered to. Creation of temporary classification requires the approval of the Director, Area Manager, and HRD Manager, or elected official of the Oneida Tribe.
  - c. All newly created temporary positions must be processed through the Wage and Salary system before a position can be filled with a temporary employee.

#### 3. Recruitment/Selection

- a. Recruitment/selection of applicants for all temporary positions requires a completed Temporary Personnel Requisition form with an updated job description attached.
- b. The HRD will provide a list of qualified candidates according to the job descriptions to the immediate supervisor. The immediate supervisor will select from the approved list adhering to Indian Preference.
- c. The HRD will contact the selected candidate and offer the position, following the proper procedures to put the incumbent on payroll.



117		d.	The selected candidate will sign a statement accepting conditions of temporary
118			employment, and length of employment where applicable.
119		e.	Temporary employees will be paid within the Grade in which the job is classified and salary
120			will be negotiated within the first three (3) steps of respective grade.
121			1) Any negotiated salary beyond step three will require written justification and approval
122			form the respective General Manager. (H.R. Interpretation, 12-8-16)
123		f.	Temporary employees are welcome to apply for any regular position within the Tribe that
124			becomes available during the term of their employment.
125		g.	Temporary employees that are terminated due to documented cause will have the right to
126			the appeal process as outlined in the Personnel Policies and Procedures.
127		h.	All temporary employees are subject to lay-off based upon department job needs and
128			budgets. (HR Interpretation – 11-25-13)
129		i.	Supervisors are required to do proficient planning within their respective span of control; as
130			such they must also enforce separation dates and will be monitored by HRD for compliance.
131		j.	Supervisors must select the most appropriate category of classification for the job.
132		,	1) Moving from one classification to another is prohibited.
133	4.	Ber	nefits
134		a.	The following employee classifications will be eligible for benefits as defined in the section
135			of the Personnel Policies and Procedures as medical, dental, vacation and personal accrual,
136			holiday pay, premium pay.
137			1) Limited Term
138			2) Seasonal
139		h.	The following employee classifications will be eligible for benefits as defined in this section
140			of the Personnel Policies and Procedures as Mandatory Benefits and Holiday pay.
141			1) Emergency/Temporary
142			2) Substitute/Relief
143			3) Seasonal Worker (only during their first season)
144		c.	The following employee classifications will be eligible for benefits as defined in this section
145		C.	of the Personnel Policies and Procedures as Mandatory Benefits.
146			1) Youth Worker
147			2) Student/Intern
148			2) Studenty intern
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### **SECTION III – SELECTION POLICY**

ONEIDA PREFERENCE AND INDIAN PREFERENCE STATEMENT OF POLICY A.

Federal policy since 1834 accords hiring preference to Indians. The purpose of this preference is

threefold: 1) to give Indians a greater participation in self-government; 2) to further the Government's

160 trust obligation; and 3) to increase the positive effect of having Indians administer matters that affect

Indian tribal life. (GTC Resolution - 5-23-11-A)

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More recently, legislation such as the Civil Rights Act (1964) and the Education Amendments of 1972 (passed after the Equal Employment Opportunity Act) continued to specifically provide for preferential hiring of Indians by Indian Tribes.

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As an employer, the Tribe seeks to employ individuals who possess the skills, abilities and background to meet the employment needs of the Tribe.

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As a sovereign Indian Tribe and a unique cultural group, the Oneida Tribe has determined that a highly desirable employment characteristic is knowledge of Oneida culture that can be attained only by membership (or eligibility for membership) in the Oneida Tribe. Further, the Tribe recognizes the unique, shared culture of Native American Indians and has determined that a desirable employment characteristic is status as a member of an American Indian Tribe. At a minimum, the Tribe has determined that some knowledge of Indian culture is a desirable employment characteristic.

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Accordingly, the Oneida Tribe establishes the following policy in regard to Indian Preference for selecting employees to provide services that meet the needs of the Oneida people. This Indian Preference policy shall be specific to staffing decisions made under the Personnel Policies and Procedures and shall not be construed to have an application outside of these policies and procedures.

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The Oneida Tribe of Indians of Wisconsin is an equal employment opportunity employer and follows non-discriminatory policies and procedures in personnel decisions. (HR Interpretation 5-19-14) However, the Oneida Tribe exists to serve the needs of the Oneida people and therefore accords Oneida Preference to enrolled Oneida Tribal Members where such preference is not otherwise prohibited. All General Managers and top administrative positions, as defined by HRD, shall be held by enrolled Tribal members. In all other instances, the Tribe applies the following priorities of Indian Preference in staffing decisions:

- 188 189 1 Enrolled Oneida Tribal member;
  - 2 Oneida Indians eligible for enrollment in the Oneida Tribe;
  - 3 Documented first generation Oneida descendant;
    - 4 Other Native American Indian;
- 5 Other (non-Indian). (HR Interpretation 6-24-11) 193

This policy will apply in decisions where the basic requirements for employment are met.

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#### 197 B. HIRING PROCEDURE 198 1 Statement of Policy 199 a. The Oneida Tribe of Indians of Wisconsin is an equal employment opportunity employer and 200 follows nondiscriminatory policies in hiring. 201 b. The Oneida Tribe is a firm advocate of the 1964 Civil Rights Act (as amended) and the 1968 202 Indian Civil Rights Act (as amended) and will make every effort to ensure compliance with 203 each Act; however: 204 c. The Oneida Tribe follows the principles of Indian Preference in the implementation of hiring 205 practices (see the Oneida Preference and Indian Preference Statement of Policy). d. The members of the Personnel Commission and all Tribal employees who supervise other 206 207 Tribal employees shall undergo training in EEO and Tribal laws, rules and regulations. 208 1) Training will be knowledge - and skills-based 209 2) All Personnel Commission members and Tribal supervisors will undergo periodic retraining in EEO and Tribal laws, rules and regulations 210 211 e. No person shall be recommended for a position if a conflict of interest or nepotism is created. Nepotism is created by the following relationships: (HR Interpretation 08-13-12) 212 213 a) Father Father-in-law i) 214 b) Mother j) Mother-in-law c) Husband Brother-in-law 215 k) 216 d) Wife I) Sister-in-law 217 e) Brother m) Son-in-law 218 f) Sister Daughter-in-law n) 219 g) Son Grandparent m) 220 Grandchild h) Daughter n) 221 2. **Hiring Procedures** 222 a. HRD Office Responsibilities 223 Unless specifically noted, the HRD Office will have responsibility for implementing the policies and procedures guiding the selection of Tribal employees. 224 225 b. Personnel Commission Role 226 The Oneida Tribe established the Personnel Commission to represent the Oneida 227 Community-at-large in the selection of tribal employees. 228 a) The Personnel Commission is directed to: 229 Seek out the best-matched applicants for each available position; 230 ii. Consider only job-related factors (such as education, experience, past job 231 performance, skills and abilities, and compatibility with the position and 232 potential co-workers) when selecting candidates. c. Identification of Vacancies and Development of Job Descriptions (Work Standard, 11-16-11) 233 234 Supervisors may inform the HRD Office of pending vacancies as soon as they are 235 identified. 236



238		2)	For existing positions, the HRD Manager (or designate), the supervisor and the Area
239			Manager (at his/her option) will review the job description to ensure compliance with:
240			a) The Tribal job structure;
241			b) The needs and requirements of the job.
242		3)	For new positions, the HRD Manager, the appropriate Area Manager, and the supervisor $% \left( 1\right) =\left( 1\right) \left( $
243			shall develop the job description.
244			a) The new job description shall conform to the Tribal job structure.
245			b) The new job description will be reviewed by the General Manager.
246			(HR Interpretation, 12-8-16)
247		4)	All job descriptions shall contain the following information:
248			a) Job title, division/department, location, supervisor's title;
249			b) Posting date, application deadline, preferred starting date, date of job, description
250			review;
251			c) Pay level (grade, step, hourly rate);
252			d) A brief job summary;
253			e) Duties and responsibilities;
254			f) Qualifications;
255			g) Inquiry address;
256			h) Statement of compliance with EEO and Indian Preference policies.
257	d.	App	olications
258		1)	All inquiries for job vacancies will be responded to with a Tribal Application Form which
259			will consist of:
260			a) Job vacancy title;
261			b) Applicant biographical data;
262			c) A request for a resume (where applicable).
263		2)	The Application Form shall be accompanied by a Statement of Policy regarding Oneida
264			Preference and Indian Preference.
265		3)	Hand-delivered applications will be accepted at the HRD Office until 4:30 p.m. on the
266			deadline date; mailed applications must be postmarked on or before the deadline date.
267		4)	All applications will be acknowledged.
268	e.	Adv	vertising
269		1)	Position vacancies will be advertised as widely as possible including:
270			a) The Kalihwisaks;
271			b) Statewide, through print and electronic media and public employment agencies;
272			c) Through targeted recruiting efforts including:
273			i. Major metropolitan areas (i.e. Milwaukee, Chicago, Minneapolis, etc.)
274			ii. The Bureau of Indian Affairs;
275			iii. The Oneida Higher Education Office.
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- d) Other postings targeted toward special recruiting categories (such as professions) shall be carried out at the discretion of the HRD Office with the advice and consent of the affected department.
- 2) Unless otherwise prohibited by external grant source or federal law, the first posting for a position vacancy shall be limited to enrolled Oneida members and shall be posted for a minimum of seven (7) calendar days.
- 3) The second posting for a position vacancy shall be posted for a minimum of ten (10) calendar days and shall be open to the general public, unless the position must be filled by an enrolled Oneida Tribal member. (HR Interpretation 8-9-11)
- 4) All vacancies requiring re-posting shall be referred back to B-2.c (Identification of Vacancies and Development of Job description) to begin the re-posting process.
- f. Screening of Applicants (HR Interpretation 11-16-12) (HR Interpretation 10-22-12)
  - 1) A Screening Committee consisting of the HRD Manager (or designate), the position supervisor, the Area Manager (at his/her option), and a member of the Personnel Commission shall be convened to conduct the screening of applicants. The Screening process will begin as soon as practical following the closing of the position. This Committee will:
    - a) Verify that all applications are complete, are accurate and were submitted on time.
      - i. Applications that are incomplete, inaccurate, or were not submitted on or before the posted deadline date may be screened out.
    - b) Analyze the job description to establish screening criteria. These criteria will include qualifications listed on the job description determined by the supervisor and Area Manager to be essential to the job. (T.O.E. WS 5-6-13)
    - c) Screen verified applications
    - d) Recommend a list of applicants to be interviewed.
  - 2) The HRD Office shall notify screened out applicants within five (5) working days after the initial screening and reserve these applications in the general recruiting pool.
  - 3) The HRD Office will arrange for interviews with the listed candidates.
- g. Candidate Interviews
  - 1) An Interview Committee will be convened and will consist of the members of the Screening Committee except that the HRD Manager will be replaced with a second member of the Personnel Commission. The Interview Committee will:
    - a) Construct an interview format consisting of:
      - i. A set of questions related to the screening criteria qualifications;
      - ii. An interview rating scale designed to objectively evaluate each candidate's qualifications.
    - b) Interview candidates and evaluate each individually
  - 2) The HRD Manager (or designee) will total the evaluation rating scale to rank order of the candidates.



320		h.	Sele	ection (Interpretation - Disqualification of Applicant 10-24-2013)
321			1)	The supervisor shall select one of the top two (2) candidates as ranked through the
322				rating scale. (HR Interpretation - 10-17-12)
323				a) The supervisor may conduct an additional personal interview with the top two (2)
324				candidates.
325				b) The selection decision shall be governed by the Oneida Preference and Indian
326				Preference Policy. (HR Interpretation - 6-6-11)
327				c) The HRD Office will notify the selected candidate and offer the candidate the job
328				within five (5) working days of the selection decision by the supervisor.
329				i. Should the supervisor's first choice refuse the offer, the HRD Office will offer
330				the job to the second ranked candidate.
331			2)	Should both of the top two ranked candidates refuse the job offer, the supervisor may:
332				a) Repeat the process outlined in B.2.h.1. above; or
333				b) Re-post the position.
334			3)	The HRD Office will notify those candidates interviewed but not selected of the
335				decision to hire the best-qualified candidate.
336			4)	All newly hired employees will be listed in the HR newsletter.
337	C.	TRAN	SFER:	S AND PROMOTIONS POLICY - The Oneida Tribe encourages transfers and promotions
338		withir	n and	among units in order to make the best possible use of human resources to meet Tribal
339		goals	and o	objectives. Supervisors and employees are encouraged to work together to create an
340				nt in which employees constantly strive to improve their skills and abilities and mangers
341		const	antly	seek to provide challenging and rewarding work experiences.
342		1. Pr	oced	ure
343		a.	Inte	ernal Posting and Bidding
344			1)	Open positions as determined by a supervisor and his/her Area Manager will be posted
345				internally for five (5) working days. This internal posting will be concurrent with the
346				external (public) posting of positions.
347				a) Positions will be posted in prominent locations in each Tribal building
348			2)	Tribal employees may bid for transfers by notifying their immediate supervisor and
349				submitting an Application Form to the HRD Office.
350				a) The HRD Manager will inform all affected Area Managers of each transfer bid.
351			3)	At the end of the five (5) day internal posting period, the HRD Manager will schedule a
352				conference with the open position's supervisor and the Area Manager.
353				a) The conference committee will consist of the supervisor, the Area Manager and the
354				HRD Manager (or designate) acting as this Committee will:
355				i. Establish selection criteria; and
356				ii. Review each bid.
357				b) The Committee may select the best-qualified applicant but is not required to
358				choose an applicant to fill the open position from those employees who have
359				submitted an application for a transfer or promotion.
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361				c) If the Committee does not fill the position from the transfer/promotion process,
362				the process will continue through the full advertising, screening and interview
363				steps.
364				i. Any decision will be governed by the Indian Preference Policy.
365			4)	Employees who are transferred or promoted will not lose any benefits; however:
366				a) An employee may be required to continue serving in his/her present position until
367				a replacement can be found;
368				b) An employee who is transferred to a position lower on the Tribal Job Structure will
369				be paid at the grade level corresponding to the new position;
370				c) An employee must have completed one year of service to the Tribe before being
371				eligible for a promotion or transfer (requests for transfers for documented medical
372				conditions will be handled on a case by case basis and only when in the best
373				interests of both the employee and the Tribe);
374				d) The newly transferred or promoted employee shall be required to complete a three
375				(3) month probation period (all conditions of the Tribe's Probation Policy shall
376				apply).
377		b.	App	licant Pool Process
378			1)	New and vacant positions will be advertised through the Tribal Applicant Pool.
379			2)	The job description will be sent to persons whose applications are maintained in the
380				Applicant Pool.
381				a) The Tribal Applicant Pool will consist of open (unspecified) applications from Tribal
382				members who wish to be considered for employment by the Tribe.
383				b) Advertising through the Tribal Applicant Pool will follow the format and time
384				conditions set forth in the Hiring Policy.
385	2.	Re	eassig	nments
386		a.		le Reassignments
387			1)	Title Reassignments may be made by supervisors to:
388				a) More accurately describe or define an existing job; or
389				b) Make minor adjustments in jobs within a unit or operating division.
390			2)	Title Reassignments may be made at any time with the approval of the Area Manager
391				and HRD Manager.
392		b.		Reassignments
393			1)	Job Reassignments may be made by supervisors to make more efficient and effective
394				use of human resources.
395			2)	Job Reassignments may be supervisor-initiated or employee-initiated but must be
396				made in the best interests of the operating unit.
397			3)	Job Reassignments may be made at any time with the approval of the Area Manager
398				and after a review of each affected job by the Personnel Evaluation Committee.
399		c.	Int	erim Job Reassignments (Work Standard 7-11-13)
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# D. PROBATION (Work Standard 1-20-2011)

- 1. The first three (3) months after an employee's starting date shall be considered a period of probation. At the end of six (6) weeks, the employee's performance shall be reviewed with him/her by the supervisor by completing an employee evaluation.
  - a. At the end of the three-month probation period, a second performance evaluation will be conducted. This evaluation will recommend the end of probation and regular status for the employee, an extension of probation, or termination for cause.
- 2. Status as a Probationary Employee
  - a. Probationary employees will be paid at five percent (5%) below the posted pay rate for the position.
    - 1) New employees hired under a negotiated salary will receive a salary one step below the agreed upon salary during the probationary period.
  - b. Probationary employees will accrue vacation/personal days during the probation period and will receive holiday pay.
  - c. Probationary employees may be terminated for cause at any time during the probation period. Cause must consist of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position. This termination is subject to appeal. (BC Action 3-20-92)
- 3. Completion of Probation Period
  - a. Satisfactory completion of probation will result in the employee receiving the regular salary for the position.
  - b. Employees who are terminated during the probation period will receive up to forty (40) hours of accrued vacation/personal days in their final paycheck.
  - c. Extensions of probation periods will not affect accrual of or use of benefits as explained under D.2.



### **SECTION IV - COMPENSATION AND BENEFITS**

#### A. SALARY

- 1. Tribal Job and Salary Structure
  - a. An ongoing plan will be instituted based on standard employee grades and step levels to assure that a uniform approach is taken to establish equitable salary and wage levels.
  - b. Employee performance evaluations will be a resource in determining whether an employee receives an increase in pay for the upcoming year. An overall satisfactory rating must be attained in order to be granted an increase in pay.
  - c. Merit increase shall be granted upon the recommendation of the supervisor, the Area Manager, the HRD Manager and the General Manager.

# 2. Workday (Work Standard, 10-17-12)

- a. The regular Tribal workday is from 8:00 a.m. to 4:30 p.m. with an hour for lunch. The exception to these hours occurs only if the program/enterprise hours must vary for the purpose of providing service (such as retail hours beyond 4:30 p.m.). Shifts will be developed as needed, and the shift hours will then become the regular workday for assigned employees for that program/enterprise.
- b. Employees are expected to be at work each scheduled work day.
  - 1) Employees who do not report for work because of inclement weather or unforeseen circumstances will not be paid for that day. Employees may elect to use personal day(s) to cover this absence. (Work Standard, 11-8-12)
  - 2) In case of an unavoidable delay or absence, the supervisor must be notified no later than thirty (30) minutes after the scheduled starting time. Employees are encouraged to notify their supervisor before their scheduled starting time.
    - i. Employees failing to report to their assigned jobs or failing to call in within the thirty (30) minute time allowed will be subject to disciplinary action.
    - ii. Permission to leave early must be obtained by the employee from his/her supervisor.

#### 3. Overtime

- a. Any and all overtime will be kept to a minimum and must be approved by the Supervisor and Area Manager.
  - 1) In the case of potential overtime that may occur at night, on holidays or on weekends, supervisors will delegate this authority to a specific employee and outline specific situations and actions that warrant overtime.
- b. All overtime must be reported to the supervisor for evaluation.
- c. Overtime will be approved only if the program or enterprise budget is capable of paying it.
- d. Overtime will be approved only for hours worked in excess of forty (40) hours per week.

  Personal/vacation days and holidays will not count toward the forth (40) hour requirements.
- e. Tribal employees are expected to work overtime if required. Time and one-half will be paid for this overtime.
- f. Exempt employees are not eligible for overtime.
  - 1) The HRD Office will maintain a list of exempt employees.



486		a.	Tribal holidays consist of the following:
487			1) One-half day Christmas Eve
488			2) Christmas Day
489			3) New Year's Day
490			4) Memorial Day
491			5) Veteran's Day
492			6) Independence Day
493			7) Labor day
494			8) Thanksgiving Day
495			9) Indian Day (day after Thanksgiving)
496			10) One-half day Good Friday
497			11) Code Talker's Day (Oneida Day, Friday prior to Memorial Day)
498			(BC Resolution – 12-11-13A)
499		b.	To be eligible for a paid holiday, employees must work the preceding and following
500			scheduled work days (except for employees who are on a prescheduled work leave or an
501			approved extended sick leave.) Employees who are granted a sick day directly prior to a
502			holiday must certify that they were capable of working the holiday in order to qualify for a
503			paid holiday.
504		c.	All regular employees will be given holiday pay for the maximum pay of eight (8) hours per
505			day.
506		d.	Holidays falling on a Saturday will be observed the preceding Friday; holidays falling on a
507			Sunday will be observed on the following Monday. (2017 Holiday Observance Calendar) (2016 Holiday Observance
508			<u>Calendar</u> )
509		e.	The Oneida Tribe acknowledges its responsibility to make a reasonable accommodation to
510			employees who wish time off to observe religious holidays. Requests for such time off will
511			be granted where possible, based on the scheduling and staffing needs of affected
512			departments. Employees wishing to take time off work for religious observances should
513			inform their supervisor as early as possible. Employees may use personal time for such
514			requests if eligible; otherwise the time off will be treated as unpaid leave.
515	5.	Vac	cation/Personal Days
516		a.	Every Tribal employee, except temporary employees, shall be allowed personal and vacation
517			days with pay to the extent that personal days and vacation are accumulated. Temporary
518			employees shall be allowed personal and vacation days in accordance with Section II.C.4.
519			(GTC Resolution – 7-02-12-A)
520		b.	The amount of personal and vacations days shall be determined by continuous service for
521			the Tribe. A "lay-off" from tribal employment shall not be considered in interruption in
522			continuous service where the lay-off is in accordance with the Tribe's Layoff Policy, nor shall
523			a preapproved leave of absence. (Accruals Interpretation, 3-6-12)



(BC Resolution, 4-13-11F)

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4. Holidays (Work Standard, 4-15-11)

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c. Except as provided for in section g, the accrual of personal days shall be as follows:

531		1) 0-3 years of service - 12 days per year
532		2) 4-7 years of service - 15 days per year;
533		3) 8-15 years of service - 20 days per year;
534		4) 15+ years of service - 25 days per year.
535	e.	Part-time employees accrue personal and vacation days for time actually worked at a ratio
536		of a full-time employee.
537	f.	Service is defined as working for Programs/Enterprises which are contracted by the Tribe of
538		specifically sponsored by the Tribe.
539	g.	Vacation and personal days shall be capped at 280 hrs. [BC Resolution, 11-10-10D] An employee
540		shall cease to accrue vacation and personal hours when he or she has reached 280 total
541		hours. Supervisors shall notify their employees when said employees have accumulated 200
542		total hours of vacation and personal time.
543		1) An employee may trade back accumulated vacation and personal hours in accordance
544		with Section IV.A.5.n. below. (GTC Resolution – 5-23-11-B)
545	h.	Upon termination from Tribal employment, employees will be paid up to forty (40) hours for
546		any unused personal and/or vacation days.
547		1) Employees who have used the Tribally-sponsored loan program will be required to
548		honor the terms of the loan agreement.
549	i.	Personal Days can be used for any reason so long as the request is approved by the
550		employee's supervisor at least twenty-four (24) hours in advance (unless the absence is due
551		to illness or unforeseen circumstances).
552		1) In the case of illness or unforeseen circumstance, the supervisor shall be notified no
553		later than fifteen (15) minutes before the scheduled starting time.
554		2) Programs and enterprises may institute stricter standards of notification. These
555		standards will be submitted to and approved by the Personnel Department.
556	j.	An employee shall notify his/her supervisor of an intent to use personal days in the
557		following ways:
558		1) Three (3) to five (5) days - one (1) week advance notification
559		2) Six (6) days or more - two (2) weeks advance notification.
560	k.	An employee shall notify his/her supervisor one (1) day in advance if he/she will take off one
561		(1) or two (2) days of vacation. Programs and enterprises may institute stricter standards of
562		notification.
563		1) Three (3) to five (5) days of vacation require a one (1) week advance notification.
564		2) Six (6) or more days of vacation require at least two (2) weeks advance notification.
565	I.	A supervisor may deny use of personal or vacation time for any business-related reason.
566	m.	Personal or Vacation Days cannot be taken when an employee is on probation.

d. Except as provided for in section g, the accrual of vacation days shall be as follows:

1) 0-3 years of service - 6 days per year;

2) 4-7 years of service - 8 days per year;

3) 8-14 years of service - 10 days per year;

4) 15+ years of service - 12 days per year;



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n. Trade-back for Cash - Each fiscal year, the Oneida Business Committee shall analyze fiscal 567 568 conditions to determine whether employees may trade back personal and/or vacation hours for cash that fiscal year. (Work Standard, 10-11-11) 569 570 1) If the Oneida Business Committee approves trade-back for cash, they shall also 571 determine whether (a) and/or (b) applies: All employees will have the opportunity to trade-back hours one time that year. 572 573 1. By August 15, each employee who has accumulated twenty-four (24) hours 574 or more of vacation and/or personal days may opt to trade in his/her hours 575 for cash. 2. Employees will receive their trade back on or before September 30 of that 576 577 year. 578 Only those employees who are unable to utilize their personal and/or vacation time 579 due to working conditions, such as a shortage in staffing, as determined by the HRD 580 Manager or designee, will have the opportunity to trade back hours on a quarterly 581 basis. 582 1. Employees will receive their trade back within sixty (60) days after opting to 583 trade back hours. 584 2) When trade-back for cash is approved by the Oneida Business Committee, the following 585 standards shall apply: 586 Employees must decide which status (vacation or personal or both) from which their 587 trade-back will be drawn. 588 Employees may not trade for cash more than eighty (80) hours in one year. (GTC Resolution 5-23-11-B) 589 590 o. Additional Duties Compensation p. Travel Time Compensation (Work Standard - 3-20-13) 591 592 593 B. INSURANCES (see separate publication) for information on Tribal Insurance plans. (Separating Employees WS 5-6-13) 594 595 C. RETIREMENT PLAN (See separate publication for information on Tribal Retirement Plan). 596 D. LEAVES 597 1. Meeting Attendance 598 a. Approval for attending any meetings inside normal working hours must be approved in advance by the employee's immediate supervisor. (BC Action, 5-16-89) 599 600 b. Employees who receive stipends or honoraria in excess of \$50.00 for attending meetings during working hours will forfeit the amount in excess of \$50.00 from their regular 601 paycheck. Stipends for travel or per diem will not be deducted if accompanied by receipts 602 603 for such expenses. 604 c. Stipends or honoraria for intra-tribal meetings during normal working hours will results in 605 the employee's paycheck being reduced by the full amount of the stipend.



2. Funeral Leave (Work Standard, 8-2-11)

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609		services for immediate family. Immediate family includes:						
610		Husband	Mother	Brother great-grandparent				
611		Wife	Father	Sister	great-grandchildren			
612		Mother-in-law	Son	Grandparent	Spouse's great-grandparents			
613		Father-in-law	Daughter	Grandchild	Spouse's grandparents			
614		Daughter-in-law	Sister-in-law	Brother-in-law	,			
615	b.	Three (3) day leave for other persons will be given only if the employee is responsible						

b. Three (3) day leave for other persons will be given only if the employee is responsible for making funeral arrangements, subject to prior approval of supervisor.

a. All regular employees will be given a three (3) day leave without loss of pay for funeral

- c. All other funeral leave will be limited to no more than one (1) day with pay subject to the notification and approval of the immediate supervisor. (Management Directive, 12-17-2009)
- 3. Leave of Absence (Work Standard, 6-10-14)

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- a. A leave of absence without pay may be granted to employees for a justifiable reason (including caring for a child, spouse or parent with a serious health condition) and when in the best interest of the Tribe.
  - 1) Leaves of absence will not exceed three (3) months.
    - All leaves of absence must be approved by the supervisor, Area Manager, HRD Manager and General Manager. (HR Interpretation, 12-8-16)
    - Requests must be documented and submitted to the supervisor with as much ii. advance notice as possible.
    - Disposition of requests will be made on the basis of staffing requirements.
  - 2) Upon returning, the employee will be reinstated in the former position with full status and benefits. Holiday, vacation, and sick leave will not be accrued during the leave of absence.
  - 3) No later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position. Notice must be presented to the supervisor.
    - Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process. (HR Interpretation 11-21-11)
- Maternity Leave
  - a. Maternity leave will be granted for a period of six (6) weeks without pay.
    - 1) An employee may elect to cover any portion of this time by using accumulated sick days.
    - 2) Any maternity-related absences for longer than six (6) weeks must be taken as a medical leave of absence.
- 5. Military Leave
  - a. In addition to the following provisions, the Tribe's Military Service Protection Act shall govern Military Leave.



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- b. A Military Leave of Absence is afforded employees entering active duty without accumulation of holiday, vacation or personal time during the period of leave. Any accumulated benefits prior to leave will be maintained for the employee.
- c. Time off for inactive duty training, examinations to determine fitness for duty and funeral honors duty shall be afforded to employees without the accumulation or loss of holiday, vacation or personal time. An employee will receive pay from the Tribe for any hours work that the employee was required to miss due to reservist training.
  - 1) Any pay received for performing any of the above duties shall be deducted from the employee's pay. (GTC Resolution 1-26-08A)

### 6. Jury Duty

- a. During a period of jury duty, an employee will receive pay from the Tribe for any hours of work missed due to jury duty.
  - 1) Jury duty pay will be deducted from the employee's paycheck when determining the amount of pay
  - 2) No overtime will be allowed in determining employee pay while serving on jury duty.
- 7. Educational Leave (BC Action, 5-4-90)
  - a. A leave of absence for education purposes will not exceed one (1) year.
- 8. Parent Policy Leave (BC Action, 3-2-94A)
  - a. Employees who are parents, guardians, or those individuals specifically referred to as "immediate family" as defined in Section IV, page 6 of these Personnel Policies and Procedures which includes husband, wife, mother, father, brother, sister, son, daughter, mother-in-law, father-in-law, grandparent and grandchild may request to participate in their child(ren)'s educationally sanctioned events not to exceed four (4) hours per employee per month
    - 1) These four (4) hours shall not accumulate.
  - b. Approval to utilize the four (4) hours must be obtained from the supervisor.
    - 1) An employee shall request his/her supervisor to utilize this leave with a minimum of twenty-four (24) hours' notice.
    - 2) The Supervisor may request verification of
      - i. Guardianship of the child(ren) and/or
      - ii. The attendance of the employee at their child(ren)'s educationally sanctioned event.
  - c. The burden shall be on the supervisor to show that a denial of the Parent Policy Leave which is based upon interference with the business of the Tribe.
  - d. This leave shall not be paid as overtime. The supervisor may have the option to use flex time to cover this time off to attend their child(ren)'s educationally sanctioned events.
  - e. All employees, except Emergency/Temporary, Youth Workers, Student Interns, and Seasonal Workers during their first season, and Substitute Reliefs are eligible to participate in this benefit.



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#### **SECTION V – EMPLOYEE RELATIONS**

#### 691 A. ORIENTATION POLICY

- The Oneida Tribe reflects the unique culture and character of the Oneida Nation. The Tribe recognizes that this may present special problems and difficulties for a new employee. The Tribe therefore provides an Orientation Program designed to ease the new employee's transition into a job and enable the new employee to become effective and productive as quickly as possible.
- Orientation Program Outline
  - a. Overview
  - b. Tribal Government and Procedures
- 699 c. Key Policies and Procedures
  - d. Benefits
    - e. Safety, Health and Security
    - f. Departmental Orientation
    - 2. Responsibilities
      - a. The HRD Office will administer the General Orientation Program
        - 1) The HRD Office will assist Divisions in administering Departmental Orientation Programs.
      - b. The HRD Office will develop and establish an Employee Mentor Program with each Division.
        - 1) Employee Mentors will be responsible for conducting the Departmental Orientation.
        - 2) Employee Mentors will assist new employees throughout their probation period as a source of references and referrals.
      - c. The HRD Office will annually review the General Orientation Program and each Departmental Orientation Program to:
        - 1) Evaluate the effectiveness of each Program,
        - 2) Modify programs as necessary.
        - 3) Requirements
          - a) The HRD Office will provide a copy of the Employee Policy and Procedures Manual to new employees before (if possible) the scheduled starting date.
          - b) The General Orientation Program will be completed in appropriate stages within the first month of the new employee's starting date.
            - The Departmental Orientation will be completed within the first week of the starting date.
          - c) The HRD Office will administer a NEW Employee Reporting Form to provide information for the purposes of maintaining a Tribal wide skills assessment inventory and a management succession plan.

#### B. EVALUATIONS

- 1. Evaluation reports will be used in determining all promotions, transfers and salary adjustments.
- 2. Annual evaluation reports for each employee will be submitted to the HRD Office by August 1 of each year. (Work Standard 6-4-14)



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- a. Evaluation reports will be retained in each employee's personnel file.
- 3. All Tribal employees will be evaluated at least once a year.
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- a. Employee performance evaluations will be conducted by each employee's immediate supervisor. The Business Committee will conduct the performance evaluation of the General Manager. (HR Interpretation 12-8-16)
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- b. The supervisor will discuss the evaluation with each employee. The evaluation will then be signed by the employee and the supervisor and forwarded to the HRD Office.
- 735 736
- 4. Satisfactory evaluations may result in the employee receiving an increase in pay within their grade level provided that the employee has not attained the highest step within the grade.

a. Unsatisfactory evaluations will result in probation status for the employee. The supervisor shall provide documentation to the Area Manager and to the employee detailing the deficiency(s). A repeat evaluation will be conducted three (3) months after the unsatisfactory evaluation. This second evaluation will result in the employee:

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 Being removed from probation and receiving a salary increase if the second evaluation results in an overall satisfactory rating; or

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2) Receiving appropriate disciplinary actions if the second evaluation also results in an unsatisfactory rating.

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b. Employees may appeal unsatisfactory evaluations to the HRD Manager. The HRD Manager will consult with the supervisor and the employee to negotiate an appropriate resolution (Work Standard 6-21-11)

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#### C. CAREER DEVELOPMENT

750 751  Tribal employees are encouraged to develop their skills and abilities by pursuing education at a local educational institution. (BC Action – 9-9-92)

752 753 a. Tribal employees must provide a general Career Development Plan to the supervisor listing the goals and objectives of the training and education to be undertaken.

754 755 2. Tribal employees may be eligible for assistance for one (1) course per semester. The employee must attempt to arrange to take the class outside his/her normal working hours.

756 757 a. Where a class conflicts with the employee's work schedule, the needs of the Tribal unit take precedence; however, the supervisor shall attempt to accommodate the employee's request.

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b. In no case shall the accommodation exceed actual class hours plus reasonable travel time.

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Tribal time.

3. The supervisor's approval and estimated cost must be submitted to the HRD Office, the Area

c. Employees must obtain the approval of their immediate supervisor to take a course on

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Manager and the General Manager. (HR Interpretation – 12-8-16)

764 765 4. The cost of the books, tuition and fees for the course shall be paid by the Tribe through funds budgeted in programs or through the Higher Education program.

766 767 a. Reimbursement for books, tuition and fees is contingent upon the employee receiving at least a C (2.0 on a 4.0 point scale).

768 769 b. Employees who receive less than the required grade point will be required to reimburse the program for whatever costs were incurred.



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b. The supervisor will investigate the complaint and attempt to resolve the disagreement.

d. There is no further appeal of this process. 2. Disciplinary Actions

1. Complaints

prerogatives, and handle grievances. (HR Interpretation – 2-4-13) (HR Interpretation - 1-29-14)

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process for handling problem employees.

(Work Standard – 5-6-13) Disciplinary procedures serve to correct unacceptable behavior and to protect the

disputes. Grievance procedures serve to protect employees from inconsistent and unfair treatment.

a. Should an employee have a disagreement with another employee, he/she may lodge an

c. If the employee lodging the complaint is dissatisfied with the attempted resolution, he/she

correcting unacceptable work performance. The supervisor will always discuss the action

informal (verbal) or formal (written) complaint with the employee's supervisor.

a. Disciplinary actions will be initiated by an immediate supervisor for the purpose of

2) Understands the expected work performance in light of the disciplinary action;

unsatisfactory performance. A supervisor must consider each disciplinary action in

a) Insubordination (including disobedience) or failure/refusal to carry out assignments

progressive order and justify a deviance from that recommended progression.

with the employee being disciplined to ensure that the employee:

may ask the Area Manager to attempt a resolution.

1) Understands the reason for the disciplinary action;

Tribe. Grievance procedures provide a systematic process for hearing and evaluating job related

In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion

and judicious good sense to resolve complaints between employees, exercise disciplinary

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a supervisor to use in administering disciplinary actions. (W = written warning; S =

suspension; T = termination): 1) Work Performance

or instructions. (W/S/T)

b) Loafing, loitering, sleeping or engaging in personal business. (W/S/T)

c) Unauthorized disclosure of confidential information or records. (S/T) d) Falsifying records or giving false information to departments and/or employees

responsible for Recordkeeping. (S/T)

e) Failure to provide accurate and complete information where such information is

3) Understands the consequences of continued unacceptable behavior. b. A supervisor shall initiate disciplinary actions commensurate with the seriousness of the

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required by an authorized person. (S/T)

810		f)	Failure to comply with health, safety and sanitation requirements, rules and
811			regulations. (W/S/T)
812		g)	Negligence in the performance of assigned duties. (W/S/T)
813	2)	Att	tendance and Punctuality
814		a)	Failure to report promptly and observe work schedules (such as starting time,
815			quitting time, rest and meal breaks) without the specific approval of the supervisor.
816			(W/S/T)
817		b)	A pattern of unexcused or excessive absenteeism and/or tardiness. (W/S/T)
818	3)	Us	e of Property
819		a)	Unauthorized or improper use of Tribal property or equipment (for example, Tribal
820			vehicles, telephone, mail services, etc.) (W/S/T)
821		b)	Unauthorized possession, removal or willful destruction of Tribal or another
822			employee's property (including improper use of possession of uniforms,
823			identification cards, badges, permits or weapons). (Willful destruction of property
824			may subject the violator to applicable liability laws.) (T)
825		c)	Unauthorized use, lending, borrowing or duplicating of Tribal keys. (T)
826		d)	Unauthorized entry of Tribal property, including unauthorized entry outside of
827			assigned hours of work or entry into restricted areas without prior supervisory
828			approval. (S/T)
829		e)	Theft or property shall include theft, embezzlement, cheating, defrauding, pilfering,
830			robbery, extortion, racketeering, swindling or any of these actions, or conspiracy to
831			commit such actions with Tribal employees or other persons against the Tribe, its
832			guests, employee, members, customers and/or clients while on or about Tribal
833			premises. (S/T) (BC Action – 12-2-88)
834	4)	Pe	rsonal Actions and Appearance
835		a)	Threatening, attempting, or doing bodily harm to another person. (T)
836		b)	Intimidating, interfering with or using abusive language toward customers, clients,
837			co-workers or others. (S/T)
838		c)	Making false or malicious statements concerning other employees, supervisors or
839			program heads. (W/S/T)
840		d)	Use of alcohol or illegal controlled substances during work hours. (S/T)
841			(GTC Resolution – 01-05-09A)
842		e)	Reporting for work under the influence of alcohol or illegal controlled substances.
843			(S/T) (GTC Resolution – 01-05-09A)
844		f)	Failure to immediately report any work-related injuries to the immediate supervisor
845			(W/S)
846		g)	Direct involvement in political campaigning during scheduled work hours. Violations
847			include:
848			i. Use of Tribal employment title in Tribal campaign activities. (W/S/T)
849			1. Political materials include: leaflets, brochures, etc. which solicit support for
850			candidates for office.



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- 2. Resolutions or petitions which propose that a political action be initiated.
- 3. Leaflets, newsletters, or other written materials the purpose of which is to espouse political views or opinions.
- h) The acceptance of gifts or gratuities for personal gain in the course of official duties. (Customers are allowed to tip Bingo workers, Oneida Tobacco Enterprise workers, and Museum Workers.) (W/S/T)
- i) Inappropriate dress or personal hygiene which adversely affects the proper performance of duties or constitutes a health or safety hazard. (W/S)
- j) Failure to exercise proper judgment. (W/S/T)
- k) Failure to be courteous in dealing with fellow employees or the general public. (W/S/T)
- Any of the following acts by employees: Arson, bribery, perjury, obstruction or interference with an investigation authorized by the Oneida Tribe. (S/T) (BC Action – 12-2-88)
- m) The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or controlled substances on or about Tribal premises. (S/T)

  (BC\_Action 12-2-88)
- n) Any violation of duly adopted Tribal ordinances. (W/S/T) (BC Action 12-2-88)
- 5) Sexual Harassment Policy

It is the Oneida Tribe's Policy that all employees have a right to work in an environment free of discrimination which includes freedom from harassment, more specifically sexual harassment. The Oneida Tribe considers sexual harassment, in whatever form, in the workplace to be a serious violation of an individual's dignity and personal rights. In all matters, where complaint of sexual harassment is lodged against an employee, the Oneida Tribe has a duty and obligation to conduct a thorough investigation using discretion, good judgment and the principles and practice of strict confidentiality. If sexual harassment has been committed, the progressive disciplinary process is as follows (W/S/T).

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

- a) Sexual Harassment (W/S/T)
  - i. Procedure
    - a. Should an employee have a complaint, he/she should file a formal (written) complaint with the Human Resources Department.



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- b. The Human Resources Department is obligated to investigate the complaint which is to be held in the strictest confidence. This investigation shall be done within five (5) working days from receiving the formal written complaint.
- c. After investigating the complaint and the Human Resources Department finds cause to take disciplinary action due to sexual harassment violation, the employee will be disciplined accordingly by their supervisor. This disciplinary action shall be initiated within five (5) working days from the date the supervisor receives the report from the Human Resource Department. (BC Actions 7-16-93)
- 3. Accumulated Disciplinary Actions Warranting Termination (HR Interpretation 1-29-14) (Provided that the Drug and Alcohol Free Workplace Policy shall govern disciplinary actions warranting termination for drug and alcohol related violations.) (GTC Resolution 01-05-09A)
  - a. The accumulation of three (3) upheld warning notices within any twelve (12) month period.(T)
  - b. The accumulation of two (2) upheld suspensions within any twelve (12) month period. (T)
  - c. The accumulation of three (3) of any combination of upheld warning notices and/or upheld suspensions within any twelve (12) month period. (T)
- 4. Substance Abuse Disciplinary Procedure Section was deleted. (GTC Resolution 01-05-09-A)

  Click here for Drug and Alcohol Free Workplace Policy.
- 5. Disciplinary Procedure (Disciplinary Flowchart)

The following procedure shall be adhered to whenever disciplinary action is taken.

- a. Supervisor becomes aware of unsatisfactory work performance or violation.
  - 1) Supervisor investigates through a meeting with the employees and determines whether disciplinary action is warranted.
- b. If disciplinary action is warranted, within five (5) working days the supervisor will fill out the five (5) part disciplinary action form stating the behavior for which the action is being taken, the time and date of its occurrence, and the specific policy section under which action is being taken.
- c. The form will be discussed with the employee and a corrective action will be identified.
- d. The employee being disciplined will sign the form.
  - 1) Should an employee being disciplined refuse to discuss the action with his/her supervisor, the supervisor shall so note this, with date of refusal, on the form and distribute as in 5.e.
- e. Copies will be given to the employee, the HRD Manager, the supervisor, the Area Manager and General Manager within twenty-four (24) hours of the conference with the employee. (HR Interpretation 12-8-16)
- f. Should a disciplinary action result in the suspension or termination of an employee, the following guidelines shall apply:



- 1) The supervisor shall consult with the HRD Manager to mutually determine the length of the suspension.
  - a) Suspensions will be limited to a maximum of three (3) weeks.
  - b) Suspension/terminations that are overturned in the appeal process shall result in the employee receiving back pay for the days he/she was suspended/terminated.
- 6. Grievance (Grievance Flowchart)
  - An employee who receives a disciplinary action which he/she believes is unfair may grieve the action. The Grievance process (including appeals of disciplinary action) shall be conducted with utmost consideration for due process (within the time limits set forth herein) but will allow and account for recognized Tribal holidays and unforeseen circumstances (such as illnesses, deaths in the immediate family of principals, etc.). The HRD office will make every attempt to ensure that grievance procedures are concluded within forty-five (45) workings days; however, extensions granted for reasonable unforeseen circumstances (as determined by the HRD Manager) may extend the process The Grievance process will be governed by the following guidelines: (HR Interpretation 8-19-2011) (HR Interpretation 1-29-2014)
  - a. For all disciplinary actions, regardless of severity:
    - 1) The employee (petitioner) must file an appeal in writing.
      - a) The employee may seek the assistance of a spokesperson or advocate at any time after the disciplinary action has been issued in order to aid in the resolution of the grievance process.
      - b) The appeal must be filed with the Area Manager and the HRD Manager (or designee) within ten (10) working days from the day the employee receives the disciplinary action.
    - 2) The Area Manager, for all disciplinary action investigations, will have ten (10) working days from the receipt of the employee's appeal to complete the investigation. One extension of no more than five (5) working days may be requested of and granted by the HRD Manager (or designee) at his or her discretion.
    - 3) The Area Manager will do one of the following:
      - a) Uphold the disciplinary action; or
      - b) Modify the disciplinary action; or
      - c) Overturn the disciplinary action. If a suspension or termination is overturned, the employee (petitioner) shall be reinstated with full back pay.
    - 4) The Area Manager will file a decision with the employee and the HRD Manager (or designee) and will include a reason for the decision, an explanation of the decision and the action to be taken as a result of it.
  - b. The employee may appeal the Area Manager's decision to the Oneida Personnel Commission. The appeal must be filed with the Oneida Personnel Commission within ten (10) working days from employee's receipt of the Area Manager's decision. Upon receipt of the appeal the Commission shall, within one business day, notify the HRD Manager (or designee) that an appeal has been filed by the employee. (GTC Resolution – 2-28-04A)



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- 1) Copies of all information of the subject case upon which the disciplinary action was upheld by the Area Manager will be hand delivered to the members of the Personnel Commission. The Personnel Commission will hear an appeal only if one or both of the following conditions exist:
  - a) The decision of the Area Manager is clearly against the weight of the evidence and/or
  - b) Procedural irregularities were exhibited during the appeal process that may have been harmful to one of the parties to the grievance.
- 2) If one or both of the above conditions are present, the HRD Office will convene the Personnel Commission to hear the grievance.
  - a) If neither of the above conditions is present, the Personnel Commission will deny the appeal for a hearing and affirm the decision of the Area Manager.
- 3) At least five (5) working days prior to the hearing date, the petitioner, respondent and Personnel Commission will receive notification of the hearing date.
- 4) Copies of all information on the subject case upon which the disciplinary action was upheld will be hand-delivered to the members of the Personnel Commission at least two (2) working days prior to the appeal date. The petitioner and respondent will have access to this information in the HRD Office at least two (2) days prior to the appeal date.
  - a) If new evidence which was previously unavailable is introduced at any point during the Personnel Commission appeal process, the Commission hearing will be suspended and the case will be remanded to the Area Manager for reconsideration.
    - i. The Area Manager will reconsider his/her decision in light of the new evidence and issue a decision within three (3) working days.
    - ii. This procedure may be invoked only once. Thereafter, the appeal process will continue to a conclusion based on the information originally presented and the newly introduced evidence.
- 5) The petitioner shall have the right to be represented by an advocate if he/she so chooses. The expenses of the advocate shall be the total responsibility of the petitioner. The respondent and/or area manager who is party to the grievance action shall have access to an advocate for consultation and/or representation. Should the petitioner engage outside professional legal representation, the respondent and/or area manager shall have access to professional legal representation.
  - a) Should the petitioner and his/her representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be upheld and the grievance dismissed.
  - b) Should the respondent and his/her representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be overturned.



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1017	6) The decision of the Personnel Commission shall be based solely on the information	
1018	presented to them before the appeal hearing, the record of the prior proceedings and	l
1019	any new evidence (if introduced appropriately through the provisions of 6.b.4.a. abov	e).
1020	7) The decision of the Personnel Commission shall be final. The Personnel Commission	
1021	may:	
1022	a) Uphold the disciplinary action; or	
1023	b) Overturn the disciplinary action and:	
1024	i. Reinstate the employee (petitioner) with full back pay for any lost time;	
1025	ii. Reinstate the employee (petitioner) without back pay.	
1026	8) The petitioner and respondent have a right to a speedy hearing and decision; therefor	
1027	notification of the final decision will be made within five (5) working days following th	e
1028 1029	hearing.  a) Notification of the final decision will include:	
1029	i. The final decision;	
1030	ii. The reason(s) for the final decision; and	
1032	iii. The action to be taken as a result of the final decision.	
1033	9) The HRD Office shall:	
1034	a) Keep all records of the hearing;	
1035	b) Provide copies of administrative advocacy rules, procedural rules, and time line	
1036	rules to interested parties.	
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1053 1054	SECTION VI – SAFETY AND HEALTH
1055	A. POLICY
1056	The personal safety and health of each employee, customer and client of the Oneida Tribe is of primary
1057	importance. The prevention of injuries and illnesses is of such importance that it will take precedence
1058	over operating productivity whenever necessary.
1059	
1060	The Oneida Tribe will maintain a safety and health program conforming to the best practices available.
1061	To be successful, this program will work to develop the proper attitudes toward on the-job injury and
1062	illness prevention on the part of supervisors and employees. This program will strive to develop a high
1063	level of cooperation in all safety and health matters between supervisors and employees and among
1064	employees.
1065	
1066	The objective of this program is a safe and healthy environment that will reduce the number of job-
1067	related injuries and illnesses to an absolute minimum. The Tribe's goal is zero
1068	accidents and illnesses.
1069	D. DDOCEDLIBES
1070 1071	B. PROCEDURES  The Tribal Safety Committee will adopt and enforce through the Personnel Department
	·
1072	procedures related to the education of the Tribal work force in matters of safety and health.
1073	These procedures will include all education and prevention activities, assessments and
1074	evaluations, and reporting.
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- A. Enterprises and programs may establish internal rules and regulations to facilitate the administration of Tribal Personnel Policies and Procedures.
  - 1. In no case will these internal rules and/or regulations conflict with or take the place of Tribal Personnel Policies and Procedures.
  - 2. Enterprises and programs which establish internal rules and regulations will file a copy of the rules and regulations with the Personnel Department.



1126 1127	SEC	TION VIII – RECORD KEEPING
1127	A. P	ERSONNEL OFFICE
1129	:	Basic records to be retained include:
1130		a. Reference Data
1131		b. Job Descriptions
1132		c. Resumes and Applications
1133		d. Interview notes/selection information
1134		e. Resignations
1135		f. Employee tax exemption claims
1136		g. Disciplinary action information
1137		h. Performance evaluations
1138		i. Insurance coverage/changes
1139		j. Transfers
1140		
1141	2	2. The Personnel Office shall keep and maintain a complete record of each employee
1142		throughout his/her term of employment.
1143		a. Tribal employees shall have access to their employment file.
1144		b. Employment files kept by the Personnel Office shall be considered confidential
1145		information. Release of any information to a third party must have the consent
1146		of the employee in writing.
1147	B. /	ACCOUNTING DEPARTMENT
1148	:	1. Basic records to be retained include:
1149		a. Attendance records
1150		b. Employee Time Sheets
1151		c. Earnings - in the form of computer printouts
1152		d. Travel - in the form of complete travel authorization forms.
1153		1) Time sheets and travel reports shall be filled out by every employee for pay
1154		period, collected by the program head, and forwarded to the Department.
1155	2	2. The Accounting Department shall retain all records for a period of seven (7)
1156		years. (Archived 29, October 2010) (BC Action, 10-14-09B)
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# March 26, 2020, Legislative Operating Committee E-Poll Approval of the March 18, 2020, LOC Meeting Minutes

E-POLL REQUEST: Approval of the March 18, 2020, LOC Meeting Minutes

LOC

To Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen

Co Fawn J. Billie; Jameson J. Wilson; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck;
Clorissa N. Santiago

i) Vote by clicking Vote in the Respond group above. This message was sent with High importance.

#### Hello Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the March 18, 2020, Legislative Operating Committee meeting minutes.

#### **EXECUTIVE SUMMARY**

The world is currently facing a pandemic of coronavirus disease (COVID-19) after an outbreak began in Wuhan, China and quickly spread to many other countries throughout the world, including the United States. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. On March 12, 2020, in accordance with Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

On March 24, 2020, the Nation's COVID-19 Team made a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. The "Safer at Home" declaration prohibits all public gatherings of any number of people.

The minutes for the March 18, 2020, Legislative Operating Committee are ready for approval so they can be sent to the Oneida Business Committee.

An e-poll is necessary for this matter because the April 1, 2020, Legislative Operating Committee meeting has been canceled due to the COVID-19 pandemic, and immediate action is required by Legislative Operating Committee to approve the minutes for the March 18, 2020, Legislative Operating Committee meeting so that the minutes can be forwarded to the Oneida Business Committee for consideration during the April 8, 2020, Oneida Business Committee meeting.

#### **REQUESTED ACTION**

Approve the March 18, 2020, Legislative Operating Committee meeting minutes and forward to the Oneida Business Committee.

#### **DEADLINE FOR RESPONSE**

March 26, 2020 at 3:00 p.m.

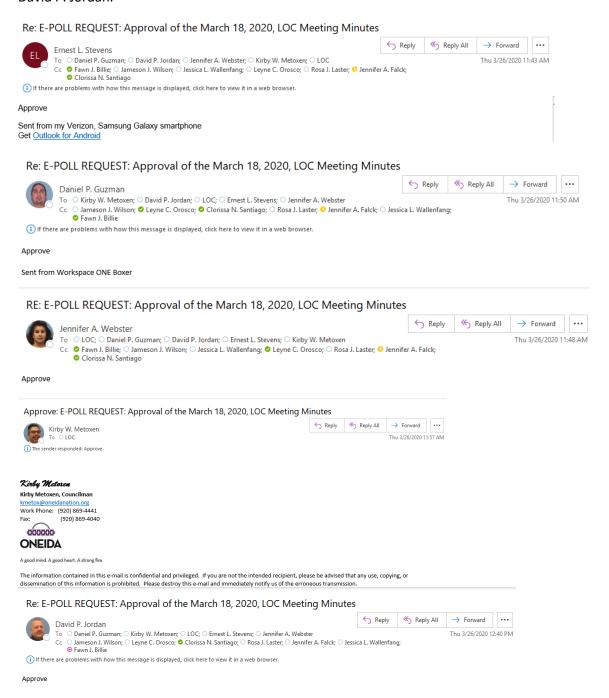
All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by Ernest Stevens III, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, and David P. Jordan.





#### Oneida Nation Oneida Business Committee

Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



#### LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Oneida Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center March 18, 2020 2:30 p.m.

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

Others Present: Clorissa N. Santiago, Kristen Hooker, Jennifer Falck, Jameson Wilson, Leyne Orosco, Mollie Passon, Lee Cornelius.

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

David Jordan called the March 18, 2020, Legislative Operating Committee meeting to order at 2:30 p.m.

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

#### II. Minutes to be Approved

#### 1. March 04, 2020 LOC Meeting Minutes

Motion by Kirby Metoxen to approve the March 04, 2020 LOC Meting Minutes and forward to the Oneida Business Committee; seconded by Ernest Stevens III. Motion carried unanimously.

#### III. **Current Business**

#### 1. Indian Preference in Contracting Law Amendments (:44-5:49)

Motion by Jennifer Webster to approve the Indian Preference in Contracting Law adoption packet and forward to the Oneida Business Committee for consideration; seconded by Ernest Stevens III. Motion carried unanimously.

Motion by Kirby Metoxen to approve the resolution "Indian Preference in Contracting Law Fine & Penalty Schedule" and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

#### 2. Children's Burial Fund Policy Amendments (5:50-11:56)

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 Children's Burial Fund amendments fiscal impact statement request memorandum and forward to the Finance Department directing a fiscal impact statement be prepared and submit to the LOC by April 1, 2020; seconded by Ernest Stevens III. Motion carried unanimously.

#### 3. **Tobacco Law Amendments** (11:57-14:09)

Motion by Kirby Metoxen to accept to draft and analysis and defer to a work meeting for further consideration; seconded by Jennifer Webster. Motion carried unanimously.

Ayes: Ernest Stevens III, Kirby Metoxen, Jennifer Webster

Abstained: Daniel Guzman King

#### 4. Oneida Food Service Code Agreement (14:16-23:24)

Motion by Ernest Stevens III to accept to updated public comment review memorandum, draft law and legislative analysis; seconded by Kirby Metoxen. Motion carried unanimously.

Motion by Kirby Metoxen to 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; seconded by Jennifer Webster. Motion carried unanimously.

- IV. New Submissions
- V. Additions
- VI. Administrative Items
- VII. Executive Session

#### VIII. Adjourn

Motion by Ernest Stevens III to adjourn at 2:54 p.m.; seconded by Kirby Metoxen. Motion carried unanimously.

## March 27, 2020, Legislative Operating Committee E-Poll Rescission of the March 25, 2020, LOC Approval of the Oneida Personnel Policies and Procedures Emergency Adoption Packet

E-POLL REQUEST: Rescission of the March 25, 2020, LOC Approval of the Oneida Personnel Policies and Proced...



#### Good Afternoon Legislative Operating Committee,

This e-mail serves as the e-poll for the rescission of the March 25, 2020, Legislative Operating Committee approval of the Oneida Personnel Policies and Procedures emergency adoption packet.

#### **EXECUTIVE SUMMARY**

On March 25, 2020, the Legislative Operating Committee conducted an e-poll to approve the Oneida Personnel Policies and Procedures emergency adoption packet. Emergency amendments to the Oneida Personnel Policies and Procedures were being sought to limit the amount of personal and/or vacation time an employee may be paid out at the time of separation or termination of employment with the Nation due to the COVID-19 pandemic. An e-poll was necessary for this matter because the April 1, 2020, Legislative Operating Committee meeting has been canceled due to the COVID-19 pandemic, and immediate action was required by Legislative Operating Committee to approve the materials for the emergency adoption of amendments to the Oneida Personnel Policies and Procedures so the materials could be forwarded to the Oneida Business Committee for consideration during the April 8, 2020, Oneida Business Committee meeting.

Since the Legislative Operating Committee's approval of the emergency amendments to the Oneida Personnel Policies and Procedures, it has been determined that the emergency amendments to the Oneida Personnel Policies and Procedures should not be presented to the Oneida Business Committee for adoption at the April 8, 2020, Oneida Business Committee meeting.

An e-poll is necessary for this matter because the April 1, 2020, Legislative Operating Committee meeting has been canceled due to the COVID-19 pandemic, and immediate action is required by Legislative Operating Committee to rescind its earlier motion so that the Oneida Personnel Policies and Procedures emergency adoption packet is not forwarded to the Oneida Business Committee for consideration during the April 8, 2020, Oneida Business Committee meeting.

#### **REQUESTED ACTION**

Rescind the March 25, 2020, Legislative Operating Committee action to "Approve the Oneida Personnel Policies and Procedures emergency adoption packet and forward to the Oneida Business Committee for consideration."

#### **DEADLINE FOR RESPONSE**

March 27, 2020 at 3:00 p.m.

All supporting documentation has been attached to this email for your convenience.



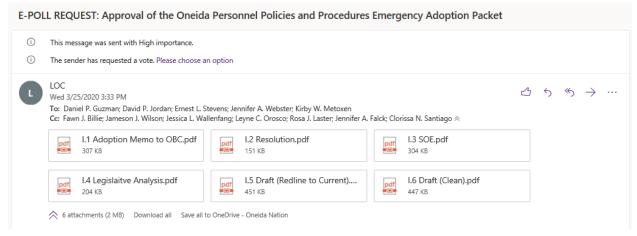
A good mind. A good heart. A strong fire.

#### **E-POLL RESULTS:**

The e-poll was approved by Ernest Stevens III, David P. Jordan, Jennifer Webster, Kirby Metoxen. Daniel Guzman King did not provide a response.

Re: E-POLL REQUEST: Rescission of the March 25, 2020, LOC Approval of the Oneida Personnel Policies and Pro... ... Reply ≪ Reply All → Forward Ernest L. Stevens Fri 3/27/2020 12:08 PM To Daniel P. Guzman: David P. Jordan: Jennifer A. Webster: Kirby W. Metoxen: LOC Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago i) If there are problems with how this message is displayed, click here to view it in a web browser. Approve Sent from my Verizon, Samsung Galaxy smartphone Get Outlook for Android RE: E-POLL REQUEST: Rescission of the March 25, 2020, LOC Approval of the Oneida Personnel Policies and Pro... Jennifer A. Webster To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen Fri 3/27/2020 12:27 PM Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago Approve Sent from my Samsung Galaxy smartphone. RE: E-POLL REQUEST: Rescission of the March 25, 2020, LOC Approval of the Oneida Personnel Policies and Pro... ← Reply ≪ Reply All → Forward To LOC; Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan Fri 3/27/2020 12:27 PM Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago approve RE: E-POLL REQUEST: Rescission of the March 25, 2020, LOC Approval of the Oneida Personnel Policies and Pro... Kirby W. Metoxen To Daniel P. Guzman; David P. Jordan; LOC; Jennifer A. Webster; Ernest L. Stevens Fri 3/27/2020 1:12 PM Cc Jameson J. Wilson; Leyne C. Orosco; Clorissa N. Santiago; Rosa J. Laster; Jennifer A. Falck; Jessica L. Wallenfang; Fawn J. Billie Sent from Workspace ONE Boxer On Mar 27, 2020 12:27 PM, "Jennifer A. Webster" < <a href="mailto:JWEBSTE1@oneidanation.org">JWEBSTE1@oneidanation.org</a>> wrote: Sent from my Samsung Galaxy smartphone

# March 25, 2020, Legislative Operating Committee E-Poll Approval of the Oneida Personnel Policies and Procedures Emergency Adoption Packet



**Good Afternoon Legislative Operating Committee,** 

This e-mail serves as the e-poll for the approval of the Oneida Personnel Policies and Procedures emergency adoption packet.

#### **EXECUTIVE SUMMARY**

The world is currently facing a pandemic of coronavirus disease (COVID-19) after an outbreak began in Wuhan, China and quickly spread to many other countries throughout the world, including the United States. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. On March 12, 2020, in accordance with Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. The declaration of a public health emergency by the Nation and the potential financial impacts of the COVID-19 pandemic met the Budget Management and Control law's requirement that the Nation be under extreme financial distress for the budget contingency plan to be implemented. The Oneida Business Committee adopted resolution BC-03-17-20-A which declared that Tier IV budget contingency measures are implemented which required a four percent (4%) reduction in overall expenditures and budgets. On April 8. 2020, the Oneida Business Committee will consider the adoption of a resolution to declare that Tier V budget contingency measures be implemented.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5].

Emergency amendments to the Oneida Personnel Policies and Procedures are being sought to limit the amount of personal and/or vacation time an employee may be paid out at the time of separation or

termination of employment with the Nation. The emergency amendments to the Oneida Personnel Policies and Procedures will:

- Limit the amount of credit for accrued vacation or personal time an employee who is terminated during the probation period will receive on his or her final paycheck to forty (40) hours [Section III(D)(3)(b)];
- Limit the amount an employee will be paid for any unused personal or vacation days upon termination from the Nation to forty (40) hours [Section IV(A)(5)(h)]; and
- Remove the burden for a supervisor to show that a denial of a personal day or vacation day be based upon interference with the business of the Nation, and instead allow a supervisor to deny use of a personal or vacation time for any business-related reason [Section IV(A)(5)(I)].

The emergency amendments to the Oneida Personnel Policies and Procedures are necessary for the preservation of the general welfare of the Reservation population. The emergency amendments limit the fringe benefit of being paid out personal and vacation time in the event of separation from employment with the Nation up to forty (40) hours in an effort to protect the general welfare of the Reservation population by maintaining essential governmental services and employment during a time when no revenues are generated through gaming operations.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately preserve funding for necessary governmental services and activities as a result of the COVID-19 pandemic.

An e-poll is necessary for this matter because the April 1, 2020, Legislative Operating Committee meeting has been canceled due to the COVID-19 pandemic, and immediate action is required by Legislative Operating Committee to approve the materials for the emergency adoption of amendments to the Oneida Personnel Policies and Procedures so the materials can be forwarded to the Oneida Business Committee for consideration during the April 8, 2020, Oneida Business Committee meeting.

#### **REQUESTED ACTION**

Approve the Oneida Personnel Policies and Procedures emergency adoption packet and forward to the Oneida Business Committee for consideration.

#### **DEADLINE FOR RESPONSE**

March 25, 2020 at 5:30 p.m.

All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King. Ernest Stevens III did not provide a response.

#### Re: E-POLL REQUEST: Approval of the Oneida Personnel Policies and Procedures Emergency Adoption Packet ≪ Reply All → Forward David P. Jordan To LOC; Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan Wed 3/25/2020 3:47 PM Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago (i) If there are problems with how this message is displayed, click here to view it in a web browser. approve RE: E-POLL REQUEST: Approval of the Oneida Personnel Policies and Procedures Emergency Adoption Packet Reply ≪ Reply All → Forward Kirby W. Metoxen Wed 3/25/2020 3:48 PM To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago Approve Kirby Metoxen Kirby Metoxen, Councilman kmetox@oneidanation.org Work Phone: (920) 869-4441 (920) 869-4040 000000 ONEIDA A good mind. A good heart. A strong fire. The information contained in this e-mail is confidential and privileged. If you are not the intended recipient, please be advised that any use, copying, or dissemination of this information is prohibited. Please destroy this e-mail and immediately notify us of the erroneous transmission. RE: E-POLL REQUEST: Approval of the Oneida Personnel Policies and Procedures Emergency Adoption Packet ≪ Reply All ← Reply → Forward Jennifer A. Webster Wed 3/25/2020 3:49 PM To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago Approve, Jenny RE: E-POLL REQUEST: Approval of the Oneida Personnel Policies and Procedures Emergency Adoption Packet ≪ Reply All → Forward Daniel P. Guzman To Kirby W. Metoxen; David P. Jordan; LOC; Jennifer A. Webster; Ernest L. Stevens Wed 3/25/2020 4:08 PM Cc Jameson J. Wilson; Leyne C. Orosco; Clorissa N. Santiago; Rosa J. Laster; Jennifer A. Falck; Jessica L. Wallenfang; Fawn J. Billie

Approve

Sent from Workspace ONE Boxer

# March 27, 2020, Legislative Operating Committee E-Poll Approval of Vehicle Driver Certification and Fleet Management Law Amendments Adoption Packet

E-POLL REQUEST: Approval of the Vehicle Driver Certification and Fleet Management Law Amendments Adopti...

LOC

To Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen
Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago

1) Vote by clicking Vote in the Respond group above.
This message was sent with High importance.

2:01 PM

2:01 PM

2:01 PM

#### Good Afternoon Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the Vehicle Driver Certification and Fleet Management law amendments adoption packet.

#### **EXECUTIVE SUMMARY**

The adoption packet for the Vehicle Driver Certification and Fleet Management law amendments is ready for approval by the Legislative Operating Committee, so that it can be sent to the Oneida Business Committee to consider adoption. The purpose of the Vehicle Driver Certification and Fleet Management law is to establish standards that certify employees, elected and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official business and regulate the use of all vehicles owned and leased by the Nation. [2 O.C. 210.1-1]. This proposed amendments to the Vehicle Driver Certification and Fleet Management law will:

- Revise the qualifications to become a certified driver, including:
  - Reduce the restriction on drug and alcohol convictions from three (3) years without an OWI, DUI, or PAC to twelve (12) months without an OWI, DUI, or PAC [2 O.C. 210.4-1(c)(2)];
  - Allow no more than three (3) moving violations or at-fault crashes within a two (2) year period [2 O.C. 210.4-1(c)(1)];
  - Allow individuals with probationary licenses to become certified drivers if at least eighteen (18) years of age or older [2 O.C. 210.4-2(a)-(b)];
- Provide an exemption to the Law for those individuals whose duties with respect to the implementation of a contract, agreement, or compact of the Nation include driving and may be subject to compliance with a motor vehicle operation policy as provided in the contract, agreement, or compact of the Nation when this law is less stringent than the said motor vehicle operation policy[2 O.C. 210.4-5];
- Clarify the restriction on driving while using prescription or over the counter medications [2 O.C. 210.5-1(d)];
- Ban weapons in fleet vehicles and personal vehicles while in use for official business, with certain exceptions [2 O.C. 210.5-1(e)];
- Require all certified drivers to complete driver safety training every three (3) years, regardless of whether they drive fleet or personal vehicles, with certain exceptions [2 O.C. 210.5-2];
- Ban the use of e-cigarettes in tribal fleet vehicles [2 O.C. 210.5-3(f))];
- Require mileage reimbursement requests to be submitted within thirty (30) days of driving the miles or by the end of the fiscal year, whichever is sooner [2 O.C. 210.5-4(b)];
- Revise and simplify the process for suspending driver certification:

- An individual's driver certification is only suspended if his or her driver's license has been suspended or revoked by the state of Wisconsin [2 O.C. 210.8-2];
- All other violations of this law that do not result in the suspension or revocation of driver's license will be handled by disciplinary action [2 O.C. 210.8-7];
- Allow a supervisor to require an employee take additional driver safety training if the individual is involved in certain circumstances, such as an at-fault motor vehicle crash or issuance of a moving violation, while driving a fleet vehicle or personal vehicle on official business [2 O.C. 210.8-8]; and
- Make additional changes to revise and reorganize the law to increase clarity.

An e-poll is necessary for this matter because the April 1, 2020, Legislative Operating Committee meeting has been canceled due to the COVID-19 pandemic, and immediate action is required by Legislative Operating Committee to approve the Vehicle Driver Certification and Fleet Management adoption packet so it is forwarded to the Oneida Business Committee for consideration during the April 8, 2020, Oneida Business Committee meeting.

#### **REQUESTED ACTION**

Approve the Vehicle Driver Certification and Fleet Management law amendments adoption packet and forward to the Oneida Business Committee for consideration.

#### **DEADLINE FOR RESPONSE**

March 27, 2020 at 4:30 p.m.

All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by Jennifer Webster, Ernest Stevens III, David P. Jordan, Kirby Metoxen, and Daniel Guzman King.

RE: E-POLL REQUEST: Approval of the Vehicle Driver Certification and Fleet Management Law Amendments Ad...



RE: E-POLL REQUEST: Approval of the Vehicle Driver Certification and Fleet Management Law Amendments Ad...



approve

#### RE: E-POLL REQUEST: Approval of the Vehicle Driver Certification and Fleet Management Law Amendments Ad... ≪ Reply All Reply → Forward David P. Jordan Fri 3/27/2020 2:09 PM To Ernest L. Stevens; LOC; Daniel P. Guzman; Jennifer A. Webster; Kirby W. Metoxen Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago i) If there are problems with how this message is displayed, click here to view it in a web browser. Approve RE: E-POLL REQUEST: Approval of the Vehicle Driver Certification and Fleet Management Law Amendments Ad... • • • ≪ Reply All → Forward Kirby W. Metoxen To Daniel P. Guzman; David P. Jordan; LOC; Ernest L. Stevens; Jennifer A. Webster Fri 3/27/2020 3:11 PM Cc Jameson J. Wilson; Leyne C. Orosco; Clorissa N. Santiago; Rosa J. Laster; Jennifer A. Falck; Jessica L. Wallenfang; Fawn J. Billie i) If there are problems with how this message is displayed, click here to view it in a web browser. Approve RE: E-POLL REQUEST: Approval of the Vehicle Driver Certification and Fleet Management Law Amendments Ad... ← Reply ≪ Reply All → Forward Daniel P. Guzman Fri 3/27/2020 4:18 PM To LOC; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago approve





#### Oneida Nation **Oneida Business Committee** Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson

DATE: April 8, 2020

RE: Vehicle Driver Certification and Fleet Management Law Amendments

Please find the following attached backup documentation for your consideration of the proposed amendments to the Vehicle Driver Certification and Fleet Management law:

- 1. Resolution: Amendments to the Vehicle Driver Certification and Fleet Management Law
- 2. Statement of Effect: Amendments to the Vehicle Driver Certification and Fleet Management Law
- 3. Vehicle Driver Certification and Fleet Management Law Amendments Legislative **Analysis**
- 4. Vehicle Driver Certification and Fleet Management Law Amendments (Redline)
- 5. Vehicle Driver Certification and Fleet Management Law Amendments (Clean)
- 6. Vehicle Driver Certification and Fleet Management Law Amendments Fiscal Impact Statement

#### Overview

On February 7, 2018, the LOC added the Vehicle Driver Certification and Fleet Management law amendments to its Active Files List. The purpose of the Vehicle Driver Certification and Fleet Management law is to establish standards that certify employees, elected and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official business and regulate the use of all vehicles owned and leased by the Nation. [2 O.C. 210.1-1].

This resolution adopts amendments to the Vehicle Driver Certification and Fleet Management law which will:

- Revise the qualifications to become a certified driver, including:
  - Reduce the restriction on drug and alcohol convictions from three (3) years without an OWI, DUI, or PAC to twelve (12) months without an OWI, DUI, or PAC /2  $O.C.\ 210.4-1(c)(2)$ ;
  - Allow no more than three (3) moving violations or at-fault crashes within a two (2) year period [2 O.C. 210.4-1(c)(1)];
  - Allow individuals with probationary licenses to become certified drivers if at least eighteen (18) years of age or older [2 O.C. 210.4-2(a)-(b)];
- Provide an exemption to the Law for those individuals whose duties with respect to the implementation of a contract, agreement, or compact of the Nation include driving and may be subject to compliance with a motor vehicle operation policy as provided in the contract, agreement, or compact of the Nation when this law is less stringent than the said motor

- vehicle operation policy[2 O.C. 210.4-5];
- Clarify the restriction on driving while using prescription or over the counter medications [2 O.C. 210.5-1(d)];
- Ban weapons in fleet vehicles and personal vehicles while in use for official business, with certain exceptions [2 O.C. 210.5-1(e)];
- Require all certified drivers to complete driver safety training every three (3) years, regardless of whether they drive fleet or personal vehicles, with certain exceptions [2 O.C. 210.5-2];
- Ban the use of e-cigarettes in tribal fleet vehicles [2 O.C. 210.5-3(f))];
- Require mileage reimbursement requests to be submitted within thirty (30) days of driving the miles or by the end of the fiscal year, whichever is sooner [2 O.C. 210.5-4(b)];
- Revise and simplify the process for suspending driver certification:
  - An individual's driver certification is only suspended if his or her driver's license has been suspended or revoked by the state of Wisconsin [2 O.C. 210.8-2];
  - All other violations of this law that do not result in the suspension or revocation of driver's license will be handled by disciplinary action [2 O.C. 210.8-7];
- Allow a supervisor to require an employee take additional driver safety training if the individual is involved in certain circumstances, such as an at-fault motor vehicle crash or issuance of a moving violation, while driving a fleet vehicle or personal vehicle on official business [2 O.C. 210.8-8]; and
- Make additional changes to revise and reorganize the law to increase clarity.

The Legislative Operating Committee developed the proposed amendments to the Vehicle Driver Certification and Fleet Management law through collaboration with representatives from the Nation's Risk Management Department, Fleet Management Department, and Human Resources Department – specifically including representatives from the Equal Employment Opportunity Department, Employment and Recruitment, Training and Development, and Personnel Services.

In accordance with the Legislative Procedures Act, a public meeting on the Vehicle Driver Certification and Fleet Management law was held on January 23, 2020. Two (2) people provided oral comments during the public meeting. The public comment period was then held open until January 30, 2020. 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 19, 2020. Any changes made based on those comments have been incorporated into this draft.

#### **Requested Action**

Approve the Resolution: Amendments to the Vehicle Driver Certification and Fleet Management Law



## **Oneida Nation**

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

1	A	BC Resolution # mendments to the Vehicle Driver Certification and Fleet Management Law
2 3 4 5 6	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
3 6 7	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and
7 8 9 10	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
11 12 13	WHEREAS,	the Vehicle Driver Certification and Fleet Management law ('the Law") was adopted by the Oneida Business Committee through resolution BC-06-28-17-C; and
14 15 16 17	WHEREAS,	the purpose of the Law is to establish standards that certify employees, elected and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official business and regulate the use of all vehicles owned and leased by the Nation; and
17 18 19 20 21 22 23	WHEREAS,	the Legislative Operating Committee worked collaboratively with representatives from the Nation's Risk Management Department, Fleet Management Department, and Human Resources Department – specifically including representatives from the Equal Employment Opportunity Department, Employment and Recruitment, Training and Development, and Personnel Services to develop the amendments to this Law; and
24 25 26 27 28	WHEREAS,	the amendments to the Law revise the qualifications to become a certified driver, including: reduce the restriction on drug and alcohol convictions from three (3) years without an OWI, DUI, or PAC to twelve (12) months, allow no more than three (3) moving violations or atfault crashes within a two (2) year period, and allow individuals with probationary licenses to become certified drivers if at least eighteen (18) years of age or older; and
29 30 31 32 33 34 35	WHEREAS,	the amendments to the Law provide an exemption to the Law for those individuals whose duties with respect to the implementation of a contract, agreement, or compact of the Nation include driving and may be subject to compliance with a motor vehicle operation policy as provided in the contract, agreement, or compact of the Nation when this law is less stringent than the said motor vehicle operation policy; and
36 37	WHEREAS,	the amendments to the Law clarify the restriction on driving while using prescription or over the counter medications; and
38 39 40 41	WHEREAS,	the amendments to the Law ban weapons in fleet vehicles and personal vehicles while in use for official business, with certain exceptions; and

**BC** Resolution # Amendments to Vehicle Driver Certification and Fleet Management Law

42 WHEREAS, the amendments to the Law require all certified drivers to complete driver safety training 43 every three (3) years, regardless of whether they drive fleet or personal vehicles, with 44 certain exceptions; and 45 46 WHEREAS, the amendments to the Law ban the use of e-cigarettes in tribal fleet vehicles; and 47 48 WHEREAS. the amendments to the Law require mileage reimbursement requests to be submitted 49 within thirty (30) days of driving the miles or by the end of the fiscal year, whichever is 50 sooner: and 51 52 WHEREAS, the amendments to the Law revise and simplify the process for suspending driver 53 certification so that now an individual's driver certification is only suspended if his or her 54 driver's license has been suspended or revoked by the state of Wisconsin, and all other 55 violations of this law that do not result in the suspension or revocation of driver's license 56 will be handled by disciplinary action; and 57 58 WHEREAS, the amendments to the Law allow a supervisor to require an employee take additional 59 driver safety training if the individual is involved in certain circumstances, such as an at-60 fault motor vehicle crash or issuance of a moving violation, while driving a fleet vehicle or 61 personal vehicle on official business; and 62 63 WHEREAS. the amendments to the Law make other minor drafting revisions; and 64 65 WHEREAS, in accordance with the Legislative Procedures Act a legislative analysis and fiscal impact 66 statement were completed for the amendments to the Law; and 67 68 WHEREAS. a public meeting on the proposed amendments to this Law was held on January 23, 2020, 69 in accordance with the Legislative Procedures Act, and the public comment period was 70 held open until January 30, 2020; and 71 72 WHEREAS, the Legislative Operating Committee accepted, reviewed, and considered the public 73 comments received on February 19, 2020; and 74 75 NOW THEREFORE BE IT RESOLVED, that the amendments to the Vehicle Driver Certification and Fleet 76

Management law are hereby adopted and shall be effective on July 7, 2020.

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BE IT FURTHER RESOLVED, that any individual who currently possesses certified driver status for the Nation shall maintain his or her certified driver status and be grandfathered in under the certified driver qualifications of this Law. The qualifications for certified driver status provided by this Law shall apply to all new applicants, new hires, or job transfers that occur after this Law becomes effective.

BE IT FURTHER RESOLVED, that the Human Resources Department shall conduct a review of all job descriptions to identify positions in which driving is not an essential function in order to determine what job descriptions the requirement to obtain driver certification can thereby be removed from.

BE IT FURTHER RESOLVED, that the Human Resources Department shall communicate with the Nation's Self Governance Department to identify positions within the Nation that would be required to comply with the Department of the Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy in accordance with the Nation's Compact and Funding Agreement with the U.S. Department of the Interior. The corresponding job descriptions for these positions shall be updated to note the required compliance with the Department of the Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy when this Law is less strict.

BC Resolution #	
Amendments to Vehicle Driver Certification and Fleet Management Law	Α
Page 3 of 3	

**BE IT FINALLY RESOLVED,** that the Human Resources Department shall develop and provide a training on the amendments to this Law. This training may be provided through e-learning.



#### Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



#### **Statement of Effect**

Amendments to the Vehicle Driver Certification and Fleet Management Law

#### **Summary**

This resolution adopts amendments to the Vehicle Driver Certification and Fleet Management law.

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

Date: March 27, 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 Vehicle Driver Certification and Fleet Management 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 Vehicle Driver Certification and Fleet Management law was adopted by the Oneida Business Committee for the purpose of establishing standards that certify employees, elected and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official business and regulate the use of all vehicles owned and leased by the Nation. [2 O.C. 210.1-1].

The amendments to the Vehicle Driver Certification and Fleet Management law will:

- Revise the qualifications to become a certified driver, including:
  - Reduce the restriction on drug and alcohol convictions from three (3) years without an OWI, DUI, or PAC to twelve (12) months without an OWI, DUI, or PAC [2 O.C. 210.4-1(c)(2)];
  - Allow no more than three (3) moving violations or at-fault crashes within a two (2) year period [2 O.C. 210.4-1(c)(1)];
  - Allow individuals with probationary licenses to become certified drivers if at least eighteen (18) years of age or older [2 O.C. 210.4-2(a)-(b)];
- Provide an exemption to the Law for those individuals whose duties with respect to the implementation of a contract, agreement, or compact of the Nation include driving and may be subject to compliance with a motor vehicle operation policy as provided in the contract, agreement, or compact of the Nation when this law is less stringent than the said motor vehicle operation policy[2 O.C. 210.4-5];
- Clarify the restriction on driving while using prescription or over the counter medications  $[2 \ O.C. \ 210.5-1(d)];$
- Ban weapons in fleet vehicles and personal vehicles while in use for official business, with certain exceptions  $[2 \ O.C. \ 210.5-1(e)]$ ;

- Require all certified drivers to complete driver safety training every three (3) years, regardless of whether they drive fleet or personal vehicles, with certain exceptions [2 O.C. 210.5-2];
- Ban the use of e-cigarettes in tribal fleet vehicles [2 O.C. 210.5-3(f))];
- Require mileage reimbursement requests to be submitted within thirty (30) days of driving the miles or by the end of the fiscal year, whichever is sooner [2 O.C. 210.5-4(b)];
- Revise and simplify the process for suspending driver certification:
  - An individual's driver certification is only suspended if his or her driver's license has been suspended or revoked by the state of Wisconsin [2 O.C. 210.8-2];
  - All other violations of this law that do not result in the suspension or revocation of driver's license will be handled by disciplinary action [2 O.C. 210.8-7]; and
- Allow a supervisor to require an employee take additional driver safety training if the individual is involved in certain circumstances, such as an at-fault motor vehicle crash or issuance of a moving violation, while driving a fleet vehicle or personal vehicle on official business [2 O.C. 210.8-8].

Other additional drafting changes were made to update the language, increase clarification, and ensure compliance with drafting style and formatting requirements.

In accordance with the Legislative Procedures Act, a public meeting on the Vehicle Driver Certification and Fleet Management law was held on January 23, 2020. Two (2) people provided oral comments during the public meeting. The public comment period was then held open until January 30, 2020. 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 19, 2020. Any changes made based on those comments have been incorporated into this draft.

This resolution provides that the amendments to the Law would become effective on July 7, 2020. The Nation's Human Resources Department requested a ninety (90) day period before the Law became effective so that proper trainings could be developed that comply with the Law.

This resolution contains a grandfather clause that any individual who currently possesses certified driver status for the Nation shall maintain his or her certified driver status and be grandfathered in under the certified driver qualifications of this Law. The qualifications for certified driver status provided by this Law shall apply to all new applicants, new hires, or job transfers that occur after this Law becomes effective.

Additionally, the resolution provides various directives to the Nation's Human Resources Department, including:

- The Human Resources Department shall conduct a review of all job descriptions to identify
  positions in which driving is not an essential function in order to determine what job
  descriptions the requirement to obtain driver certification can thereby be removed from;
- The Human Resources Department shall communicate with the Nation's Self Governance Department to identify positions within the Nation that would be required to comply with



the Department of the Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy in accordance with the Nation's Compact and Funding Agreement with the U.S. Department of the Interior. The corresponding job descriptions for these positions shall be updated to note the required compliance with the Department of the Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy when this Law is less strict; and

■ The Human Resources Department shall develop and provide a training on the amendments to this Law. This training may be provided through e-learning.

#### Conclusion

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





# AMENDMENTS TO VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT LEGISLATIVE ANALYSIS

#### **SECTION 1. EXECUTIVE SUMMARY**

DECTION II EXEC	Analysis by the Legislative Reference Office	
Intent of the Amendments	<ul> <li>To revise the qualifications to become a certified driver, including:         <ul> <li>Reduce the restriction on drug and alcohol convictions from three (3) years without an OWI to twelve (12) months without an OWI;</li> <li>No more than three (3) moving violations or at-fault crashes within a two (2) year period;</li> <li>Allow individuals with probationary licenses to become certified drivers if age 18 or older;</li> </ul> </li> <li>To revise and simplify the process for suspending driver certification:         <ul> <li>An individual's driver certification is only suspended if his or her driver's license has been suspended or revoked by the state of Wisconsin;</li> <li>All other violations of this law that do not result in the suspension or revocation of driver's license will be handled by disciplinary action;</li> </ul> </li> <li>To revise the restriction on driving while using prescription or over the counter medications to increase clarity;</li> <li>To require all certified drivers to complete driver safety training every three (3) years, regardless of whether they drive fleet or personal vehicles, with certain exceptions;</li> <li>To require mileage reimbursement requests to be submitted within thirty (30) days of driving the miles or by the end of the fiscal year, whichever is sooner;</li> <li>To ban weapons in fleet vehicles and personal vehicles while in use for official business, with certain exceptions;</li> <li>To ban the use of e-cigarettes in tribal fleet vehicles;</li> <li>To create an exception to this policy for employees who are subject to stricter driver certification and training requirements due to contracts, agreements or compacts of the Nation.</li> <li>Additional changes to revise and reorganize the law to increase clarity.</li> </ul>	
Purpose	To establish standards that certify employees, elected and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official business and regulate the use of all vehicles owned and leased by the Nation. [2 O.C. 210.1-1].	
Affected Entities	Human Resources Department (HRD), Risk Management, Fleet Management, Automotive Department, Employee Assistance Program (EAP), All employees, officials, and volunteers of the Nation who drive fleet vehicles or personal vehicles on official business. All supervisors of employees who drive fleet vehicles or personal vehicles on official business.	
Related Legislation	Personnel Policies and Procedures, Travel and Expense Policy, Drug and Alcohol Free Workplace law, Clean Air Policy.	

<b>Public Meeting</b>	A public meeting was held on January 23, 2020, and the public comment period
	was held open until January 30, 2020.
Fiscal Impact	A fiscal impact statement has been provided by the Finance Department.

#### **SECTION 2. LEGISLATIVE DEVELOPMENT**

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

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

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

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

- 29 A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- **B.** The law was added to the Active Files List on February 7, 2018.
- C. At the time this legislative analysis was developed, the following work meetings had been held regarding developments of these amendments and legislative analysis:
  - July 15, 2019: Work meeting with HRD and Risk Management.
  - July 29, 2019: Work meeting with HRD and Risk Management.
- August 13, 2019: Work meeting with HRD and Risk Management.
  - September 4, 2019: Work meeting with LOC.
  - October 2, 2019: Work meeting with HRD, Risk Management and Fleet Management.
    - October 16, 2019: Work meeting with LOC.

- October 24, 2019: Work meeting with LOC
- November 5, 2019: Work meeting with LOC, HRD and Risk Management.
- December 4, 2019: Work meeting with LOC.
  - February 19, 2020: Work meeting with LOC.
  - February 27, 2020: Work meeting with LOC.
  - March 4, 2020: Work meeting with LOC and HRD.

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

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

Chart 1. Qualifications for Driver Certification - Comparison

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

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

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#### **Moving Violations**

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

- Speeding (1 to 10 mph over limit)
- Speeding (11 to 19 mph over limit)
- Speeding (20 mph over limit)
- Failure to obey traffic sign or signal
- Illegal turn
- Obstructing traffic
- Failure to give proper signal
- Driving wrong way on one way street
- Inattentive driving
- Failure to yield right of way
- Driving on wrong side of highway
- Driving too fast for conditions
- Failure to stop for school bus with lights flashing
- Attempt to elude an officer
- Reckless driving
- Following Too Closely
- Texting while driving
- o *Effect*. Due to the lack of clarity in the current law, HRD does not currently check for any traffic violations other than drug and alcohol related offenses. Upon adoption of this law, HRD will now check driving records and will not certify any individuals with three (3) or more moving violations in the past two (2) years.
- Change to Probationary License. Under the current law, probationary licenses are not acceptable as valid driver's licenses. Under the proposed amendments, probationary licenses will now be accepted as valid driver's licenses so long as the individual is eighteen (18) years or older.
  - O What is a Probationary License? In Wisconsin, a probationary license is a driver's license issued to a new driver, regardless of age. According to WI DMV, "the main difference between a probationary license and regular license consists of the restrictions listed on the back of the license. A probationary license is not an instruction permit or learner's permit. It is a valid driver's license for operation within and outside of Wisconsin." New drivers hold a probationary license for at least two (2) years after passing their driving test, regardless of age.
  - o *Effect*. Individuals age eighteen (18) or older who hold a probationary license may now become certified drivers so long as they meet all other requirements of this law.
- Change to Occupational License. Previously, the law stated that an occupational license "is a valid, non-probationary license if the driver's abstract which accompanies the occupational license allows the driver to operate vehicles for his or her job with the Nation." These amendments delete this provision and state only that an individual must hold a "valid Wisconsin driver's license" [2 O.C. 210.4-2(b)]. The term "valid Wisconsin driver's license" is not defined.
  - o What is an Occupational License? An occupational license is a restricted driver's license.

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

- **C.** *Access to List of Certified Drivers.* The Human Resources Department (HRD) is required to maintain a list of certified drivers. This list is currently provided by HRD to both Fleet Management and Accounting. Now, HRD will also be required to provide this list to the Risk Management Department [2 O.C. 210.4-3(c)].
- **D.** Exemption for Drivers Subject to Stricter Contracts, Agreements or Compacts. The amendments add
   156 an exception to the law for employees who may be subject to stricter driver certification requirements
   157 as a result of contracts, agreements or compacts entered into by the Nation.

- Department of Interior Compact and Funding Agreement. The Nation has entered into a Compact and Funding Agreement with the U.S. Department of Interior since 1994. In the current funding agreement, the Nation agrees to self-administer a motor vehicle operations policy that is either comparable or superior to the DOI's 2006 Motor Vehicle Operation Policy. The DOI's policy is more stringent than the amendments proposed by the LOC.
- Effect. As a result, any employee of the Nation whose duties involve driving with respect to implementation of the Compact must follow the stricter DOI motor vehicle operation policy to maintain compliance with this federal funding agreement. For a more detailed review, see Section 8 "Other Considerations."
- **E.** *Driving While on Prescription Drugs or Medication.* The current law states that while operating a vehicle on official business, drivers of the Nation shall not drive "while under the influence of controlled substances, intoxicating beverages, prescription drugs or other medications that caution against operating a motor vehicle when taken."
  - Problem with Wording of Medication Restriction. The wording of the prescription drug and medication restriction is unclear and has created challenges for HRD to implement. As HRD explains, many common medications may instruct individuals to "use caution" if driving, such as medication for seasonal allergies. "Alternatively, some medications have no driving warning yet create impairment in some people." This has led to confusion as to whether employees can drive while using their medications. HRD issued an interpretation in 2017 to clarify this restriction and presented this concern to the LOC.
  - *Proposed Change*. The amendments now state that an individual may not drive while "while under the influence of prohibited drugs or alcohol." In addition, drivers may not drive if "impaired by a medical or physical condition or other factor that affects a driver's motor skills, reaction time or concentration" [2 O.C. 210.5-1(d)].
    - O Definition or Prohibited Drug. The amendments define prohibited drug as "marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner" [2 O.C. 210.3-1(i)].
    - O Effect. The amendments clarify that employees may drive while using their prescription or over-the-counter medications as long as they are using the medication in a lawful manner and are not impaired while using the medication. Rather than restricting driving based on the "use caution" label that appears on many medications, the restriction is now based on the actual effects of that medication on the driver's motor skills, reaction time or concentration.

- F. *Ban on Weapons in Vehicles While on Official Business*. A new restriction has been added to the law stating that an individual cannot carry a weapon while operating a fleet or personal vehicle while on official business, regardless of whether the weapon is in the open or concealed [2 O.C. 210.5-19].
  - Exception. An individual who is carrying a weapon in the course of their official duties (such as a police officer) or participating in cultural activities or ceremonies (such as Oneida Rites of Passage) are exempt from this restriction.
  - *Definition of Weapon:* A weapon is defined as "a firearm, knife, electric weapon, club, or any other object intended to cause harm to oneself or others" [2 O.C. 210.3-1(k)].
  - Current Policies and Laws Governing Weapons.
    - The Nation's current prohibited weapons policy, adopted by the BC resolution in 2011 (BC-10-26-11-C), states that other than those required to carry weapons for their job, "no person shall carry a weapon, whether in the open or concealed, on Tribal public property, including any tribal building, gaming or retail business, facility, construction site, vehicle or at any Tribally sponsored event."
    - o In addition, the Workplace Violence Policy states that the possession or use of weapons on any kind of property of the Nation, <u>including parking lots</u>, other exterior premises or while engaged in activities for the Nation," is a "prohibited behavior" [2 O.C. 223.5(g)].
    - Finally, the Nation's Hunting, Fishing and Trapping law prohibits individuals from transporting a loaded firearm, air rifle or cocked bow or crossbow in a vehicle [4 O.C. 409.9-1(c)].
    - o *Conclusion:* Taken together, the Nation's current laws and policies already restrict drivers from carrying weapons in their personal vehicles while on tribal property or in tribal parking lots or from carrying weapons in fleet vehicles under any circumstance.
  - Effect. These amendments clarify that drivers may not carry weapons in either personal or fleet vehicles while on official business of the Nation unless required to do so for their job or cultural activities.
  - **G.** *E-Cigarettes in Fleet Vehicles*. The current law already states that individuals may not smoke or permit others to smoke in the Nation's fleet vehicles. Under these amendments, the use of electronic smoking devices, or "e-cigarettes," will also be prohibited in the Nation's fleet vehicles [210.5-3(f)].
  - **H.** *Driver Safety Training.* The current law requires all drivers certified to drive a fleet vehicle to complete driver safety training every three (3) years. These amendments will now require all certified drivers to complete this safety training, regardless of whether they drive a fleet vehicle or a personal vehicle on official business.
    - *Training Responsibility Moved to HRD*. In addition, rather than Environmental Health and Safety Division, it will now be HRD's responsibility to provide and monitor this training [2 O.C. 210.5-2]. During an LOC meeting, HRD Training and Development noted that there may be an expense related to purchasing or developing a driver safety training program.
    - Training Exemptions. Finally, individuals who are already required to comply with state or federal
      driver safety requirements (such as police officers) are exempt from the safety training offered by
      Oneida HRD.

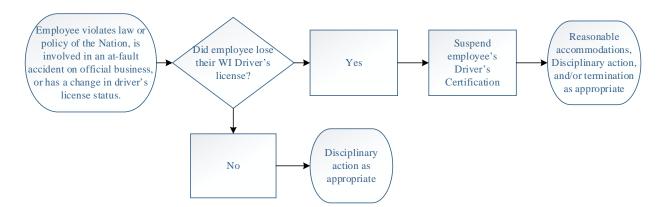
Chart 2. Driver Safety Training Requirements

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

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

- Copies of Reports to Area Managers. Previously, these reports were provided to the driver and driver's supervisor. Now these reports will also be provided to the driver's area manager. The intent is to ensure that the driver's area manager is kept informed of incidents and can ensure that issues are addressed with employees [2 O.C. 210.7-2].
- **M.** *Driving Privileges*. The current law allows for supervisors to "temporarily suspend" an individual's driving privileges without actually suspending their driver certification. In the other words, the individual is still certified as a driver by HRD, but his or her supervisor temporarily does not give them permission to drive on official business. This section has been deleted from the law. However, the amendments state that employees cannot drive fleet vehicles or their personal vehicles on official business "without obtaining permission from their supervisor" [2 O.C. 210.5-4(a) and 6-6(b)]. Therefore, supervisors will still have the authority to deny permission for an employee to drive on official business on an individual basis without suspending their driver certification.
- **N.** Suspension of Driver Certification. The process for a supervisor to officially suspend an employee's driver certification has been substantially changed and simplified.
  - Proposed. Under the proposed amendments, an individual's driver certification is suspended only when the individual's valid drivers license has been suspended or revoked by the state of Wisconsin or has otherwise become invalid. The length of the suspension lasts until the individual's driver's license is reinstated. In other words, if a person holds a valid Wisconsin driver's license, that person can drive for the Oneida Nation assuming he or she meets all other requirements of this law. All other violations of this law, such as failure to submit insurance or inappropriate use of a fleet vehicle, will now be handled by disciplinary action in accordance with the Nation's Personnel Policies and Procedures.

Chart 3. Proposed Driver Certification Suspension Process.



	Current Law	Proposed Law
Reason(s) to Suspend Driver Certification  Length of Driver Certification Suspension	<ul> <li>Various violations of the law, including:         <ul> <li>having WI driver's license suspended or revoked,</li> <li>being arrested or charged or convicted of motor vehicle operation violation involving drugs or alcohol;</li> <li>Not reporting motor vehicle crash while on official business,</li> <li>Not maintaining minimum insurance on personal vehicle</li> </ul> </li> <li>Minimum length of suspension between five (5) and fifteen (15) days for the first three (3) suspensions.</li> <li>More than three (3) suspensions in a three (3) year period results in a three (3) year suspension.</li> <li>Citation for motor vehicle violation involving drugs or alcohol results in automatic three (3) year suspension.</li> </ul>	Suspend driver certification only if Wisconsin Driver's License has been suspended, revoked or otherwise invalid.  Suspended until the individual's WI Driver's license is reinstated by the WI Department of Motor Vehicles and the individual meets qualifications for reinstatement under this law.
Supervisor Discretion to Suspend or Extend Driver Certification for any other reason not listed in this law?	Yes, "based on the best interests of the Nationif the supervisor determines it is appropriate to do so"	No.
Is Driver Certification Suspension Appealable?	No.	No.
Can the supervisor offer reasonable accommodations if driver certification suspension affects an employee's ability to perform their job?	Yes, the supervisor may: Provide non-driving accommodation within the home department; Reassign to a position that does not involve driving Leave of absence without pay.	Yes, the supervisor may: Reassign the individual to a position that does not require driving; Provide non-driving accommodation within the position; Remove the driving requirement from the job description Place the individual on unpaid leave until the individual obtains his or her driving certification.
Can the Supervisor terminate employment individual's driver certification is suspended?	Yes.	Yes, if a valid driver's license "is an essential requirement of the position."

#### Chart 5. Reinstating Driver Certification – Comparison.

	Current Law	Proposed Law
Reinstatement of Driver Certification	<ul> <li>Automatically reinstated if the suspension was thirty (30) days or less;</li> <li>If the suspension was thirtyone (31) days or more; HRD shall verify insurance and check the driving record to ensure that driver meets eligibility requirements, including no drug or alcohol convictions within three (3) years.</li> </ul>	Upon review of HRD that individual's Driver's license has been reinstated and that the driver meets original qualifications for certification, including:  No OWI, DUI or PAC violation within past 12 months;  Less than three (3) moving violations or at fault accidents within the past two (2) years  All other training and insurance requirements.
Failure to Reinstate Driver Certification Appealable?	Yes, any official, volunteer or employee may seek review of a decision not to reinstate certification by filing an appeal with the Judiciary.	No, failure to reinstate driver certification is not appealable.

- O. Additional Safety Training After an Accident. Supervisors may now require an individual to complete additional driver safety training, at their own expense, if the individual is involved in an at-fault motor vehicle crash or damage while driving on official business, receives a moving violation while driving on official business, or has his or her driver's license suspended or revoked by the State of Wisconsin [2 O.C. 210.8-8].
  - Example. NWTC offers an in-person "traffic school safety program", while other organizations
    offer certified online courses on topics such as "Failure to Yield Right of Way." Some Wisconsin
    drivers may already take such courses in order to reduce the number of points on their record.
- **P.** *Minor Drafting Changes*. Additional minor drafting changes have been made throughout the law for clarity.

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

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

332	purchase of maximum collision damage waiver from the rental company, as this is more
333	cost effective for the Nation.
334	o <i>Recommendation:</i> The LOC and LRO should note the discrepancy in the Travel and
335 336	Expense Policy and identify that section of the Travel and Expense Policy as an area for future amendments.
337	B. Other Laws that Reference Vehicle Driver Certification: The following laws of the Nation reference
338	Vehicle Driver Certification and Fleet Management. These amendments do not conflict with any of the
339	referenced laws.
340	<ul> <li>Drug and Alcohol Free Workplace. This law applies to all applicants for employment, whether</li> </ul>
341	external or internal, and all employees during working hours, when on-call, and when operating
342	vehicle owned by the Nation or a vehicle rented by the Nation. An employee is prohibited from
343	the use of prohibited drugs and alcohol during working hours, when on-call, and when operating
344	a vehicle owned by the Nation or a vehicle rented by the Nation [2 O.C. 202.4-1 and 4-2].
345	• Clean Air Policy. "Except as provided in 411.4-1(b)(1) and 411.4-2, no person may smoke in
346	any vehicle owned or operated by the Tribe" [4 O.C. 411.4-1(c)].
347	
348	SECTION 7. ENFORCEMENT AND ACCOUNTABILITY
349	A. <i>Enforcement</i> . This law is enforced in the following ways:
350	<ul> <li>Suspension of Driver Certification. A supervisor shall suspend an individual's driver certification</li> </ul>
351	if the individual's driver's license is suspended or revoked by the State or becomes invalid for an
352	other reason [2 O.C. 210.8-2].
353	<ul> <li>Disciplinary Action. In addition to the suspension of a driver certification, a supervisor may take</li> </ul>
354	disciplinary action against an individual in accordance with the Personnel Policies and Procedure
355	[2 O.C. 210.8-7].
356	
357	SECTION 8. OTHER CONSIDERATIONS
358	A. Vehicle Driver & Fleet Management Data. The following data is provided for information:
359	Number of Driver Certification Suspensions:
360	o 2017: 3
361	o 2018: 13
362	o 2019: 6
363	Number of Employees Separated from Employment Due to Loss of Driver Certification:
364	o 2019: 2
365	Number of Job Applicants Screened Out Due to OWI or Driving Convictions:
366	o HRD does not currently track this information. However, between July and November of
367	2019, at least five (5) applicants were screened out for not meeting driver certification
368	requirements.
369	Source: Email communications with HRD, 11/5/19.
370	<ul> <li>Number of Fleet Vehicles</li> </ul>
371	o The Nation currently owns 209 fleet vehicles. 200 of these vehicles are permanently
372	assigned to a department of the Nation.

Source: Email communication with Fleet Management, 10/29/19.

Chart 6. Vehicle Incidents Involving Nation-owned Vehicles

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

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

- **B.** Grandfather Clause for Drivers with Three or More Moving Violations or At-Fault Accidents within Past Two Years. Under the current law and HRD's present interpretation, HRD only checks vehicle driver records for drug and alcohol related citations and to ensure valid driver's license. Once these amendments are passed, HRD will now check whether drivers had three (3) or more moving violations or at-fault accidents within the past two (2) years.
  - Need for Grandfather Clause. Because HRD has not previously checked for moving violations, there may employees who are currently certified with three (3) or more accidents on their record in the past two (2) years. Since these employees were certified under the previous law, the LOC should consider adding a grandfather clause in the adopting resolution to ensure that these employees do not lose their driver certification upon adoption of this law.
  - Conclusion. The LOC intends to add a grandfather clause for current certified drivers that have had three (3) or more moving violations or at-fault accidents within the past two (2) years. It is expected that this grandfather clause will state that new restrictions on moving violations shall apply only to new applicants, new hires, or job transfers that occur after the adoption date of this law.
- C. Certification of Drivers Previously Disqualified for OWI in the Last Three (3) Years. Under the current law, applicants or employees who have had a drug or alcohol citation within the past three (3) years, such as an OWI, cannot become certified drivers for the Nation. Upon passage of this law, this restriction will be lowered to twelve (12) months. Therefore, there may be current employees of the Nation who will become eligible for driver certification upon adoption of this law. For example, an employee who had an OWI two years ago who is now working under a reasonable accommodation that doesn't involve driving.
  - Recommendation. Upon adoption of this law, HRD may want to communicate this information to supervisors and/or impacted employees so that they are aware that they may now be eligible for driver certification.
- **D.** Training Upon Adoption of Amendments. Upon the adoption of these amendments, HRD should offer updated training to supervisors and employees of the Nation on the new provisions of this law.
  - Conclusion. The LOC intends to direct HRD to offer an updated training to employees of the Nation on the new provisions of this law. This directive will be included in the adopting resolution of these amendments. The LOC will consult with HRD to determine a reasonable timeframe for HRD to develop and offer this training. During the LOC meeting on December 4, 2019, a representative of HRD Training and Development recommended allowing at least

180 days for HRD to develop the training on the new amendments.

E. Impact of Driving Record Check on Currently Certified Drivers. In order to become a newly certified driver, a driver must not have had an OWI within the past twelve (12) months and not had three (3) or more moving violations or at-fault accidents within the past two (2) years. However, an individual who has become certified can only have their driver certification suspended if they lose their valid Wisconsin driver's license.

Example Scenario. In other words, an individual can be hired with a clean driving record, receive driver certification from the Nation, then have three (3) or more moving violations within a 2-year period during their employment, but still keep their driver certification because they never lost their valid driver's license as a result of the moving violations. However, if that same individual were to leave their employment with the Nation and later apply for another position in the organization, that individual could not become a certified driver, because they are now applying as a new driver and must pass the driving record check.

Chart 7. Driving Record Requirement Comparison

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

 Recommendation. While this discrepancy is not necessarily problematic, it may cause confusion for current employees and supervisors who receive three (3) or more traffic citations after they have become a certified driver for the nation. HRD and supervisors should be aware that a <u>current</u> employee can only lose their driver certification if they lose their WI driver's license – regardless of the number of moving violations on their record since becoming certified.

**F.** Number of Job Descriptions Requiring Drivers License. During the development of these amendments, the LOC expressed interest in learning how many of the Nation's job descriptions require employees to hold a valid driver's license as a condition of their employment. The LOC was interested to know if there may be positions where an employee rarely drives on official business, but their job

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

- Data: HRD estimated that roughly 700 out of 950 program/non-divisional positions require a
  driver's license. Data for gaming positions was not available at the time this analysis was
  drafted.
- Conclusion: During a work meeting, the LOC encouraged HRD to review the Nation's job
  descriptions and determine whether it is necessary for certain jobs to require a driver's license.
   If the LOC intends to formalize this directive to HRD in the adopting resolution for this law.
- **G.** Employees Subject to Department of Interior Compact & Funding Agreement. The Nation has entered into a Compact and Funding Agreement with the U.S. Department of Interior since 1994. In the current funding agreement, the Nation agrees to self-administer a motor vehicle operations policy that is either comparable or superior to the DOI's 2006 Motor Vehicle Operation Policy. The DOI's policy is more stringent than the amendments proposed by the LOC. Therefore, any employees whose positions are funded by these The following programs, services, functions, and activities are currently found within the Nation's BIA Funding Agreement:

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

**Environmental Quality** 

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

- Conclusion. The LOC determined that it is important to identify the specific employees who may have to follow the BIA Motor Vehicle Operation Policy, so it is clear which employees are subject to the Nation's Law and which employees are required to follow a stricter policy. The Legislative Operating Committee intends to direct the Human Resources Department to work with the Self Governance Department to identify the positions that would be required to comply with the BIA Motor Vehicle Operations Policy, and to update the job descriptions so that it is clear which driving policy is applicable.
- **H.** Fiscal Impact. A fiscal impact statement has been provided by the Finance Department.
  - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].
  - A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee [1 O.C. 109.6-1(a and b).].

#### **Title 2. Employment - Chapter 210**

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they're driving law and a variety of vehicles the responsibility is attached to them

#### VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT

Vehicles         210.8. Suspension of Driver Certification and Other Enforcement
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#### 210.1. Purpose and Policy

210.1-1. *Purpose*. The purposespurpose of this law areis to:

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

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

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

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

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

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

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#### 210.2. Adoption, Amendment, Repeal

210.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-28-17-C<sub>-a</sub> and amended by resolution BC- - - - .

210.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

210.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

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

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

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

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

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#### 210.3.- Definitions

210.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

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

- 33 (b) "Business day" means Monday through Friday, from 8:00 a.m. to 4:30 p.m.; excluding the Nation's holidays.
  - (b) "Business miles" means miles driven in a vehicle by an individual in order to conduct Tribal business.
    - (c) "Certification" or "certified" means that a driver meets the requirements established by this law and is authorized to operate a Tribal vehicle and/or a personal vehicle on Tribal business
    - (d) "Driver" means any employee, official and/or volunteer who is certified to operate a Tribal vehicle, or to drive a personal vehicle on Tribal business.
    - (e) "Driver's abstract" means a driver's official driving record, which includes, but is not limited to, any restrictions or limitations that may be imposed on the driver's driving privileges.
    - (f) "Employee" means an individual who is employed by the Nation and is subject to the direction and control, but does not include elected or appointed officials, or employees of a chartered corporation of the Nation with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer employee relationship. "Employee" includes, but is not limited to, an individual employed by any program or enterprise of the Nation, and political appointees.
    - (g)d) "Entity" means a department, enterprise, program, board, committee or commission of the Nation.
    - (e) "Employee Assistance Program" means a professional counseling program staffed by clinical social workers licensed by the State of Wisconsin which offers services to the Nation's employees and family members.
    - (f) "Fleet vehicle" means a vehicle owned or leased by the Nation.
    - (g) "Moving violation" means any violation of motor vehicle or traffic law that is committed by the driver of a vehicle while the vehicle is moving. A moving violation does not include parking violations, equipment violations, or paperwork violations relating to insurance, registration or inspection.
    - (h) "Nation" means the Oneida Nation.

- (i) "Non-business miles" means miles driven in a Tribal vehicle that are not business-related, including commuting.
- (j) "Official" means anyone who is serving on the Oneida Business Committee or the Oneida Judiciary, and any other person who is elected or appointed to a board, committee or commission created by the Oneida Business Committee or Oneida General Tribal Council.
- (k)(i) "Prohibited drug" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.
- (j) "Supervisor" means the direct supervisor of an employee. Provided that, for For volunteers, elected or appointed officials and, or employees without a direct supervisor, it means the Human Resources Department or any party who has been designated by the Human Resources Department as responsible for performing a supervisor's responsibilities under this law.
- (1) "Tribal" or "Tribe" means the Oneida Nation.
- 80 (m) "Tribal(k) "Weapon" means a firearm, knife, electric weapon, club, or any other object intended to cause harm to oneself or others.

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#### 210.4. Driver Certification

- <u>210.4-1.</u> An individual shall obtain driver certification from the Human Resources Department before operating a fleet vehicle <u>"means a or personal"</u> vehicle <u>on official business.</u>
- <u>210.4-2.</u> <u>owned or leased Qualifications for Certification</u>. In order to receive driver certification a person shall:
  - (a) Be eighteen (18) years of age or older;
  - (b) Hold a valid Wisconsin driver's license;
    - (1) A person who holds a valid driver's license from a state other than Wisconsin shall have thirty (30) days after his or her first day of employment or service to obtain a Wisconsin driver's license.
  - (c) Have a driving record that does not reflect any of the following conditions:
    - (1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or
    - (2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.
  - (d) Complete all driver training requirements imposed by the Nation- or any federal or state agency regulations;
  - (e) Satisfy any other requirements specific to the job description and/or vehicle that may be used by or assigned to the person; and
  - (f) Maintain one (1) of the following minimum insurance requirements for a personal vehicle if the individual may use his or her personal vehicle to conduct official business:
    - (1) the individual's insurance covers:
      - (A) one hundred thousand dollars (\$100,000) per person;
      - (B) three hundred thousand dollars (\$300,000) per motor vehicle crash for bodily injury; and
      - (C) twenty-five thousand dollars (\$25,000) property damage; or
    - (2) the individual's insurance covers two hundred and fifty thousand dollars (\$250,000) combined single limit.
- 210.4-3. The Nation's Human Resources Department shall be responsible for determining whether an individual meets all the qualifications before approving or denying a driver certification.
  - (a) An individual shall provide his or her appropriate license, training certification, and insurance information to the Human Resources Department.
  - (b) The Human Resources Department shall have the authority to check the driving record of an individual at any time.
  - (c) The Human Resources Department shall maintain a current list of all certified drivers and provide the list to Fleet Management, Risk Management, and Central Accounting on a regular basis.
- 210.4-4. A supervisor shall ensure that an individual has received his or her driver certification from the Human Resources Department before allowing the individual to drive a fleet vehicle or a personal vehicle on official business.
- 210.4-5. Exemption. An individual whose duties with respect to the implementation of a contract,
   agreement, or compact of the Nation include driving may be subject to compliance with a motor
   vehicle operation policy as provided in the contract, agreement, or compact of the Nation when
   this law is less stringent than the said motor vehicle operation policy.
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- 128 <u>210.5.</u> (n) "Volunteer" means a person who provides a service to the Nation without receiving pay.

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

#### 210.4. Tribal Department Responsibilities of a Certified Driver

- <u>210.5-1.</u> *General Responsibilities.* While operating a fleet vehicle or a personal vehicle on official business, an individual shall:
  - (a) Abide by all traffic laws;
  - (b) Wear a seat belt and require any passengers to wear a seat belt at all times;
  - (c) Not drive while under the influence of prohibited drugs and/or alcohol;
  - (d) Not drive if impaired by a medical or physical condition or other factor that affects a driver's motor skills, reaction time, or concentration;
  - (e) Not carry a weapon, whether in the open or concealed;
    - (1) Exemption. An individual who is carrying a weapon in the course of performing his or her official duties, or is participating in cultural activities or ceremonies is exempt from this requirement.
  - (f) Not transport prohibited drugs and/or alcohol;
    - (1) Exemption. An employee of the Nation who is transporting prohibited drugs and/or alcohol in the course of performing his or her job duties is exempt from this requirement.
  - (g) Not deliver goods or services for personal gain, or operate private pools where the riders pay the driver; and
  - (h) Not use electronic devices in an unlawful manner.
- 210.5-2. *Training Responsibilities*. An individual with driver certification shall complete the driver safety training provided and monitored by the Human Resources Department every three (3) years.
  - (a) *Exemption*. An individual who is required to maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies shall be exempt from the requirement to complete the driver safety training provided by the Human Resources Department.
- <u>210.5-3.</u> <u>210.4-1.</u> *Department of Public Works*. The Department of Public Works shall maintain Fleet Management and Automotive Departments to assist with the implementation of this law.
- <del>210.4-2.</del> Fleet Management. Vehicle Responsibilities. When operating a fleet vehicle, an individual shall:
  - (a) Complete a vehicle mileage log;
  - (b) Not transport unauthorized passengers;
  - (c) Notify the Fleet Management shall: Department immediately of any problems with a fleet vehicle that may be a safety or mechanical hazard, or of any incidents that result in the inability of a fleet vehicle to complete a trip;
  - (d) Be personally responsible for all traffic citation costs, parking ticket costs, or any similar expense related to vehicle use;
  - (e) Use Oneida Retail locations for fueling fleet vehicles, unless the fleet vehicle needs fuel before it can be taken to an Oneida Retail location;
  - (f) Not smoke or use electronic smoking devices or permit others to smoke or use electronic smoking devices in the fleet vehicle; and
- (g) Ensure the interior of the vehicle is kept in good condition, clean, and free of debris. 210.5-4. *Personal Vehicle Responsibilities*. When operating a personal vehicle on official business, an individual shall:
  - (a) Obtain permission from his or her supervisor to operate a personal vehicle on official business; and

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

  (1) Not seeking mileage reimbursement does not exempt an individual from the
  - (1) Not seeking mileage reimbursement does not exempt an individual from the provisions of this law.
  - 210.5-5. *Notification Requirements*. An individual shall notify his or her supervisor if he or she:
    - (a) Has his or her driver's license suspended or revoked by the State, or has his or her driver's license become invalid for any other reason;
    - (b) Meets any of the conditions for disciplinary action as provided in section 210.8-7; and/or
    - (c) Has any impairment by a medical or physical condition or other factor that affects his or her motor skills, reaction time, or concentration.

### 210.6(a) Purchase. Fleet Vehicles

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- 210.6-1. Fleet Management Department. The Nation's Fleet Management Department shall purchase, manage, and monitor the use of Tribal vehicles, the Nation's fleet vehicles. The Fleet Management Department's responsibilities shall include, but are not limited to:
  - (a) Maintain a list of all fleet vehicles that are available for use, including the removal of vehicles permanently assigned to specific entities of the Nation;
  - (b) Remove unsafe vehicles from the fleet;
  - (b)c) Obtain estimates of and schedule Tribalfleet vehicle repairs when necessary;
  - (c) Participate in motor vehicle crash investigations;
  - (d) Participate in situations requiring approval of driver certifications;
  - (e) (d) Install or remove global positioning system monitors on Tribalequipment on fleet vehicles;
  - (e) Ensure the Nation's logo is on all fleet vehicles; and
  - (f) Ensure that all Tribalfleet vehicles are equipped with a mileage log and an auto incident kit which contains forms and instructions for reporting any incident; and.
  - (g) Maintain a list of all fleet vehicles that are available for use by drivers; including vehicles permanently assigned to specific departments.
- 210.4-3.6-2. Automotive Department. \_The Automotive Department shall service and maintain Tribalfleet vehicles according to factory recommendations, or the maintenance schedule established by the Automotive Department, whichever is stricter. Any vehicle deemed unsafe by the Automotive Department shall be reported to the Fleet Management Department.
- 210.4-46-3. Risk Management.—Department. The Risk Management shall:
- (a) Secure Department shall be responsible for securing and maintaining insurance coverage for all Tribal fleet vehicles, or may designate another party to do so;. Additional responsibilities of the Risk Management Department shall include, but is not limited to:
  - (b) Provide(a) Providing auto insurance identification cards in every Tribalfleet vehicle;
  - (c) Process(b) Processing all submitted vehicle claims and related information; and
  - (d) Submitting claims to the insurance company:
- 210.6-4. *Use of a Fleet Vehicle*. A fleet vehicle may be permanently assigned to an entity for use or requested for use on a temporary basis. A fleet vehicle shall be used for conducting official business of the Nation. When used for travel purposes, a fleet vehicle may also be used for incidental purposes such as travel to and from lodging and/or meal sites.
  - (a) Prohibited Use of a Fleet Vehicles. A fleet vehicle shall not be used for any of the following purposes:
    - (1) Personal use for non-business purposes;
    - (2) Towing cargo for personal reasons;

- (3) Hauling loads that could structurally damage the vehicle; and/or
- (4) Jump starting vehicles, other than fleet vehicles.
- 210.6-5. Permanently Assigned Fleet Vehicles. The Fleet Management Department may permanently assign a fleet vehicle to an entity if the entity meets the minimum mileage criteria as established by the Fleet Management Department.
  - (a) Exception to Minimum Mileage Criteria. The Fleet Management Department may grant an entity an exception to the minimum mileage criteria.
  - (b) An entity who is permanently assigned a fleet vehicle shall regularly schedule maintenance work and safety checks with the Automotive Department.
  - (c) An entity that is permanently assigned a fleet vehicle is responsible for ensuring that any individual who drives the vehicle has his or her driver certification.
  - 210.6-6. (e) Participate in motor vehicle crash investigations; and
  - (f) Participate in situations requiring approval of certifications.

<u>Temporary Use</u> <u>10.4-5.</u> Human Resources Department. The Human Resources Department shall:

- (a) Maintain a current list of drivers and provide the list to Fleet Management and the Central Accounting Department on a regular basis;
- (b) Perform driving record checks and approve or deny certification based on the review of an individual's driving record; and notify the appropriate parties immediately of ineligibility in writing;
- (c) Notify supervisors immediately of
  - (1) the certification status of his or her employees or volunteers; and
  - (2) of any cancelation or lapse in a personal vehicle driver's insurance coverage.
- (d) Assist supervisors with the administration of suspensions and/or revocations of certification;
- (e) Request and maintain records of proof of insurance on personal vehicles driven on Tribal business;
- (f) Participate in motor vehicle crash investigations;
- (g) Maintain documentation of all required driver training and regulatory compliance;
- (h) Perform, or delegate to another person to perform, the supervisory responsibilities identified in this law, for drivers who do not have a supervisor.
- 210.4-6. Environmental Health & Safety Division. The Environmental Health & Safety Division shall provide driver safety training as included herein, and provide the Human Resources Department with the names of drivers who have completed training after each training session.
- 210.4-7. Supervisors. For drivers who do not have a supervisor, the Human Resources Department shall either assume the supervisor's responsibilities, or shall delegate those responsibilities to another person/<u>Fleet Vehicle</u>. An individual in an entity. Supervisors of drivers shall:
  - (a) Ensure those drivers who report to them are certified before allowing those employees to drive a Tribal vehicle or a personal vehicle on Tribal business.
  - (b) Ensure drivers have the appropriate license, training certification(s), and insurance information on file with the Human Resources Department.
  - (c) Ensure all motor vehicle crashes and damages are reported in accordance with this law.
  - (d) Ensure that all Tribal vehicle mileage is recorded and submitted to Fleet Management in accordance with requirements established by Fleet Management.
  - (e) Approve expense reports submitted for personal vehicle mileage reimbursement.
  - (f) Promptly take appropriate action to investigate:
    - (1) all infractions of this law of which they become aware, including but not limited to, allegations of alcohol or drug use while using a Tribal vehicle or personal not permanently assigned a fleet vehicle for Tribal business.

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

#### **210.5.** Driver Responsibilities

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

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

#### **210.6. Tribal Vehicle Usage**

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

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

- vehicle to complete a trip. (c) Be personally responsible for all traffic citation costs, parking ticket costs or any similar
  - expense related to vehicle use. (d) Use Oneida One Stops for fueling Tribal vehicles, unless the Tribal vehicle needs fuel
  - before it can be taken to an Oneida One Stop.
  - (e) Not smoke, and not permit others to smoke, in the Tribal vehicle.

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- (f) Ensure the interior of the vehicle is kept in good condition, clean and free of debris.
- 373 (c) Any other individual who is authorized to be a passenger by the supervisor of the 374 employee, elected or appointed official, or volunteer.

- (a) Personal use or non-business miles, except as authorized under the Business Committee Vehicle Policy.
- (b) Vacation.

- (c) Towing cargo for personal reasons.
- (d) Hauling loads that could structurally damage the vehicle.
- (e) Delivering goods or services for personal gain, or operating private pools where the riders pay the driver.
- (f) Transporting hitchhikers.
- (g) Jump starting vehicles, other than Tribal vehicles-

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

210.6-7. Additional Equipment, Modifications-

(a) <u>to Fleet Vehicles</u>. Modifications to <u>Tribal fleet</u> vehicles for personal reasons are not permitted. Modifications to <u>Tribal fleet</u> vehicles for operating purposes may be allowed only with the approval of the Fleet Management. Department.

- (1) Provided that, this shall not be construed to prohibit drivers from making temporary, non-permanent modifications, such as adjusting the positions of vehicle seats or mirrors.
- (b) Fleet Management may equip Tribal vehicles with Global Positioning Systems (GPS) to monitor vehicle usage.
- (c)(a) Radar detection devices shall not be installed or used in Tribal fleet vehicles.

#### 210.7. Rental Vehicles

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

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

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

#### 210.8. Driver Certification

<u>7210.8-1.</u> Certification. All persons shall be certified before operating a Tribal vehicle or personal vehicle on Tribal business. In order to be certified, an individual shall:

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

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

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

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

#### (b) Mileage Reimbursement.

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

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

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

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

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

#### 210.8-3. Additional Requirements

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

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

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

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

- (1) motor vehicle operation violation involving drugs or alcohol; or
- (2) criminal offense related to a traffic incident.

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

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

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

210.97-1. This section shall apply in the event a driver is involved in a motor vehicle crash while driving a Tribal vehicle or a personal vehicle on Tribal business; and/or in the event that a Tribal vehicle is damaged during use. Provided that, if the Travel and Expense Policy has more restrictive requirements regarding accident reporting, the provisions of that policy shall apply.

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

- (a)\_ immediately report the crash or damage to local law enforcement if it results in any of the following:
  - (1) death of a person;
  - (2) an injury to the driver or another person that requires medical intervention by law enforcement or emergency personnel, or treatment at a medical facility; orattention;
  - (2) death of a person; or
  - (3) damage to property that does not belong to the driver or the Nation; or
  - (4) a Tribal vehicle being disabled and/or needing to be towed.
- (b) immediately report the motor vehicle crash or damage to his or her supervisor-; and
- (c) \_provide <u>the Fleet Management Department</u> and Risk Management <u>Department</u> with a completed <u>auto</u> incident report by the end of the next business day immediately following the motor vehicle crash or damage.
- (d) comply with any applicable alcohol and drug testing requirements established in other laws of the Nation.
- 210.9-3. Drivers shall follow any additional, applicable motor vehicle crash reporting requirements for vehicles regulated by a state or federal agency.
- 210.9-4.7-2. Internal Review. Whenever necessary, The Fleet Management Department and Risk Management Department shall coordinate and conduct an internal reviews review of the auto incident report for a motor vehicle crash and/or damage to a vehicle crashes involving Tribal vehicles. Internal reviews may include other personnel as deemed appropriate by .
- (a) Fleet Management and Risk Management-
  - (a) Fleet Management and Risk Management shall have investigative authority to:
    - (1) determine fault, if not determined by law enforcement; and/or
  - (2) may recommend whether a <u>driver's certification</u> an <u>individual</u> should be <u>suspended</u> subject to disciplinary action and/or a driver safety training requirement based on the motor vehicle crash or incident resulting in damage to a vehicle.
  - -(b) <u>Internal reviews The internal review</u> shall be completed as soon as <u>practicable possible</u> after a motor vehicle crash has been reported; <u>and shall be conducted in accordance with industry standards of practice</u>.
  - (c)\_ Following an internal review, Fleet Management and Risk Management shall issue an investigation report. Copies of the investigation report shall be:
    - (1) provided to the driver, the driver's supervisor, and the driver's area manager; and
    - (2) provided to the Human Resources Department if the Fleet Management Department and Risk Management Department recommend disciplinary action.

#### 210.8 supervisor; Suspension of Driver Certification and Other Enforcement

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

- 210.9-5. If, while driving a Tribal vehicle, a driver is determined to be, or admitted Suspension of driver certification is the suspension of an individual's ability to drive a fleet vehicle or personal vehicle on official business and is not a leave from work. Suspension of driver certification is non-appealable.
- 210.8-2. *Qualifications for Suspension*. A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.
  - (a) A supervisor may refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

- 570 <u>210.8-3. Length of Suspension.</u> The individual's driver certification shall be suspended until a time in which the individual has obtained a valid driver's license and meets the qualifications for reinstatement of driver certification.
- 210.8-4. *Notification of Suspension*. The supervisor shall notify the Human Resources
  Department in writing if he or she suspends the driver certification of an individual and shall
  provide the basis for the suspension. Once notified of a suspension of driver certification the
  Human Resources Department shall remove the individual from the list of current certified drivers.
  210.8-5. *Reasonable Accommodations to Suspension*. If the suspension of an individual's driver
  certification affects the individual's ability to perform his or her job duties, a supervisor may take
  one of the following actions:
  - (a) Reassign the individual to a position which does not require driving;
  - (b) Provide non-driving accommodation within the position;
  - (c) Remove the driving requirement from the job description;
  - (d) Place the individual on unpaid leave until the individual obtains his or her driver certification; or
  - (e) Terminate the individual because a valid driver's license is an essential requirement of the position.
  - 210.8-6. Reinstatement of Driver Certification. An individual may have his or her driver certification reinstated upon a review by the Human Resources Department that the individual again meets all the qualifications for driver certification provided for in section 210.4-2.
  - 210.8-7. Other Enforcement Actions. A supervisor may take disciplinary action against an individual in accordance with the Nation's laws and policies governing employment if the individual is an employee, or in accordance with the laws and policies of the Nation governing sanctions and penalties if the individual is an elected or appointed official of the Nation, for any of the following actions:
    - (a) Failing to comply with any provision of this law;
    - (b) Failing to complete any applicable driver training requirements;
    - (c) Driving a fleet vehicle without being certified under the provisions of this law;
    - (d) Admitting to, or being determined to be, partially or entirely at fault in a motor vehicle crash involving vehicle damage, property damage, or personal injury, the driver may have his or her certification suspended; and

#### 210.10. Suspension and Revocation of Certification; Disciplinary Action

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

(a) Driving Privilege Suspensions.

- (1) In certain situations, a supervisor may temporarily suspend a driver's driving privileges without suspending the driver's certification. When a driver's driving privileges are suspended, the driver shall not be permitted to drive a Tribal vehicle or to drive a personal vehicle on Tribal business.
  - (A) A supervisor shall temporarily suspend a driver's driving privileges:
    - (1) When the driver is unable to provide proof that the driver carries any insurance required by this law, or
    - (2) When the driver has not satisfied any driver training requirements as required by this law; but has made arrangements to complete the required driver training within a reasonable period of time.
    - (3) Upon request from the Human Resources Department, in conjunction with the Risk Management Department, pending an

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619	investigation that appears likely to lead to a suspension of
620	certification.
621	(4) In any other situation where the supervisor is unable to determine
622	whether the driver has valid certification and is eligible to drive a
623	Tribal vehicle or a personal vehicle on Tribal business.
624	(B) When a supervisor suspends a driver's driving privileges; the supervisor
625	shall promptly notify both the driver and the Human Resources Department,
626	in writing, of the suspension, including the effective date; as well as the
627	conditions that the employee is required to meet before the suspension may
628	be lifted. The supervisor shall also notify both the driver and the Human
629	Resource Department, in writing, once the driver's driving privileges are
630	reinstated.
631	(C) A driver's driving privileges shall automatically be reinstated after the
632	driver satisfactorily fulfills the conditions identified by the supervisor when
633	the driving privileges are suspended.
634	(b) Certification Suspensions. A driver shall have his or her certification suspended for any
635	of the following:
636	(1) Refusing to allow the Nation or an insurance carrier check his or her driving
637	record.
638	(2) Failing to immediately notify his or her supervisor of any information as
639	required in 210.8-4 or elsewhere in this law.
640	(3) Noncompliance with motor vehicle crash reporting requirements established by
641	this law.
642	(4) Failing to complete any applicable driver training requirements.
643	(5) Being arrested, charged or convicted of a motor vehicle operation violation
644	involving drugs, alcohol or criminal offense related to a traffic incident.
645	(6) Having his or her driver's license restricted, suspended, revoked or cancelled
646	by the state.
647	(7) Knowingly driving a Tribal vehicle without being certified under the provisions
648	of this law.
649	(8) For a personal vehicle certification, not(e) Not maintaining the minimum insurance
650	requirements for a personal vehicle.
651	(c) Supervisors who fail to uphold this law may face disciplinary action, in accordance with
652	the laws of the Nation governing employment.
653	(d) Regardless of whether a violation results in suspension of certification,
654	(1) employees who violate this law may also be subject to disciplinary action, in
655	accordance with laws of the Nation governing employment;
656	(2) officials who violate this law may also be subject to sanctions and penalties in
657	accordance with applicable laws of the Nation; including but not limited to, removal
658	from office for elected officials and termination of appointment for appointed
659	officials.
660	210.10-2. Except as provided in 210.11-2(d) and 210.10-7(b), suspension of a vehicle driver
661	certification or of driving privileges, is not appealable.
662	210.10-3. Suspensions Affecting Employment Status. Suspension of certification is a suspension
663	of driving privileges and is not leave from work. Individuals who have their driving privileges
664	suspended in accordance with 210.10-1(a), or who have their certification suspended and their
665	ability to perform their duties as an employee affected by that suspension may request, in writing,

that their 8-8. Additional Driver Safety Training. A supervisor and a Human Resources Department representative determine what, if any, options may be available to them. Options may

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

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- 210.10-4. The minimum length of a suspension shall be based on the number of prior suspensions that have occurred within the past three (3) years from the date of the incident that resulted in the most recent suspension:
  - (a) The first time a driver has that an individual complete an additional applicable driver safety training, at his or her vehicle driver certification suspended, the suspension shall last no less than five (5) full-time workdays.
  - (b) The second time a driver has his or her vehicle driver certification suspended, the suspension shall last no less than ten (10) full-time workdays.
  - (c) The third time a driver has his or her vehicle driver certification suspended, the suspension shall last no less than fifteen (15) full-time workdays.
  - (d) Drivers who incur more than three (3) vehicle driver certification suspensions under this law within a three (3) year period shall lose their vehicle driver certification for three (3) years, beginning with the date of the incident that resulted in the most recent suspension.
- 210.10-5. Due to the seriousness of a citation for the operation of motor vehicles involving drugs or alcohol, vehicle driver certification shall be suspended upon the issuance of a driving citation involving drugs or alcohol. Certification may only be reinstated upon the dismissal of the citation or upon three (3) years passing from the date of citation.
- 210.10-6. A break in employment or service of one hundred eighty (180) days or greater shall clear the driver's record of any vehicle driver certification suspensions, except for three (3)-year suspensions resulting from a violation that involved drugs or alcohol. However, all prior suspensions may be used in re-employment consideration.
- 210.10-7. Notwithstanding any other provision of this law, the Nation reserves the right to suspend an individual's certification or extend a certification suspension. Certification may be suspended; or an existing suspension may be extended, based on the best interests of the Nation and in accordance with the following:
  - (a) For officials and volunteers: upon unanimous agreement between the Human Resources Department, Fleet Management and Risk Management.
  - (b) For employees: A supervisor may suspend an employee's certification or extend an existing suspension, when the supervisor determines it is appropriate to do so. The employee may appeal this adverse employment action in accordance with the employment laws of the Nation.

#### 210.11. Reinstatement of Certification

- 210.11-1. Vehicle driver certifications that are suspended for thirty (30) days or less shall be automatically reinstated upon expiration of the suspension.
- 210.11-2. A driver whose certification is suspended for thirty one (31) days or more, may have his or her certification reinstated in accordance with the following:
  - (a) The driver may request reinstatement of his or her certification after:
    - (1) A certification suspension has concluded or any citation(s) are dismissed or the individual is cleared of any charges alleged in a citation that resulted in a driving certification suspension; and
- (2) Three (3) years have passed since own expense, if the individual was convicted of a motor vehicle operation citation involving drugs or alcohol; and:
  - (3) The state removes a (a) is involved in an at-fault motor vehicle crash or damage involving the fleet vehicle or personal vehicle driven on official business;

#### Title 2. Employment - Chapter 210

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and a variety of vehicles the responsibility is attached to them they're driving law VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT

210.1. Purpose and Policy 210.2. Adoption, Amendment, Repeal

210.3. Definitions

210.4. Driver Certification

210.5. Responsibilities of a Certified Driver

210.6. Fleet Vehicles

210.7. Motor Vehicle Crashes or Damage to Vehicles

210.8. Suspension of Driver Certification and Other Enforcement

#### 210.1. Purpose and Policy

3 210.1-1. Purpose. The purpose of this law is to establish standards that certify employees, elected and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official 4 5 business and regulate the use of all vehicles owned and leased by the Nation.

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

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#### 210.2. Adoption, Amendment, Repeal

- 12 210.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-28-17-C, and amended by resolution BC- - -13
- 14 210.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act. 15
- 16 210.2-3. Should a provision of this law or the application thereof to any person or circumstances
- be held as invalid, such invalidity shall not affect other provisions of this law which are considered 17 18 to have legal force without the invalid portions.
- 19 210.2-4. In the event of a conflict between a provision of this law and a provision of another law, 20 the provisions of this law shall control.
- 21 210.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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#### 210.3. Definitions

- 210.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Area manager" means an employee's supervisor's supervisor; or, an individual designated to be the area manager by a General Manager position.
  - (b) "Business day" means Monday through Friday, from 8:00 a.m. to 4:30 p.m.; excluding the Nation's holidays.
  - (c) "Employee" means an individual employed by the Nation, but does not include elected or appointed officials, or employees of a chartered corporation of the Nation.
  - (d) "Entity" means a department, enterprise, program, board, committee or commission of the Nation.
  - (e) "Employee Assistance Program" means a professional counseling program staffed by clinical social workers licensed by the State of Wisconsin which offers services to the Nation's employees and family members.
  - (f) "Fleet vehicle" means a vehicle owned or leased by the Nation.
- (g) "Moving violation" means any violation of motor vehicle or traffic law that is 38 committed by the driver of a vehicle while the vehicle is moving. A moving violation does 39

- 40 not include parking violations, equipment violations, or paperwork violations relating to insurance, registration or inspection.
  - (h) "Nation" means the Oneida Nation.
  - (i) "Prohibited drug" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.
  - (j) "Supervisor" means the direct supervisor of an employee. For volunteers, elected or appointed officials, or employees without a direct supervisor, it means the Human Resources Department or any party who has been designated by the Human Resources Department as responsible for performing a supervisor's responsibilities under this law.
  - (k) "Weapon" means a firearm, knife, electric weapon, club, or any other object intended to cause harm to oneself or others.

#### 210.4. Driver Certification

- 210.4-1. An individual shall obtain driver certification from the Human Resources Department before operating a fleet vehicle or personal vehicle on official business.
- 210.4-2. Qualifications for Certification. In order to receive driver certification a person shall:
  - (a) Be eighteen (18) years of age or older;
  - (b) Hold a valid Wisconsin driver's license;
    - (1) A person who holds a valid driver's license from a state other than Wisconsin shall have thirty (30) days after his or her first day of employment or service to obtain a Wisconsin driver's license.
  - (c) Have a driving record that does not reflect any of the following conditions:
    - (1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or
    - (2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.
  - (d) Complete all driver training requirements imposed by the Nation or any federal or state agency regulations;
  - (e) Satisfy any other requirements specific to the job description and/or vehicle that may be used by or assigned to the person; and
  - (f) Maintain one (1) of the following minimum insurance requirements for a personal vehicle if the individual may use his or her personal vehicle to conduct official business:
    - (1) the individual's insurance covers:
      - (A) one hundred thousand dollars (\$100,000) per person;
      - (B) three hundred thousand dollars (\$300,000) per motor vehicle crash for bodily injury; and
      - (C) twenty-five thousand dollars (\$25,000) property damage; or
    - (2) the individual's insurance covers two hundred and fifty thousand dollars (\$250,000) combined single limit.
- 210.4-3. The Nation's Human Resources Department shall be responsible for determining whether an individual meets all the qualifications before approving or denying a driver certification.
  - (a) An individual shall provide his or her appropriate license, training certification, and insurance information to the Human Resources Department.
  - (b) The Human Resources Department shall have the authority to check the driving record of an individual at any time.

- (c) The Human Resources Department shall maintain a current list of all certified drivers and provide the list to Fleet Management, Risk Management, and Central Accounting on a regular basis.
- 210.4-4. A supervisor shall ensure that an individual has received his or her driver certification from the Human Resources Department before allowing the individual to drive a fleet vehicle or a personal vehicle on official business.
- 210.4-5. *Exemption*. An individual whose duties with respect to the implementation of a contract, agreement, or compact of the Nation include driving may be subject to compliance with a motor vehicle operation policy as provided in the contract, agreement, or compact of the Nation when this law is less stringent than the said motor vehicle operation policy.

#### 210.5. Responsibilities of a Certified Driver

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- 210.5-1. *General Responsibilities*. While operating a fleet vehicle or a personal vehicle on official business, an individual shall:
  - (a) Abide by all traffic laws;
  - (b) Wear a seat belt and require any passengers to wear a seat belt at all times;
  - (c) Not drive while under the influence of prohibited drugs and/or alcohol;
  - (d) Not drive if impaired by a medical or physical condition or other factor that affects a driver's motor skills, reaction time, or concentration;
  - (e) Not carry a weapon, whether in the open or concealed;
    - (1) *Exemption*. An individual who is carrying a weapon in the course of performing his or her official duties, or is participating in cultural activities or ceremonies is exempt from this requirement.
  - (f) Not transport prohibited drugs and/or alcohol;
    - (1) *Exemption*. An employee of the Nation who is transporting prohibited drugs and/or alcohol in the course of performing his or her job duties is exempt from this requirement.
  - (g) Not deliver goods or services for personal gain, or operate private pools where the riders pay the driver; and
  - (h) Not use electronic devices in an unlawful manner.
- 210.5-2. *Training Responsibilities*. An individual with driver certification shall complete the driver safety training provided and monitored by the Human Resources Department every three (3) years.
  - (a) *Exemption*. An individual who is required to maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies shall be exempt from the requirement to complete the driver safety training provided by the Human Resources Department.
- 210.5-3. Fleet Vehicle Responsibilities. When operating a fleet vehicle, an individual shall:
  - (a) Complete a vehicle mileage log;
  - (b) Not transport unauthorized passengers;
  - (c) Notify the Fleet Management Department immediately of any problems with a fleet vehicle that may be a safety or mechanical hazard, or of any incidents that result in the inability of a fleet vehicle to complete a trip;
  - (d) Be personally responsible for all traffic citation costs, parking ticket costs, or any similar expense related to vehicle use;
  - (e) Use Oneida Retail locations for fueling fleet vehicles, unless the fleet vehicle needs fuel before it can be taken to an Oneida Retail location;
- 135 (f) Not smoke or use electronic smoking devices or permit others to smoke or use electronic smoking devices in the fleet vehicle; and

- 137 (g) Ensure the interior of the vehicle is kept in good condition, clean, and free of debris.
  138 210.5-4. *Personal Vehicle Responsibilities*. When operating a personal vehicle on official business, an individual shall:
  - (a) Obtain permission from his or her supervisor to operate a personal vehicle on official business; and
  - (b) Submit all required documents for mileage reimbursement, if seeking reimbursement for miles driven while conducting official business, within thirty (30) days of driving the miles or by the end of the current fiscal year, whichever is sooner.
    - (1) Not seeking mileage reimbursement does not exempt an individual from the provisions of this law.
  - 210.5-5. *Notification Requirements*. An individual shall notify his or her supervisor if he or she:
    - (a) Has his or her driver's license suspended or revoked by the State, or has his or her driver's license become invalid for any other reason;
    - (b) Meets any of the conditions for disciplinary action as provided in section 210.8-7; and/or
    - (c) Has any impairment by a medical or physical condition or other factor that affects his or her motor skills, reaction time, or concentration.

#### 210.6. Fleet Vehicles

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- 210.6-1. Fleet Management Department. The Nation's Fleet Management Department shall purchase, manage, and monitor the use of the Nation's fleet vehicles. The Fleet Management Department's responsibilities shall include, but are not limited to:
  - (a) Maintain a list of all fleet vehicles that are available for use, including vehicles permanently assigned to specific entities of the Nation;
  - (b) Remove unsafe vehicles from the fleet;
  - (c) Obtain estimates of and schedule fleet vehicle repairs when necessary;
  - (d) Install or remove equipment on fleet vehicles;
  - (e) Ensure the Nation's logo is on all fleet vehicles; and
  - (f) Ensure that all fleet vehicles are equipped with a mileage log and an auto incident kit which contains forms and instructions for reporting any incident.
- 210.6-2. *Automotive Department*. The Automotive Department shall service and maintain fleet vehicles according to factory recommendations, or the maintenance schedule established by the Automotive Department, whichever is stricter. Any vehicle deemed unsafe by the Automotive Department shall be reported to the Fleet Management Department.
- 210.6-3. *Risk Management Department*. The Risk Management Department shall be responsible for securing and maintaining insurance coverage for all fleet vehicles. Additional responsibilities of the Risk Management Department shall include, but is not limited to:
  - (a) Providing auto insurance identification cards in every fleet vehicle;
  - (b) Processing all submitted vehicle claims and related information; and
  - (c) Submitting claims to the insurance company.
- 210.6-4. *Use of a Fleet Vehicle*. A fleet vehicle may be permanently assigned to an entity for use or requested for use on a temporary basis. A fleet vehicle shall be used for conducting official business of the Nation. When used for travel purposes, a fleet vehicle may also be used for incidental purposes such as travel to and from lodging and/or meal sites.
  - (a) *Prohibited Use of a Fleet Vehicles*. A fleet vehicle shall not be used for any of the following purposes:
    - (1) Personal use for non-business purposes;
    - (2) Towing cargo for personal reasons;
  - (3) Hauling loads that could structurally damage the vehicle; and/or

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

188 189 190 210.6-5. Permanently Assigned Fleet Vehicles. The Fleet Management Department may permanently assign a fleet vehicle to an entity if the entity meets the minimum mileage criteria as established by the Fleet Management Department.

190 191 (a) Exception to Minimum Mileage Criteria. The Fleet Management Department may grant an entity an exception to the minimum mileage criteria.

192 193 (b) An entity who is permanently assigned a fleet vehicle shall regularly schedule maintenance work and safety checks with the Automotive Department.

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

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

199 200 (a) Requests for the use of a fleet vehicle shall be made at least one (1) week in advance, unless urgent circumstances arise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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210.7. Motor Vehicle Crashes or Damage to Vehicles

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

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

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

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- (2) an injury to the driver or another person that requires medical attention;
- (3) damage to property that does not belong to the driver or the Nation; or
- (4) a vehicle being disabled and/or needing to be towed.
- (b) immediately report the motor vehicle crash or damage to his or her supervisor; and
- (c) provide the Fleet Management Department and Risk Management Department with a completed auto incident report by the end of the next business day immediately following the motor vehicle crash or damage.
- 210.7-2. *Internal Review*. The Fleet Management Department and Risk Management Department shall coordinate and conduct an internal review of the auto incident report for a motor vehicle crash and/or damage to a vehicle.
  - (a) Fleet Management and Risk Management may recommend whether an individual should be subject to disciplinary action and/or a driver safety training requirement based on the motor vehicle crash or incident resulting in damage to a vehicle.
  - (b) The internal review shall be completed as soon as possible after a motor vehicle crash has been reported.
  - (c) Following an internal review, Fleet Management and Risk Management shall issue a report. Copies of the report shall be:
    - (1) provided to the driver, the driver's supervisor, and the driver's area manager; and
    - (2) provided to the Human Resources Department if the Fleet Management Department and Risk Management Department recommend disciplinary action.

#### 210.8. Suspension of Driver Certification and Other Enforcement

- 210.8-1. Suspension of driver certification is the suspension of an individual's ability to drive a fleet vehicle or personal vehicle on official business and is not a leave from work. Suspension of driver certification is non-appealable.
- 210.8-2. *Qualifications for Suspension*. A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.
  - (a) A supervisor may refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.
- 210.8-3. *Length of Suspension*. The individual's driver certification shall be suspended until a time in which the individual has obtained a valid driver's license and meets the qualifications for reinstatement of driver certification.
- 210.8-4. *Notification of Suspension*. The supervisor shall notify the Human Resources Department in writing if he or she suspends the driver certification of an individual and shall provide the basis for the suspension. Once notified of a suspension of driver certification the Human Resources Department shall remove the individual from the list of current certified drivers.
- 210.8-5. Reasonable Accommodations to Suspension. If the suspension of an individual's driver certification affects the individual's ability to perform his or her job duties, a supervisor may take
- one of the following actions:
  - (a) Reassign the individual to a position which does not require driving;
  - (b) Provide non-driving accommodation within the position;
  - (c) Remove the driving requirement from the job description;

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

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

- 210.8-6. Reinstatement of Driver Certification. An individual may have his or her driver certification reinstated upon a review by the Human Resources Department that the individual again meets all the qualifications for driver certification provided for in section 210.4-2.
- 210.8-7. Other Enforcement Actions. A supervisor may take disciplinary action against an individual in accordance with the Nation's laws and policies governing employment if the individual is an employee, or in accordance with the laws and policies of the Nation governing sanctions and penalties if the individual is an elected or appointed official of the Nation, for any of the following actions:
  - (a) Failing to comply with any provision of this law;
  - (b) Failing to complete any applicable driver training requirements;
  - (c) Driving a fleet vehicle without being certified under the provisions of this law;
  - (d) Admitting to, or being determined to be, partially or entirely at fault in a motor vehicle crash involving vehicle damage, property damage, or personal injury; and
  - (e) Not maintaining the minimum insurance requirements for a personal vehicle.
- 210.8-8. Additional Driver Safety Training. A supervisor may require that an individual complete an additional applicable driver safety training, at his or her own expense, if the individual:
  - (a) is involved in an at-fault motor vehicle crash or damage involving the fleet vehicle or personal vehicle driven on official business;
  - (b) receives a moving violation while driving a fleet vehicle or personal vehicle driven on official business; and
  - (c) has his or her driver's license suspended or revoked by the State or becomes invalid for any other reason.

# 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 26, 2020

**RE:** Fiscal Impact of the Amendments to the Vehicle Driver Certification and

Fleet Management Law

I. Estimated Fiscal Impact Summary

Law: Amendments to the Indian Pr	Law: Amendments to the Indian Preference in Contracting Law Draft 3		
Implementing Agency	Legislative Operating Committee		
<b>Estimated time to comply</b>	Unable to determine		
<b>Estimated Impact</b>	<b>Current Fiscal Year</b>	10 Year Estimate	
<b>Total Estimated Fiscal Impact</b>	Indeterminate	Indeterminate	

#### II. Background

This Law was adopted by the Oneida Business Committee by resolution BC-06-28-17-C as the Vehicle Driver Certification and Fleet Management Law. Upon adoption this law repealed both the Vehicle Driver Certification Policy and the Oneida Vehicle Fleet Management Policy. A public meeting was held on January 23, 2020. The amendments to the legislation are the following:

- The qualifications to become a certified driver are updated:
  - Restriction on drug and alcohol convictions is reduced from three years without and OWI to 12 months without an OWI.
  - o Drivers may have no more than three moving violations or at fault crashes within a two-year period.
  - Allow persons with probationary licenses to become certified drivers at age 18 or older.
- The process to suspend driver certification is modified.

- Certification is suspended when a driver's license is suspended or revoked by the State of Wisconsin.
- o There will be disciplinary action for other violations not resulting in the State loss of driving privileges.
- Restrictions pertaining to use of over the counter or prescription medications are revised.
- Driver safety training for all certified drivers will be required every three years, with certain exceptions.
- Mileage reimbursement requests must be submitted within 3 days of trip or by the end of the current fiscal year, whichever is sooner.
- The use of e-cigarettes in tribal fleet vehicles will be banned.
- Weapons in fleet vehicles and in personal vehicles when used for official tribal business will be banned, with certain exceptions.
- Exceptions to the law may be created for drivers whom are subject to more stringent driver certification and/or training requirements due to outside contracts, agreements or compacts.

#### 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.

#### IV. Executive Summary of Findings

We attempted contact three times with the Human Resources Department, Risk Management and the Department of Public Works – Fleet Management. We did not receive responses to our inquiries for estimated impact from DPW Fleet Management nor the Human Resources Department. The Risk Management Director indicated there should not be a significant increase in costs to Oneida Nation. The request for estimated timeframes needed to comply with the amendments to the Law, was not addressed. Therefore, we cannot include this important information in our analysis and are unable to render a full fiscal impact statement.

The Risk Management Director indicated his area and DPW Fleet Management did participate in providing information to the LOC leading up to the Public Meeting. It was along the lines of data of the number of crashes over the last ten years.



Researching information, we examined the Center for Insurance Policy and Research within the National Association of Insuance Commissioners. According to the data there, the main rating factors in determining the pricing of automobile insurance premiums include:

- Age.
- Driving experience.
- Driving record.
- Claims history.

There are nine other factors which are determined by the Center for Insurance Policy and Research to be the main drivers of insurance rates. These other factors are not touched upon by the Amendments, however. Any changes to our Vehicle Driver Certifications in these areas noted in above bullet points could possibly have the impact of increasing our premium prices paid by Oneida Nation. The Risk Maagement Director does not see the potential impact as significant, however. It is noted that the proposed Amendments include relaxing requirements in each of the areas noted above, which, according to the National Association of Insurance Commissioners, are key drivers of insurance rates.

#### V. Financial Impact

The Fiscal Impact of implementing this legislation is indeterminate at this time. It is remotely possible that the Amendments could cause our insurance premiums paid by Oneida Nation to increase, but we cannot know the amount predicted until the Risk Managemet Department obtains quotes from insurance companies.

#### VI. 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.



## March 31, 2020, Legislative Operating Committee E-Poll Approval of the Tobacco Law Amendments Public Comment Period



#### **Good Morning Legislative Operating Committee,**

This e-mail serves as the e-poll for the approval of the Tobacco law amendments public comment period packet.

#### **EXECUTIVE SUMMARY**

The world is currently facing a pandemic of the coronavirus disease 2019 (COVID-19). The COVID-19 outbreak originated in Wuhan, China and has spread to many other countries throughout the world, including the United States. The World Health Organization has identified that the spread of COVID-19 is now a pandemic resulting in many countries experiencing the effects of illness and health issues related to COVID-19 and economic impacts.

In accordance with the Nation's Emergency Management and Homeland Security law, on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. [3 O.C. 302.8-1].

On March 24, 2020, the Nation's COVID-19 Team made a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. The "Safer at Home" declaration prohibits all public gatherings of any number of people.

Then the COVID-19 Team issued a declaration on March 27, 2020, titled "Suspension of Public Meetings under the Legislative Procedures Act." This declaration provides that the Legislative Procedures Act's requirement to hold a public meeting during the public comment period is suspended due to the COVID-19 public health emergency, but that individuals may still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation during the public comment period via e-mail to the Legislative Operating Committee at LOC@oneidanation.org.

The Legislative Operating Committee adopted emergency amendments to the Tobacco law on February 26, 2020, through resolution BC-02-26-20-A. The emergency amendments are set to expire on August 26, 2020, with a one-time opportunity for an additional six (6) month extension. The Legislative Operating Committee has been developing permanent amendments to be adopted before the emergency amendments expire. The proposed emergency amendments are now ready for the public comment period. The "Suspension of Public Meetings under the Legislative Procedures Act" still allows the

community to participate in the legislative process by providing input on proposed legislation, even when it is unsafe to hold a public meetings in person during the public comment period.

An e-poll is necessary for this matter because the April 1, 2020, Legislative Operating Committee meeting has been canceled due to the COVID-19 pandemic, and immediate action is required by Legislative Operating Committee to approve the Tobacco law public comment period packet so it is forwarded to the Kalihwisaks for inclusion in the April 16, 2020, edition.

#### **REQUESTED ACTION**

Approve the Tobacco law public comment period packet, and set the public comment period for the Tobacco law amendments to be held open until May 7, 2020.

#### **DEADLINE FOR RESPONSE**

March 31, 2020 at 2:30 p.m.

All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by David P. Jordan, Jennifer Webster, Daniel Guzman King, and Kirby Metoxen. Ernest Stevens III did not provide a response.



#### RE: E-POLL REQUEST: Approval of the Tobacco Law Amendments Public Comment Period



Approve

#### Kirby Metoxen

Kirby Metoxen, Councilman kmetox@oneidanation.org Work Phone: (920) 869-4441 Fax: (920) 869-4040



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

The information contained in this e-mail is confidential and privileged. If you are not the intended recipient, please be advised that any use, copying, or dissemination of this information is prohibited. Please destroy this e-mail and immediately notify us of the erroneous transmission.

# ONEIDA NATION PUBLIC COMMENT PERIOD NOTICE Due to the COVID-19 Public Health Emergency Only Written Comments Will Be Accepted Until:

Oneida-nsn.gov/government/register/public meetings

Send Public Comments to

LOC@oneidanation.org

Send Public Comments to
LOC@oneidanation.org
Ask Questions here
LOC@oneidanation.org

Find Public Meeting Materials at



#### TOBACCO LAW AMENDMENTS

The purpose of this law is to regulate the sale, possession and distribution of cigarettes within the Reservation.

#### The Tobacco law amendments will:

THURSDAY, MAY 7, 2020

- 1. Define "tobacco products";
- 2. Clarify that cigarettes, electronic cigarettes, and tobacco products shall not be sold to any person under the age of twenty-one (21);
- 3. Clarify that no person other than an authorized employee shall sell cigarettes, electronic cigarettes, or tobacco products at an Oneida retail location;
- 4. Clarify that the process and procedure contained in the Nation's Citations law governs citations issued under this Law; and
- 5. Provide authority to the Oneida Business Committee to adopt through resolution a fine and penalty schedule for citations issued as a result of violations of this Law.

#### PUBLIC COMMENT PERIOD CLOSES THURSDAY, MAY 7, 2020

The Nation's COVID-19 Team issued a declaration on March 27, 2020, titled "Suspension of Public Meetings under the Legislative Procedures Act." This declaration provides that the Legislative Procedures Act's requirement to hold a public meeting during the public comment period is suspended due to the COVID-19 public health emergency. Although there will be no public meeting, the public comment period will still occur, and individuals can participate in the legislative process by submitting written comments, questions, or other input via e-mail to LOC@oneidanation.org.

#### PROVIDING EFFECTIVE PUBLIC COMMENTS

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





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



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

Least Effective Comment	More Effective Comment	Most Effective Comment
The Nation doesn't need a Tobacco	The penalties for violations of this	Section 115.8-2 of this Law should
law.	Law are not strong enough.	be expanded to include other pen-
		alties in addition to citations, sei-
		zure, and disciplinary action.



# AMENDMENTS TO THE TOBACCO LAW LEGISLATIVE ANALYSIS

#### **SECTION 1. EXECUTIVE SUMMARY**

Analysis by the Legislative Reference Office			
Intent of the	<ul><li>Provide a definition for "tobacco products;"</li></ul>		
Amendments	<ul> <li>Clarify that all tobacco products, and not just cigarettes and electronic</li> </ul>		
	cigarettes, shall not be sold to any person under the age of twenty-one (21)		
	years;		
	<ul> <li>Clarify that no person other than an authorized employee shall sell tobacco</li> </ul>		
	products, and not just cigarettes and electronic cigarettes, at an Oneida retail		
	location;		
	<ul> <li>Clarify that process and procedure contained in the Nation's Citations law will</li> </ul>		
	govern citations issued under this Law; and		
	<ul> <li>Provide authority to the Oneida Business Committee to adopt through</li> </ul>		
	resolution a fine and penalty schedule for citations issued as a result of a		
	violation of this Law.		
Purpose	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		
Related Legislation	Oneida Personal Policies and Procedures, Citations law		
<b>Public Meeting</b>	A public comment period will be held open until May 7, 2020. A public meeting		
	will not be held in accordance with the Nation's COVID-19 Team's declaration		
	titled, "Suspension of Public Meetings under the Legislative Procedures Act."		
Fiscal Impact	A fiscal impact statement has not yet been requested.		

#### **SECTION 2. LEGISLATIVE DEVELOPMENT**

- A. *Background*. The Tobacco law ("the Law") regulates the sale, possession, and distribution of cigarettes within the Reservation. [1 O.C. 115.1-1]. The Oneida Business Committee originally adopted this Law on March 15, 1976. The Law was most recently amended on an emergency basis on February 26, 2020.
- B. *Emergency Amendments*. On February 26, 2020, the Oneida Business Committee adopted emergency amendments to the Law through resolution BC-02-26-20-A. The emergency amendment raised the minimum age for the sale of cigarettes and electronic cigarettes from eighteen (18) to twenty-one (21).
  - The Oneida Business Committee is allowed to temporarily enact an emergency law where legislation is necessary for the immediate preservation of the public health, safety or general welfare of the reservation population and the enactment or amendment of legislation is required sooner than would be possible by utilizing the standard legislative process [1 O.C. 109.9-5].
  - An emergency amendment to the Law was pursued based on President Trump's December 20, 2019, action to sign into law an amendment to the Federal Food, Drug, and Cosmetic Act which raised the legal age to purchase tobacco products to at least twenty-one (21) years old, effective immediately. The Oneida Retail Enterprise began implementing this change on January 1, 2020.
  - The Oneida Business Committee determined emergency adoption of the amendment to the Law was necessary for the preservation of the public health and general welfare of the Reservation population because it ensures the Nation is in compliance with federal law. Additionally, the Oneida Business Committee found that observance of the requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest.

■ The emergency amendment to the Law will expire on August 26, 2020. The Legislative Procedures Act allows a one-time emergency law extension of up to six (6) months. [1 O.C. 109.9-5(b)].

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

- A. Representatives from the following departments of the Nation participated in the development of this Law and legislative analysis:
  - Oneida Retail Enterprise;
  - Community Health Services Department; and
  - Oneida Law Office.
- B. The following laws of the Nation were reviewed in drafting this analysis:
  - Oneida Personnel Policies and Procedures; and
  - Citations law.

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

- A. Thus far, this Law has followed the process set forth in the Legislative Procedures Act.
  - The Tobacco law emergency amendments was added to the Legislative Operating Committee's Active Files List on February 5, 2020.
  - The Oneida Business Committee adopted the emergency amendments on February 26, 2020, through the adoption of resolution BC-02-26-20-A.
  - The emergency amendments will expire on August 26, 2020.
- B. At the time this legislative analysis was developed the following work meetings had been held regarding the development of these amendments:
  - January 30, 2020: Work meeting with LOC and Oneida Law Office.
  - March 2, 2020: Work meeting with Oneida Retail Enterprise and Community Health Services Department.
  - March 4, 2020: Work meeting with LOC.

#### **SECTION 5. CONTENTS OF THE AMENDMENTS**

- A. **Definition of Tobacco Products**. The proposed amendments add a definition for "tobacco products" to the Law. [1 O.C. 115.3-1(h)]. Previously, the Law only defined and referenced "cigarettes" and "electronic cigarettes" and was silent as to other tobacco products. The Oneida Retail Enterprise uses the same minimum age for the sale of tobacco products as cigarettes and electronic cigarettes, the Law just did not reflect this practice.
  - Effect. The addition of the definition and reference to tobacco products better reflects the Oneida Retail Enterprise's current practices, and informs the reader that tobacco products are treated in the same manner as cigarettes and electronic cigarettes.
- B. *Minimum Age of Sale*. The proposed amendments provide that cigarettes, electronic cigarettes, and/or other tobacco products shall not be sold to any person under the age of twenty-one (21). [1 O.C. 115.6-3]. Prior to the adoption of the emergency amendments, the Law only stated that cigarettes and electronic cigarettes shall not be sold to any person under the age of eighteen (18).
  - Effect. This proposed amendment permanently adopts the emergency amendment which raised the minimum age of sales of cigarettes and electronic cigarettes from eighteen (18) to twenty-one (21). This amendment also clarifies that the minimum age for the sale of tobacco products is twenty-one (21). Although the current version of the Law does not reference tobacco products other than cigarettes and electronic cigarettes, this amendment reflects the Oneida Retail Enterprise's current practice.
- C. Sale by Authorized Employees Only. The proposed amendments provide that no person other than an authorized employee shall sell cigarettes, electronic cigarettes, and/or other tobacco products at an

- Oneida retail location. [1 O.C. 115.6-3]. Previously, the Law only referenced cigarettes and electronic cigarettes in this section.
  - Effect. This amendment clarifies that the restriction of sales to authorized employees applies to the sale of tobacco products at Oneida retail locations. Although the current version of the Law does not reference tobacco products other than cigarettes and electronic cigarettes, this amendment reflects the Oneida Retail Enterprise's current practice.
- D. *Citations Issued for Violations of this Law*. The proposed amendments provide that an individual who violates a provision of this Law may be issued a citation by the Oneida Police Department. [1 O.C. 115.8-1]. The Law goes on to provide that citations, which may include fines and other penalties, shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations. [1 O.C. 115.8-1(a)-(b)]. The proposed amendments also delegate 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. [1 O.C. 115.8-1(c)]. Previously, the Law provided that violators subject to the jurisdiction of the Nation shall be subject to a fine of not more than ten dollars (\$10) per pack of unstamped cigarettes to be issued by the Oneida Police Department and paid to the Nation. The Law also previously provided that all fines assessed 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.
  - Adoption of a Citations Law. In February 2020 the Oneida Business Committee adopted a Citations law for the purpose of providing a consistent process that governs all citations that fall under the jurisdiction of the Oneida Nation. [8 O.C. 807.1-1].
  - Effect. The proposed amendments better clarify that the process and procedure contained in the Nation's Citations law will govern citations issued under this Law. The proposed amendment's removal of language specific to fines and penalties from the Law to instead be placed into a resolution containing a fine and penalty schedule is also consistent with the Nation's recent legislative drafting practices.

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

- A. Reference to other Laws of the Nation. The following laws of the Nation are referenced in this Law:
  - Oneida Personnel Policies and Procedures. This Law provides that an employee who violates this Law shall be subject to disciplinary action in accordance with the Nation's laws and policies governing employment. [1 O.C. 115.8-2(b)].
    - The Oneida Personnel Policies and Procedures is the Nation's law which governs employment. The Oneida Personnel Policies and Procedures provides the process for handling complaints, disciplinary actions, and grievances. [Section V.D.].
    - A supervisor would have to follow the disciplinary action procedure contained in the Oneida Personnel Policies and Procedures if holding an employee accountable for a violation of this Law.
  - Citations law. This Law provides that 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.
    - The Citations law is the Nation's law governing citations. The Citations law provides how a citation action is started such as who has the authority to issue a citation, the requirements of the form of the citation, and how a citation is served and filed; stipulations for the settlement of a citation; and the citation hearing procedures. [8 O.C. 807].
    - Any citations issued by the Oneida Police Department for a violation of this Law must comply with the requirements and procedures of the Citations law.

#### SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

- 121 A. *Enforcement*. This Law is enforced in the following ways:
  - *Procedures and Policies.* The Oneida Retail enterprise is the entity responsible for carrying out the process, procedures, and responsibilities of this Law.
  - *Issuance of a Citation*. The Oneida Police Department is authorized to issue a citation for a violation of this Law. [1 O.C. 115.8-1].
  - Seizure of Unstamped Cigarettes. The Oneida Police Department is authorized to seize any cigarettes acquired, owned, possessed, sold, or distributed in violation of this Law. [1 O.C. 115.8-2(a)].
  - Disciplinary Action. A supervisor may utilize disciplinary action in accordance with the Oneida Personnel Policies and Procedures for any employee who violates this Law. [1 O.C. 115.8-2(b)].

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

- A. *Timeframe for Permanent Adoption of Amendments*. The emergency amendment to this Law, as adopted by the Oneida Business Committee through resolution BC-02-26-20-A, will expire on August 26, 2020. The Legislative Procedures Act allows a one-time extension of up to an additional six (6) months. [1 O.C. 109.9-5(b)]. This means that the Legislative Operating Committee has until February 21, 2021, at the latest to adopt the permanent amendments to this Law before the emergency amendments expire.
- B. *Fine and Penalty Schedule*. This Law provides that 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. [1 O.C. 115.8-1(c)]. The fine and penalty schedule resolution for the Tobacco law is currently under development. The Legislative Operating Committee intends to bring this proposed fine and penalty schedule resolution to the Oneida Business Committee at the time these amendments are up for adoption.
- C. *Fiscal Impact*. A fiscal impact statement has not yet been requested.
  - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].
  - A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee [1 O.C. 109.6-1(a and b).].

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

#### **TOBACCO**

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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

2 115.1-1. *Purpose*. The purpose of this law is to regulate the sale, possession, and distribution of cigarettes within the Reservation.

4 115.1-2. *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

8 115.2-1. 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-

10 20-A-, and BC- - - - .

11 115.2-2. 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

13 Act.

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14 115.2-3. 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

16 to have legal force without the invalid portions.

17 115.2-4. In the event of a conflict between a provision of this law and a provision of another law,

18 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

- Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any land added thereto pursuant to federal law.
  - (g) "Stamped Cigarettes" means cigarettes bearing valid Wisconsin tax stamps.
  - (h) "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

#### 115.4. Oneida Retail Locations

- 115.4-1. The Nation shall maintain Oneida retail locations within the Reservation as it deems necessary to provide adequate service to consumers of stamped cigarettes.
- 115.4-2. Each Oneida retail location established hereunder shall be managed and operated by the Oneida Nation.

#### 115.5. Purchase of, Title to and Possession of Tobacco Products

115.5-1. The Nation shall purchase stamped cigarettes from such suppliers as it may choose and shall take title and possession on delivery to an Oneida retail location on the Reservation (the. The title shall be subject to any purchase money security interest). Possession of the stamped cigarettes (, but not title), shall be transferred to the manager of the Oneida retail location to be held for sale to the consumers. The Nation shall retain title to stamped cigarettes until sold to a consumer.

#### 115.6. Restrictions on Sales

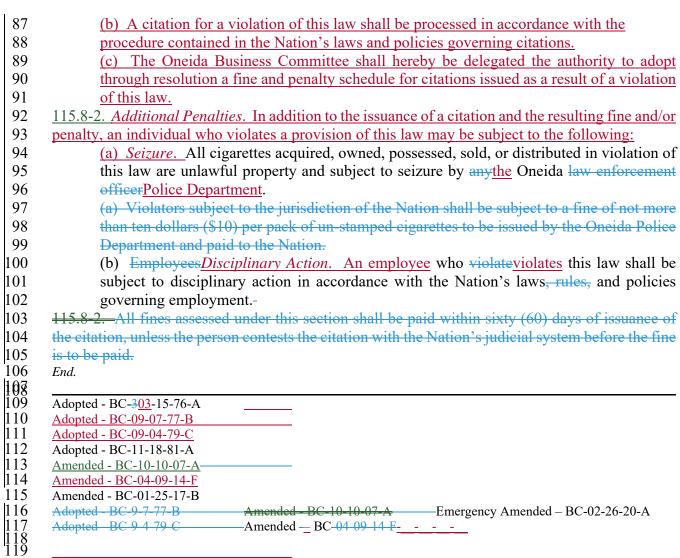
- 115.6-1. The Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal Cigarette tax stamp within the Reservation. Furthermore, only the Nation may claim the tax refunds on cigarettes sold on the Reservation as provided for under state law.
- 115.6-2. The Nation reserves the right to restrict sales, volume, pricing, and profit margin of stamped cigarettes sold at an Oneida retail location.
- 115.6-3. Cigarettes—and, electronic cigarettes, and/or other tobacco products shall not be sold to any person under the age of twenty-one (21)—). Cigarettes—and, electronic cigarettes, and/or other tobacco products for sale at an Oneida retail location shall be on display behind a counter. No person other than an authorized employee shall sell cigarettes—and, electronic cigarettes, and/or other tobacco products at an Oneida retail location.
  - 115.6-4. No person may sell or offer for sale unstamped cigarettes on the Reservation.

#### 115.7. Liability

115.7-1. The Nation shall be responsible for all risks to the stamped cigarettes and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary any person owning a purchase money security interest in the products to the extent his or her interest may appear.

#### 115.8 Violations

- 115.8-1. <u>Issuance of a Citation</u>. An individual who violates a provision of this law may be issued a citation by the Oneida Police Department.
  - (a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Trial Court.



# 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

2 115.1-1. *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.

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#### 115.2. Adoption, Amendment, Repeal

- 8 115.2-1. This law was adopted by the Oneida Business Committee by resolution BC- 11-18-81-
- 9 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,

10 and BC-\_-\_.

- 11 115.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the
- 12 Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures

13 Act.

- 14 115.2-3. 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.
- 17 115.2-4. 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.

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#### 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.
  - (g) "Stamped Cigarettes" means cigarettes bearing valid Wisconsin tax stamps.
  - (h) "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

#### 115.4. Oneida Retail Locations

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- 115.4-1. The Nation shall maintain Oneida retail locations within the Reservation as it deems necessary to provide adequate service to consumers of stamped cigarettes.
- 115.4-2. Each Oneida retail location established hereunder shall be managed and operated by the Oneida Nation.

#### 115.5. Purchase of, Title to and Possession of Tobacco Products

115.5-1. The Nation shall purchase stamped cigarettes from such suppliers as it may choose and shall take title and possession on delivery to an Oneida retail location on the Reservation. The title shall be subject to any purchase money security interest. Possession of the stamped cigarettes, but not title, shall be transferred to the manager of the Oneida retail location to be held for sale to the consumers. The Nation shall retain title to stamped cigarettes until sold to a consumer.

#### 115.6. Restrictions on Sales

- 115.6-1. The Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal Cigarette tax stamp within the Reservation. Furthermore, only the Nation may claim the tax 64 refunds on cigarettes sold on the Reservation as provided for under state law.
- 115.6-2. The Nation reserves the right to restrict sales, volume, pricing, and profit margin of 66 stamped cigarettes sold at an Oneida retail location. 67
- 68 115.6-3. Cigarettes, electronic cigarettes, and/or other tobacco products shall not be sold to any person under the age of twenty-one (21). Cigarettes, electronic cigarettes, and/or other tobacco 69 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.
  - 115.6-4. No person may sell or offer for sale unstamped cigarettes on the Reservation.

#### 115.7. Liability

115.7-1. The Nation shall be responsible for all risks to the stamped cigarettes and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary any person owning a purchase money security interest in the products to the extent his or her interest may appear.

#### 115.8 Violations

- 115.8-1. Issuance of a Citation. An individual who violates a provision of this law may be issued a citation by the Oneida Police Department.
  - (a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the 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 the Oneida Police Department.
  - (b) *Disciplinary Action*. An employee who violates this law shall be subject to disciplinary action in accordance with the Nation's laws and policies governing employment.

End.

Adopted - BC-03-15-76-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
Emergency Amended - BC-02-26-20-A
Amended - BC-\_\_-\_\_\_

# April 3, 2020, Legislative Operating Committee E-Poll Approval of Children's Burial Fund Policy Amendments Adoption Packet



#### **Good Afternoon Legislative Operating Committee,**

This e-mail serves as the e-poll for the approval of the Children's Burial Fund Policy amendments adoption packet.

#### **EXECUTIVE SUMMARY**

The adoption packet for the Children's Burial Fund Policy amendments is ready for approval by the Legislative Operating Committee, so that it can be sent to the Oneida Business Committee to consider adoption. The purpose of the Children's Burial Fund Policy is 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. [1 O.C. 129.1-1]. This proposed amendments to the Children's Burial Fund Policy will:

- Revise the eligibility qualifications for assistance from the Fund [1 O.C. 129.4-1];
- 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 [1 O.C. 129.5-3(d)];
- 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 [1 O.C. 129.6-2];
- Prohibit the use of the Fund for travel and/or lodging to attend a funeral [1 O.C. 129.6-3];
- 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 [1 O.C. 129.7-1]; and
- Make additional changes to revise and reorganize the law to increase clarity.

An e-poll is necessary for this matter because the April 15, 2020, Legislative Operating Committee meeting will be canceled due to the COVID-19 pandemic, and immediate action is required by Legislative Operating Committee to approve the Children's Burial Fund Policy amendments adoption packet so it can be forwarded to the Oneida Business Committee for consideration during the April 22, 2020, Oneida Business Committee meeting.

#### **REQUESTED ACTION**

Approve the Children's Burial Fund Policy amendments adoption packet and forward to the Oneida Business Committee for consideration.

#### **DEADLINE FOR RESPONSE**

#### April 3, 2020 at 3:00 p.m.

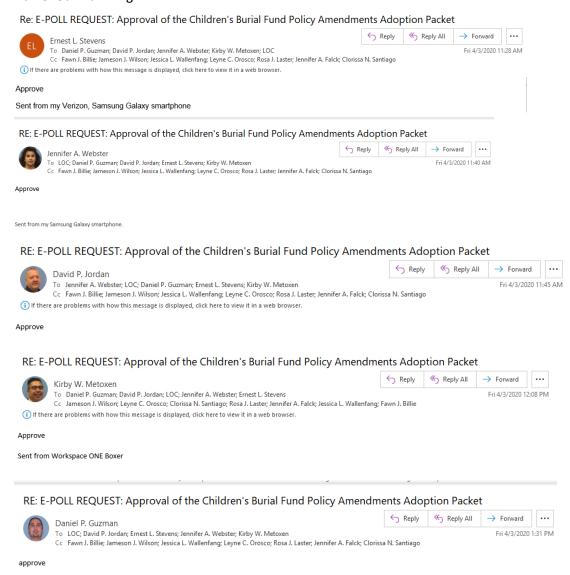
All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by Ernest Stevens III, Jennifer Webster, David P. Jordan, Kirby Metoxen, and Daniel Guzman King.





# Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson

DATE: April 22, 2020

RE: Children's Burial Fund Policy Amendments

Please find the following attached backup documentation for your consideration of the proposed amendments to the Children's Burial Fund Policy:

- 1. Resolution: Amendments to the Children's Burial Fund Policy
- 2. Statement of Effect: Amendments to the Children's Burial Fund Policy
- 3. Children's Burial Fund Policy Amendments Legislative Analysis
- 4. Children's Burial Fund Policy Amendments (Redline)
- 5. Children's Burial Fund Policy Amendments (Clean)
- 6. Children's Burial Fund Policy Amendments Fiscal Impact Statement

#### Overview

On August 7, 2019, the LOC added the Children's Burial Fund Policy amendments to its Active Files List upon recommendation by the Oneida Trust Enrollment Committee. The purpose of the Children's Burial Fund Policy is 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. [1] O.C. 129.1-1].

This resolution adopts amendments to the Children's Burial Fund Policy which will:

- Revise the eligibility qualifications for assistance from the Fund [1 O.C. 129.4-1];
- 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 [1 O.C. 129.5-3(d)];
- 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 [1 O.C. 129.6-2];
- Prohibit the use of the Fund for travel and/or lodging to attend a funeral [1 O.C. 129.6-3];
- 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 [1 O.C. 129.7-1]; and
- Make additional changes to revise and reorganize the law to increase clarity.

The Legislative Operating Committee developed the proposed amendments to the Children's Burial Fund Policy through collaboration with representatives from the Oneida Trust Enrollment Department.

In accordance with the Legislative Procedures Act, a public meeting on the Children's Burial Fund Policy was held on February 13, 2020. Three (3) people provided oral comments during the public meeting. The public comment period was then held open until February 20, 2020. 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 March 4, 2020. Any changes made based on those comments have been incorporated into this draft.

#### **Requested Action**

Approve the Resolution: Amendments to the Children's Burial Fund Policy



## **Oneida Nation**

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

## BC Resolution # \_\_\_\_\_

1		Amendments to the Children's Burial Fund Policy			
1 2 3 4 5	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and			
6 7	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and			
8 9 10	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and			
11 12 13 14	WHEREAS,	the Children's Burial Fund Policy ('the Law") was adopted by the Oneida Business Committee on an emergency basis through BC-09-23-09-F and then permanently through resolution BC-02-10-10-B; and			
15 16 17 18	WHEREAS,	the purpose of the Law is 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; and			
19 20 21	WHEREAS,	the Legislative Operating Committee worked collaboratively with representatives from the Nation's Oneida Trust Enrollment Department to develop the amendments to this Law; and			
22 23 24	WHEREAS,	the amendments to the Law revise the eligibility qualifications for assistance from the Children's Burial Fund; and			
25 26 27 28	WHEREAS,	the amendments to the Law 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; and			
29 30 31 32 33	WHEREAS,	the amendments to the Law allow the Children's Burial 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 Children's Burial Fund could be used for or caps on the use of the Children's Burial Fund for certain types of expenses; and			
34 35 36	WHEREAS,	the amendments to the Law prohibit the use of the Children's Burial Fund for travel and/or lodging to attend a funeral; and			
37 38 39 40	WHEREAS,	the amendments to the Law allow appeals 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 to be made to the Oneida Trust Enrollment Committee; and			
41 42 43	WHEREAS,	the amendments to the Law make other minor drafting revisions to revise and reorganize the Law to increase clarity; and			

BC Resolution # \_\_\_\_ Amendments to Children's Burial Fund Policy Page 2 of 2

44 45	WHEREAS,	in accordance with the Legislative Procedures Act a legislative analysis and fiscal impact statement were completed for the amendments to the Law; and	
46 47 48 49	WHEREAS,	a public meeting on the proposed amendments to this Law was held on February 13, 2020, in accordance with the Legislative Procedures Act, and the public comment period was held open until February 20, 2020; and	
50 51 52 53	WHEREAS,	the Legislative Operating Committee accepted, reviewed, and considered the public comments received on March 4, 2020; and	
54 55	<b>NOW THEREFORE BE IT RESOLVED,</b> that the amendments to the Children's Burial Fund Policy are hereby adopted and shall be effective on May 6, 2020.		



#### Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



#### Statement of Effect

Amendments to the Children's Burial Fund Policy

#### **Summary**

This resolution adopts amendments to the Children's Burial Fund Policy.

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

Date: April 3, 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 Children's Burial Fund Policy 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 Children's Burial Fund Policy was adopted by the Oneida Business Committee for the purpose of 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].

The amendments to the Children's Burial Fund Policy will:

- Revise the eligibility qualifications for assistance from the Fund [1 O.C. 129.4-1];
- 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 [1 O.C. 129.5-3(d)];
- 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 [1 O.C. 129.6-2];
- Prohibit the use of the Fund for travel and/or lodging to attend a funeral [1 O.C. 129.6-3];
   and
- 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 [1 O.C. 129.7-1].

Other additional drafting changes were made to update the language, increase clarification, and ensure compliance with drafting style and formatting requirements.

In accordance with the Legislative Procedures Act, a public meeting on the Children's Burial Fund Policy was held on February 13, 2020. Three (3) people provided oral comments during the public meeting. The public comment period was then held open until February 20, 2020. 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 March 4, 2020. Any changes made based on those comments have been incorporated into this draft.

This resolution provides that the amendments to the Children's Burial Fund Policy would become effective on May 6, 2020.

#### **Conclusion**

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





## CHILDREN'S BURIAL FUND POLICY AMENDMENTS LEGISLATIVE ANALYSIS

#### **SECTION 1. EXECUTIVE SUMMARY**

Analysis by the Legislative Reference Office			
Intent of the	■ Revise the eligibility qualifications for assistance from the Fund;		
Amendments	■ 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;		
	■ 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;		
	■ Prohibit the use of the Funds for travel and/or lodging to attend a funeral;		
	■ 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.		
Purpose	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 [1 O.C.]		
	129.1-1].		
<b>Affected Entities</b>	Affected Entities 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.		
Fiscal Impact	Fiscal Impact A fiscal impact statement has been provided by the Finance Department.		

#### SECTION 2. LEGISLATIVE DEVELOPMENT

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- 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

- recommended by the Oneida Trust Enrollment Committee to maintain a burial benefit for children ages three (3) and under who are not enrolled but eligible for enrollment in the Nation at the time of death.
  - Resolution BC-02-10-10-B. The Law was permanently adopted by this resolution to provide financial assistance towards funeral related expenses for children ages five (5) or younger that were eligible for enrollment in the Nation but not enrolled at the time of death. Additionally; children who were six (6) years of age at the time of death and approved for enrollment by the Oneida Trust Enrollment Committee, but not approved for enrollment by the Oneida Business Committee, were also eligible for financial assistance.
  - C. On August 7, 2019, the Oneida Trust Enrollment Committee submitted a request to the Legislative Operating Committee to consider amending the Law.

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

- A. Representatives from the following departments of the Nation participated in the development of this Law and legislative analysis:
  - Oneida Trust Enrollment Department; and
  - Oneida Trust Enrollment Committee.
- B. The following laws of the Nation were reviewed in drafting this analysis:
  - Membership Ordinance; and
  - Oneida Nation Constitution.
- C. The following tribal laws were reviewed in the development of this analysis:
  - Wichita and Affiliated Tribes Burial Assistance Guidelines;
  - Leech Lake Band of Ojibwe Funeral Assistance Program;
  - Absentee Shawnee Tribe Burial Assistance Program; and
  - Pawnee Nation of Oklahoma Burial Assistance Policy.

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

- A. Thus far, this Law has followed the process set forth by the Legislative Procedures Act.
  - The Law was added to the Legislative Operating Committee's Active Files List on August 7, 2019.
  - A public meeting on the proposed amendments to the Law was held on February 13, 2020.
  - The public comment period closed on February 20, 2020.
  - The Legislative Operating Committee reviewed and considered all public comments received on March 4, 2020.
- B. At the time this legislative analysis was developed the following work meetings had been held regarding the development of these amendments:
  - December 2, 2019: Work meeting was held with Oneida Trust Enrollment Department Staff.
  - December 4, 2019: Work meeting was held with the Legislative Operating Committee.
  - March 4, 2020: Work meeting was held with the Legislative Operating Committee.

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#### SECTION 5. CONTENTS OF THE LEGISLATION

- A. *Qualifications for Financial Assistance*. The proposed amendments revise the qualifications for financial assistance from the Children's Burial Fund ("the Fund"). In order to be eligible for financial assistance from the Fund the deceased child shall be six (6) years of age or younger; not enrolled with the Nation; eligible for enrollment with the Nation; and not enrolled with any other tribe. [1 O.C. 129.4-1]. Previously, the Law provided that in order to be eligible for assistance from the Fund the deceased child must be five (5) years old or younger, not enrolled with the Nation, but eligible for enrollment. The current Law also allowed for a six (6) year old to be eligible for the Fund if the Oneida Trust Enrollment Committee had approved the enrollment of that deceased child prior to his or her death.
  - Effect. The proposed amendments simplify the qualifications by removing the additional step of having an enrollment approved by the Oneida Trust Enrollment Committee for those deceased children who were six (6) years old. Having an enrollment approved by the Oneida

Trust Enrollment Committee did not ultimately affect whether a deceased child met the qualifications of enrollment with the Nation. The inclusion of the additional eligibility qualification of not being enrolled with a different tribe provides clarification as to how enrollment with another tribe affects a deceased child's eligibility for assistance from the Fund.

- B. Required Documentation to Prove Eligibility of Enrollment. The proposed amendments provide that upon making a financial assistance from the Fund a person shall provide the Oneida Trust Enrollment Department any other relevant documentation as requested by the Oneida Trust Enrollment Department to support the eligibility of enrollment of the deceased child. [1 O.C. 129.5-3(d)]. Previously, the only required that a person provide the Oneida Trust Enrollment Department all original invoices; birth certificate, death certificate, or fetal death report; and a voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined.
  - Effect. The addition of the requirement to any other relevant documentation as requested by the Oneida Trust Enrollment Department to support the eligibility of enrollment of the deceased child, in addition to the documents that were already required by the Law recognizes that 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 child, and provides the greatest flexibility in requesting documentation to support the eligibility of enrollment of the deceased child.
- C. *Use of the Funds.* The proposed amendments provide that funeral related expenses are payable if identified on an invoice. [1 O.C. 129.6-2]. The Law provides that funeral related expenses may include, but are not limited to monument and/or headstone costs, casket or coffin costs, cemetery costs, church costs, and/or food costs. [1 O.C. 129.6-2(a)-(e)]. Previously, the Law provided specific types of uses for the Fund which included food costs, monument and/or headstone costs, cemetery costs, and church costs. The Law then further added restrictions as to how much of the Fund could be used for certain types of expenses. Two hundred dollars (\$200) of the three thousand and five hundred dollars (\$3,500) that was available as assistance was allowed to be used for food, and only one thousand dollars (\$1,000) was allowed to be used for monument or headstone costs. Cemetery or church costs did not have further restrictions.
  - Effect. Removing the restrictions as to the types of costs that are able to be paid for by the Fund as well as any specific limitations on the cost of specific aspects of a funeral opens up the use of the Fund and provides the most flexibility to families to determine how to best use their assistance from the Fund for the funeral costs of a deceased child.
- D. **Prohibition to Use Funds for Travel and/or Lodging.** The proposed amendments add a provision which prohibits payments from the Fund to be used for travel and/or lodging for attending a funeral. [1 O.C. 129.6-3(b)]. Previously, the Law only provided that payments from the Fund could not be used to reimburse funeral costs to individuals. [1 O.C. 129.6-3(a)].
  - Effect. This amendment clarifies that in addition to the Fund not being able to be used to reimburse costs to individuals, it cannot be used for travel and/or lodging for attending a funeral. This provides further clarification as to how the Fund may be used by a family.
- E. Appeals. The amendments add a new appeal section. [1 O.C. 129.7]. This section provides that an appeal of a decision of the Oneida Trust Enrollment Department as to the eligibility of a deceased child for financial assistance from the Fund may be made to the Oneida Trust Enrollment Committee within fourteen (14) days of receipt of the decision. Previously, the Law was silent as to if appeals were allowed, or where those appeals would be made to.
  - Effect. This amendment provides clarification that appeals of the Oneida Trust Enrollment Department's decisions are permitted, and should be made to the Oneida Trust Enrollment Committee. Allowing for appeals provides due process to those individuals who may have been denied assistance from the Fund due to not meeting the enrollment eligibility requirements. The Oneida Trust Enrollment Committee is given the authority to hear the appeals due to the fact that the Oneida Trust Enrollment Committee is the final hearing body for all matters related to enrollment.
- F. *Minor Drafting Changes*. Additional minor drafting changes have been made throughout the law for 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. T 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. 129.4-11.
    - 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.

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#### 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.

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#### **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 been developed by the Finance Department.
  - 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.

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### Title 1. Government and Finances – Chapter 129

#### **CHILDREN'S BURIAL FUND POLICY**

### Kaya>takenh@sla ashakotiya>t@tane> latiksa>sh&ha

It is helpful for them to bury them the children **CHILDREN'S BURIAL FUND** 

129.1.	Purpose	and	Policy
129.1.	Purbose	ana	Policy

129.2. Adoption, Amendment, Conflicts Repeal

129.3. Definitions

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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

3 129.1-1. *Purpose*. It is the purpose of this policylaw to provide financial assistance towards the 4 funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in

5 the Oneida Tribe of Indians of Wisconsin Nation.

129.1-2. Policy. The Oneida TribeIt 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.

9 129.1-3. This fund is established to provide an individual allotment, not to exceed \$3,500 per 10 qualified individual, to defray the cost of funeral expenses.

#### 129.2. Adoption, Amendment, Conflicts Repeal

129.2-1. This policylaw was adopted by the Oneida Business Committee by resolution BC-02-13

14 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 15 16 General Tribal Council pursuant to the procedures set out in Tribal lawthe Legislatives Procedures

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18 129.2-3. Should a provision of this policylaw or the application thereof to any person or 19 circumstances be held as invalid, such invalidity shall not affect other provisions of this policylaw 20 which are considered to have legal force without the invalid portions.

21 129.2-4. In the event of a conflict between a provision of this policylaw and a provision of another 22 law, ordinance, policy, regulation, rule, resolution, or motion, the provisions of this policylaw shall 23 control. Provided that, nothing in this policy is intended to repeal or modify any existing law, 24 ordinance, policy, regulation, rule, resolution or motion.

25 129.2-5. This policylaw is adopted under authority of the Constitution of the Oneida Tribe of 26 Indians of Wisconsin Nation.

#### 129.3. Definitions

129.3-1. This section shall govern the definitions of words and phrases used within this policylaw. 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.

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

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#### 129.4. Qualifications for Financial Assistance

- 129.4-1. Except as provided in 129.4-2, In order to be eligible for <u>financial</u> assistance <u>from the</u> Children's Burial Fund the deceased child shall be <u>five (5)</u>:
  - (a) six (6) years of age or younger;
  - (b) not enrolled, but with the Nation;
  - (c) eligible for enrollment-with the Nation; and

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

(d) not enrolled with any other tribe.

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#### 129.5. Procedures Requesting Financial Assistance

- 55 129.5-1. The Oneida <u>Trust</u> Enrollment Department is designated to shall process all requests for 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.
  - 129.5-3. Original invoices Upon making a request for financial assistance from the Children's Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department for payment.:
    - (a) all original invoices:
    - (b) birth certificate, death certificate, or fetal death report;
    - (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.
  - 129.5-4. Upon receipt and verification of invoices and theother relevant document(s) as required under 129.5-5, the documentation, the Oneida Trust Enrollment Department shall be responsible for processing the appropriate paper work for the payment to be made to the funeral home, monument company, casket or coffin company, cemetery, crematorium, churches, and/or catering/or food vendors.
- 74 129.5-5. A birth certificate, death certificate, or fetal death report shall be submitted to the Enrollment Department prior to payment. A voluntary paternity/maternity statement shall also be submitted to the Enrollment Department prior to payment where paternity and/or maternity needs to be determined.
- 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 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 <u>129.6-1</u>. Financial assistance from the Children's Burial Fund for funeral costs of a deceased
- 85 <u>child shall not exceed</u> 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: (a) monument and/or headstone costs; 88 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. 129.5-9. Church costs are payable directly to the vendor or may be added to the funeral home 96 97 invoice, amount to be included under the \$3,500.00. 98 129.5-10. Under no circumstances willshall there be any payments from the Children's Burial 99 Fund for reimbursements forof: 100 (a) funeral costs to individuals—; and/or 101 (b) travel and/or lodging for attending a funeral. 129.5-116-4. Any unexpended monies after payment(s) have been made willshall remain in the 102 103 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. Total129.6-5. 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

Oneida Trust Enrollment Committee within fourteen (14) days of receipt of the decision.

- 112 113 114 End.
- 115 116 117 Emergency Adopted - BC-09-23-09-F
- Permanently Adopted BC-02-10-10-B
- Amended BC- - -

#### Title 1. Government and Finances – Chapter 129 Kaya>takenh@sla ashakotiya>t@tane> latiksa>sh&<u>ha</u>

It is helpful for them to bury them the children CHILDREN'S BURIAL FUND

#### CHIEDREN S BORNE I C

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

3 129.1-1. *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.

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#### 129.2. Adoption, Amendment, Repeal

- 11 129.2-1. This law was adopted by the Oneida Business Committee by resolution BC-02-10-10-B 12 and amended by BC- - - - .
- 13 129.2-2. 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.
- 15 129.2-3. 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.
- 18 129.2-4. 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.
- 20 129.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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#### 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.

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#### 129.4. Qualifications for Financial Assistance

38 129.4-1. 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;
    - (c) eligible for enrollment with the Nation; and
    - (d) not enrolled with any other tribe.

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#### 129.5. Requesting Financial Assistance

- 129.5-1. The Oneida Trust Enrollment Department shall process all requests for financial assistance from the Children's Burial Fund.
- 48 129.5-2. Requests for financial assistance from the Children's Burial Fund shall be made to the Oneida Trust Enrollment Department within three hundred and sixty-five (365) days from the 50 date of death.
- 129.5-3. Upon making a request for financial assistance from the Children's Burial Fund the 51 52 following documentation shall be provided to the Oneida Trust Enrollment Department:
  - (a) all original invoices;
  - (b) birth certificate, death certificate, or fetal death report;
  - (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.
  - 129.5-4. Upon receipt and verification of invoices and other relevant documentation, the Oneida Trust Enrollment Department shall be responsible for processing the appropriate paper work for the payment to be made to the funeral home, monument company, casket or coffin company, cemetery, crematorium, churches, and/or catering or food vendors.

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#### 129.6. Use of Funds

- 129.6-1. Financial assistance from the Children's Burial Fund for funeral costs of a deceased child shall not exceed three thousand five hundred dollars (\$3,500).
- 129.6-2. 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.
- 129.6-3. Under no circumstances shall there be any payments from the Children's Burial Fund for reimbursements of:
  - (a) funeral costs to individuals; and/or
  - (b) travel and/or lodging for attending a funeral.
- 129.6-4. Any unexpended monies after payment(s) have been made shall remain in the Children's Burial Fund.
- 129.6-5. Any expenses over three thousand five hundred dollars (\$3,500) shall be the responsibility of the family or responsible party.

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#### **129.7.** Appeals

129.7-1. An appeal of a decision of the Oneida Trust Enrollment Department 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.

88 89 90 91 End.

Emergency Adopted – BC-09-23-09-F Permanently Adopted – BC-02-10-10-B Amended – BC-\_-\_-\_-

# 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: April 1, 2020

RE: Fiscal Impact of the Amendments to the Children's Burial Fund Policy

**Amendments** 

I. Estimated Fiscal Impact Summary

Law: Amendments to the Children's Burial Fund Policy Draft 2			
Implementing Agency Legislative Operating Committee			
<b>Estimated time to comply</b>	Unable to determine		
<b>Estimated Impact</b>	<b>Current Fiscal Year</b>	10 Year Estimate	
<b>Total Estimated Fiscal Impact</b>	Indeterminate	Indeterminate	

#### II. Background

This Policy was adopted by the Oneida Business Committee by resolution BC-02-10-10-B as the Children's Burial Fund Policy. A preceding action was BC Resolution 09-23-09-F, which permitted limited funding for unenrolled, but eligible children up to age three. A public meeting was held on February 13, 2020. The amendments to the Policy are the following:

- Requires requester(s) must provide Trust and Enrollment Department with any relevant documentation requested to prove eligibility of deceased child.
- Eligibility qualifications are revised.
- Allows Fund to be utilized for any burial related expense supported by an invoice.
- Prohibit use of funds for travel and/or lodging to attend a funeral.
- Allows for appeals to be made to Oneida Trust Enrollment Committee.

#### 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.

#### IV. Executive Summary of Findings

The current Policy allows for benefit to families of deceased children who are eligible but unenrolled up to age five. The new amendment increases this to six years of age. There has been a cap of three thousand five hundred dollars (\$3,500.00) per child. This cap is not being changed by the Amendment. During the information gathering before the request for fiscal impact statement, the Trust and Enrollment Committee indicated that the provisions of this Policy have been utilized five times since 2015. This has been a total impact of a maximum of seventeen thousand five hundred dollars (\$17,500.00). Raising the age limit by one year will cause an increase in exposure, but this would most likely not be a significant impact.

#### V. Financial Impact

The Fiscal Impact of implementing this Policy Amendment is indeterminate at this time. Raising the age limit from five years of age to six years of age will increase exposure of the Children's Burial Fund. However, with only five instances of the Fund being utlzed in the last five yeas the impact will most likely not have a material impact. Ensuring that travel related expenses are disallowed moving forward will have the effect of holding down additional costs.

#### VI. 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.



## April 13, 2020, Legislative Operating Committee E-Poll Approval of the Children's Code Six Month Review Memorandum

E-Poll Request: Approval of the Children's Code Six Month Review Memorandum



### **Good Afternoon Legislative Operating Committee,**

This e-mail serves as the e-poll for the approval of the Children's Code six (6) month review memorandum.

### **EXECUTIVE SUMMARY**

The Children's Code was adopted by the Oneida Business Committee on July 26, 2017, through resolution BC-07-26-17-J for the purpose of providing for the welfare, care, and protection of Oneida children. Upon adopting the Children's Code the Oneida Business Committee also directed that a one (1) year review of the Children's Code itself as it relates to the full implementation be presented. On May 8, 2019, the Oneida Business Committee approved an amendment to the July 26, 2017, directive to complete a one (1) year review of the Children's Code to instead require that a review of the implementation of the Children's Code be conducted six (6) months after the Children's Code takes effect. The Children's Code took effect on October 1, 2019. The Children's Code has now been in effect for six (6) months, so it is time for the six (6) month review memorandum of the implementation of the Children's Code to be presented to the Oneida Business Committee.

The Nation is currently facing a COVID-19 pandemic, and on March 24, 2020, the Nation's COVID-19 Team made a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. The "Safer at Home" declaration prohibits all public gatherings of any number of people.

An e-poll is necessary for this matter because the Legislative Operating Committee has canceled all its meetings until June 2020 due to the COVID-19 pandemic and the Nation's COVID-19 Team's "Safer at Home" declaration, and immediate action is required by Legislative Operating Committee to approve the Children's Code six (6) month review memorandum so it is forwarded to the Oneida Business Committee for inclusion on the April 22, 2020, Oneida Business Committee meeting agenda.

### **REQUESTED ACTION**

Approve the Children's Code six (6) month review memorandum and forward to the Oneida Business Committee.

#### **DEADLINE FOR RESPONSE**

April 13, 2020 at 6:00 p.m.

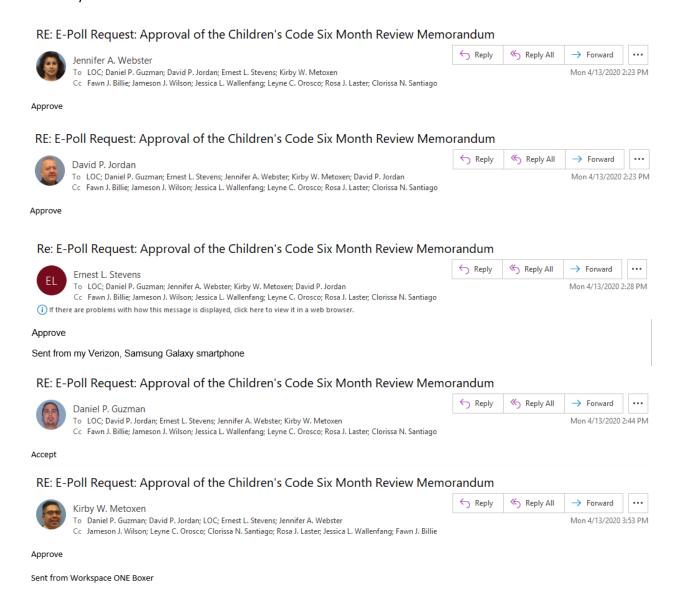
All supporting documentation has been attached to this email for your convenience.



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

### **E-POLL RESULTS:**

The e-poll was approved by Jennifer Webster, David P. Jordan, Ernest Stevens III, Daniel Guzman King, and Kirby Metoxen.





### Oneida Nation **Oneida Business Committee**

**Legislative Operating Committee** PO Box 365 • Oneida, WI 54155-0365



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson

DATE: April 22, 2020

RE: Children's Code Implementation Six (6) Month Review

Timeline of the Implementation of the Children's Code													
7/26/17	9/13/17	10/8/17	12/27/17	03/28/18	06/27/18	09/26/18	10/24/18	1/23/19	4/24/19	7/24/19	10/1/19	10/23/19	4/22/20
		•			•								
Children's Code was adopted by the OBC through resolution BC-07-26-17 Law was set to become effective 455 calendar days after the adoption of the FY 2018 budget.	ion Plan. OBC	become effective January 6 2019. t	to	OBC accepted the second quarterly report.	OBC accepted the third quarterly report.	OBC accepted the fourth quarterly report.	OBC took action through resolution BC-10-24-18-A to amend resolution BC-07-26-17-J to delay the implementation of this law.  Children's Code now set to become effective October 1, 2019.	OBC accepted the fifth quarterly report.	OBC accepted the sixth quarterly report.	the	Children's Code became effective.	s OBC accepted eighth and final quarterly report.	Six Month Review of the Children's Code presented to the OBC.
OBC directed a full implementati plan be submitted to OBC, with quarterly repsubmitted thereafter, ar one (1) year review of the Children's Coitself as it relates to the full	the orts nd a												

The Children's Code was adopted by the Oneida Business Committee (OBC) through resolution BC-07-26-17-J for the purpose of providing for the welfare, care, and protection of Oneida children. OBC resolution BC-07-26-17-J provided that the Children's Code would become effective four hundred and fifty-five (455) calendar days after the adoption of the Fiscal Year 2018 budget.

On July 26, 2017, the OBC also directed that a full implementation plan be submitted to the OBC, with quarterly reports submitted thereafter, and a one (1) year review of the Children's Code itself as it relates to the full implementation. On September 13, 2017, the OBC reviewed and accepted the Children's Code Implementation plan. Additionally, the OBC was granted the authority to modify the effective date of the Children's Code or implementation plan as it deems necessary to successfully implement the Children's Code.

On October 8, 2017, the General Tribal Council adopted the Fiscal Year 2018 budget through resolution GTC-10-08-17-A. In accordance with OBC resolution BC-07-26-17-J, the Children's Code was set to become effective on January 6, 2019.

In October of 2018, the OBC then took action through resolution BC-10-24-18-A to amend resolution BC-07-26-17-J to delay the implementation of the Children's Code. The Children's Code was then set to become effective on October 1, 2019.

On May 8, 2019, the OBC approved an amendment to the July 26, 2017, directive to complete a one (1) year review of the Children's Code to instead require that a review of the implementation of the Children's Code be conducted six (6) months after the Children's Code takes effect.

The Children's Code took effect on October 1, 2019. On October 23, 2019, the OBC adopted resolution BC-10-23-19-B to authorize discretion regarding the implementation of the Children's Code to better address the transfer of cases from Brown and Outagamie County. Eight (8) quarterly reports were presented to the OBC on the progress of the implementation of the Children's Code from December 27, 2017, until October 23, 2019.

This memorandum serves as the six (6) month review of the implementation of the Children's Code.

### ONEIDA FAMILY COURT

### Updates Since Implementation of the Children's Code

The Oneida Family Court would like to provide the following updates on the implementation of the Children's Code since it became effective on October 1, 2019:

- OFC Positions.
  - The second Family Court Clerk position was vacant between October 2020 and February 2020.
  - A second Family Court Clerk has now been hired and the Oneida Family Court reports that things have been progressing nicely with that employee.
- Children's Code Cases.
  - The first Children's Code case was filed with the Oneida Family Court in December 2019
  - The Oneida Family Court currently has twenty (20) active Children's Code cases and has conducted Emergency Custody Hearings, Plea Hearings, Dispositional Hearings, and Permanency Plan Hearings on child in need of protection and/or services (CHIPS) cases and a Plea Hearing on a Termination of Parental Rights case relating to a stepparent adoption.
  - On March 20, 2020, the COVID-19 Core Decision Making Team issued a declaration "Suspension of Transfer of Cases in Resolution #BC-07-26-17-J, Adoption of the Children's Code and the Nation's Indian Child Welfare Act Policy" which stated that all new child welfare cases in Brown and Outagamie County shall begin in or transfer to the Oneida Family Court "unless such commencement or transfer would be impracticable under the circumstances of the case as decided by the Nation's Indian Child Welfare Department and the Nation's Child Welfare attorney."
    - Two (2) cases transferred over from Brown County on April 8, 2020, as the children's sibling has a case pending in the Oneida Family Court.



- Even if additional cases do not transfer during the Oneida Nation's public health emergency, the Oneida Family Court is available to process any original Children's Code filings if the state agencies are unwilling to file them and pending cases continue to be processed and heard within the timelines established by the law.
- Collaboration with ICW and the Oneida Law Office.
  - On January 15, 2020, and February 26, 2020, the Oneida Family Court hosted a
    meeting to discuss the early stages of the Children's Code with the Indian Child
    Welfare Department and the Child Welfare Attorney.
  - General issues and concerns have been discussed and another meeting will be scheduled after the public health emergency is over.
- Updates to Court Forms.
  - Since the Oneida Family Court started hearing Children's Code cases, several of the court forms have been modified to improve them.
  - Changes in court forms are communicated to the Indian Child Welfare Department and the Child Welfare Attorney.
- *Identification of Potential Revisions to the Children's Code.* 
  - The Oneida Family Court provided the Legislative Reference Office with a list of potential amendments that can be made to the Children's Code.
  - The Legislative Reference Office shall keep a copy of these potential amendments in its records until such a time the Legislative Operating Committee decides to amend the Children's Code.

### ONEIDA INDIAN CHILD WELFARE DEPARTMENT

### Updates Since Implementation of the Children's Code

The Indian Child Welfare (ICW) Department would like to provide the following updates on the implementation of the Children's Code since it became effective on October 1, 2019:

- *ICW Staff*.
  - The ICW Department remains fully staffed, even amidst the COVID-19 crisis.
  - All ICW Department staff are working limited and staggered hours in the office.
     Full return of staff will begin on April 13, 2020.
- Training of Staff.
  - Training for staff continues through the ICW Department's partnership with the Wisconsin Child Welfare Professional Development System (WCWPDS) as well as through a strong partnership with the Brown County Child Protection Services.
- *Collaboration with the Counties.* 
  - The ICW Department has been holding ongoing meetings with Brown and Outagamie County leadership teams to discuss collaboration and process between the jurisdictions.
- *Use of Reflective Practice.* 
  - Reflective Practice through Oneida Behavioral Health is now being offered to staff as a resource for self-care and personal/professional growth.
  - There has been continued efforts by the ICW Department to promote a healthy and strong work environment and to support staff through this transition.
- On-Call Services.



• The ICW Department social workers, supervisor and director are providing on-call after hours services on a weekly rotation.

### Remaining Goals of Implementation

The Indian Child Welfare Department is still working to accomplish the following:

- *Memorandum of Understanding with Oneida Behavioral Health.* 
  - The ICW Department is still working towards finalizing a memorandum of understanding with the Oneida Behavioral Health for urinary analysis services.
  - The ICW Department has been waiting for final Oneida Behavioral Health approval since December 2019.
- Case Management System.
  - The ICW Department hopes to continue to use the RFP process to obtain a case management system to assist with managing cases and data.
- Access to eWISACWIS.
  - The ICW Department is still awaiting access to eWISACWIS to enter the Nation's foster care placements.
- Lack of Necessary Support Staff.
  - The ICW is currently working on a way to solve the Nation's problem of a lack of support staff needed to manage cases.
  - Unlike the counties, the Nation does not have volunteer drivers, human services or parent support aids to help with supervised visits or any other wrap around services.
  - Much more time is being spent by the ICW Department staff on documentation and court documents which creates less time for the staff to dedicate to wrap around services which the staff assisted with previously.

### Concerns of Implementation

The Indian Child Welfare Department has the following concerns for the continued implementation of the Children's Code:

- Internal Limitations in Access to Emergency Support Services.
  - The ICW Department has concerns about its access to emergency support services related to safety.
  - The ICW Department does not have a way to offer emergency support services such as fuel for clients or other emergency items when needed. ICW Department staff have been paying out of pocket for these items.
- Legal Representation.
  - The ICW Department has concerns that the department will need more time and commitment from its legal representation in the future for the Children's Code to be successful.
- Access to Wrap Around Services.
  - The ICW Department is concerned that it lacks access to wrap around services such as providers, volunteer drivers, or individuals to assist with supervised visitation. The lack of access to these services has been challenging and overwhelming for staff.
- Management of Caseloads.
  - The ICW Department has concerns about managing full caseloads of its staff.



 Cases have been on the rise and there is concern for burn out and compassion fatigue for ICW Department staff. This concern has increased since the COVID-19 pandemic.

### 161 AGREEMENT NEGOTIATIONS

### Updates Since Implementation of the Children's Code

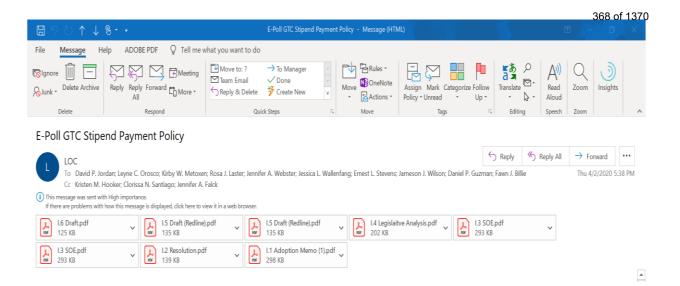
Since the Children's Code became effective on October 1, 2019, the 161 Agreement Negotiation Team has completed the following:

- Outagamie County Negotiations.
  - The 161 Agreement with Outagamie County has been signed and executed.
- *Brown County Negotiations*.
  - The 161 Agreement with Brown County has been signed and executed.

### REQUESTED ACTION

Accept Children's Code Implementation Six (6) Month Review





### Good Afternoon Legislative Operating Committee,

This e-mail serves as the e-poll for the materials for the adoption of emergency amendments to the General Tribal Council Meeting Stipend Payment Policy. Please note: that you will have to respond with the word "approve" or "disapprove" as the voting button does not appear to be available when sending remotely.

### **EXECUTIVE SUMMARY**

The world is currently facing a pandemic of coronavirus disease (COVID-19) after an outbreak began in Wuhan, China and quickly spread to many other countries throughout the world, including the United States. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. On March 12, 2020, in accordance with Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. The declaration of a public health emergency by the Nation and the potential financial impacts of the COVID-19 pandemic met the Budget Management and Control law's requirement that the Nation be under extreme financial distress for the budget contingency plan to be implemented. The Oneida Business Committee adopted resolution BC-03-17-20-A which declared that Tier IV budget contingency measures are implemented which required a four percent (4%) reduction in overall expenditures and budgets. On April 8, 2020, the Oneida Business Committee will consider the adoption of a resolution to declare that Tier V budget contingency measures be implemented.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5].

Emergency amendments to the General Tribal Council Meeting Stipend Payment Policy are being sought to provide an exception to the mandatory payment of stipends to eligible attendees of a General Tribal Council meeting when necessary to protect and safeguard the resources and general welfare of the Oneida Nation. The emergency amendments to the General Tribal Council Meeting Stipend Payment Policy will:

Provide the Oneida Business Committee with authority to adopt a resolution that halts the
payment of General Tribal Council meeting stipends to all eligible members of the Nation for a
period of time that the Oneida Business Committee deems necessary to protect and safeguard
the resources and general welfare of the Oneida Nation.

The emergency amendments to the General Tribal Council Meeting Stipend Payment Policy are necessary for the preservation of the general welfare of the Reservation population. The emergency amendments allow the Oneida Business Committee to discontinue the payment of otherwise mandatory General Tribal Council meeting stipends to maintain essential governmental services and employment when no revenues are being generated through gaming operations and during such time as it takes once gaming operations start back up for the Nation to recover from the financial damage caused by the COVID-19 pandemic.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately preserve funding for necessary governmental services and activities as a result of the COVID-19 pandemic.

An e-poll is necessary for this matter because the April 1, 2020, Legislative Operating Committee meeting was canceled due to the COVID-19 pandemic, and immediate action is required by Legislative Operating Committee to approve the materials for the emergency adoption of amendments to the General Tribal Council Meeting Stipend Payment Policy so the materials can be forwarded to the Oneida Business Committee for consideration during the April 8, 2020, Oneida Business Committee meeting.

### **REQUESTED ACTION**

• Approve the General Tribal Council Meeting Stipend Payment Policy emergency adoption packet and forward to the Oneida Business Committee for consideration.

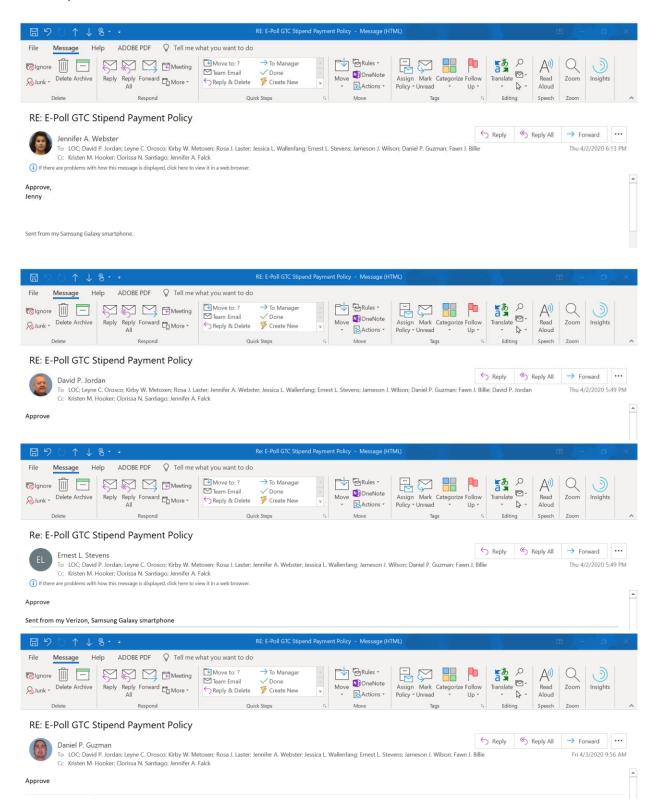
### **DEADLINE FOR RESPONSE**

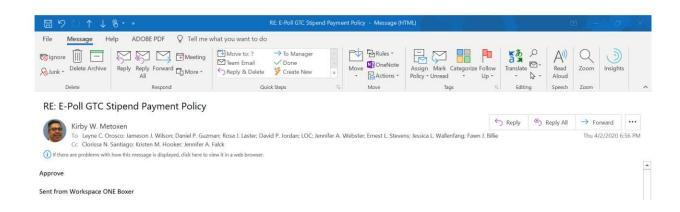
April 3, 2020 at 11:00 a.m.

All supporting documentation has been attached to this email for your convenience.

### **E-POLL RESULTS:**

The e-poll was approved by Jennifer Webster, David P. Jordan, Ernest Stevens III, Daniel Guzman King, and Kirby Metoxen.









# Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-365



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson

DATE: April 8, 2020

RE: General Tribal Council Meeting Stipend Payment Policy Emergency Amendments

Please find the following attached backup documentation for your consideration of the General Tribal Council Meeting Stipend Payment Policy Emergency Amendments:

- 1. Resolution: Emergency Amendments to the General Tribal Council Meeting Stipend Payment Policy
- 2. Statement of Effect: Emergency Amendments to the General Tribal Council Meeting Stipend Payment Policy
- 3. General Tribal Council Meeting Stipend Payment Policy Emergency Amendments Legislative Analysis
- 4. General Tribal Council Meeting Stipend Payment Policy (Redline)
- 5. General Tribal Council Meeting Stipend Payment Policy (Clean)

### Overview

Emergency amendments to the General Tribal Council Meeting Stipend Payment Policy are being sought to create an exception to the mandatory payment of General Tribal Council (GTC) meeting stipends when deemed necessary to protect and safeguard the resources and general welfare of the Nation. The emergency amendments to the General Tribal Council Meeting Stipend Payment Policy will:

Provide the Oneida Business Committee with authority to decide, through adoption of a resolution, to halt the payment of General Tribal Council meeting stipends to all eligible members for a period of time the Oneida Business Committee deems necessary to protect and safeguard the resources and general welfare of the Nation. [1 O.C. 111.4-3(c)].

The world is currently facing a pandemic of COVID-19 after an outbreak began in Wuhan, China and quickly spread to many other countries throughout the world, including the United States. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. State governors, including the State of Wisconsin, have declared public health emergencies and state public health officers have issued orders, for example, closing public schools, limiting public gatherings, and closing restaurants and bars except for take-out orders.

On March 12, 2020, in accordance with the Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "*Declaration of Public Health State of Emergency*" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

Since the declaration of a public health emergency, the Oneida Business Committee has taken action to protect the health and welfare of the members, employees and the community, including instituting expenditure restrictions to preserve resources for the provision of governmental services to members most at risk, closure of the Nation's gaming operations, and insuring that employees will continued to be paid during the public health emergency as long as the Nation's resources will allow.

The declaration of a public health emergency by the Nation and the potential financial impacts of the COVID-19 pandemic met the Budget Management and Control law's requirement that the Nation be under extreme financial distress for the budget contingency plan to be implemented. The Oneida Business Committee adopted resolution BC-03-17-20-A which declared that Tier IV budget contingency measures are implemented which required a four percent (4%) reduction in overall expenditures and budgets. On April 8, 2020, the Oneida Business Committee will consider the adoption of a resolution to declare that Tier V budget contingency measures be implemented.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency amendments to the General Tribal Council Meeting Stipend Payment Policy are necessary for the preservation of the general welfare of the Reservation population. The emergency amendments would allow for the Oneida Business Committee to discontinue the payment of GTC meeting stipends in an effort to protect the general welfare of the Reservation population by maintaining essential governmental services and employment when no revenues are generated through gaming operations and during the period of time it takes after gaming operations start back up for the Nation to recover from the financial distress caused by the COVID-19 pandemic.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately preserve funding for necessary governmental services and activities as a result of the COVID-19 pandemic.

The emergency amendments to the General Tribal Council Meeting Stipend Payment Policy will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

### **Requested Action**

Approve the Resolution: Emergency Amendments to the General Tribal Council Meeting Stipend Payment Policy.





## Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson

DATE: April 8, 2020

RE: General Tribal Council Meeting Stipend Payment Policy Emergency Amendments

Please find the following attached backup documentation for your consideration of the General Tribal Council Meeting Stipend Payment Policy Emergency Amendments:

- 1. Resolution: Emergency Amendments to the General Tribal Council Meeting Stipend Payment Policy
- 2. Statement of Effect: Emergency Amendments to the General Tribal Council Meeting Stipend Payment Policy
- 3. General Tribal Council Meeting Stipend Payment Policy Emergency Amendments Legislative Analysis
- 4. General Tribal Council Meeting Stipend Payment Policy (Redline)
- 5. General Tribal Council Meeting Stipend Payment Policy (Clean)

### Overview

Emergency amendments to the General Tribal Council Meeting Stipend Payment Policy are being sought to create an exception to the mandatory payment of General Tribal Council (GTC) meeting stipends when deemed necessary to protect and safeguard the resources and general welfare of the Nation. The emergency amendments to the General Tribal Council Meeting Stipend Payment Policy will:

Provide the Oneida Business Committee with authority to decide, through adoption of a resolution, to halt the payment of General Tribal Council meeting stipends to all eligible members for a period of time the Oneida Business Committee deems necessary to protect and safeguard the resources and general welfare of the Nation. [1 O.C. 111.4-3(c)].

The world is currently facing a pandemic of COVID-19 after an outbreak began in Wuhan, China and quickly spread to many other countries throughout the world, including the United States. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. State governors, including the State of Wisconsin, have declared public health emergencies and state public health officers have issued orders, for example, closing public schools, limiting public gatherings, and closing restaurants and bars except for take-out orders.

On March 12, 2020, in accordance with the Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "*Declaration of Public Health State of Emergency*" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

Since the declaration of a public health emergency, the Oneida Business Committee has taken action to protect the health and welfare of the members, employees and the community, including instituting expenditure restrictions to preserve resources for the provision of governmental services to members most at risk, closure of the Nation's gaming operations, and insuring that employees will continued to be paid during the public health emergency as long as the Nation's resources will allow.

The declaration of a public health emergency by the Nation and the potential financial impacts of the COVID-19 pandemic met the Budget Management and Control law's requirement that the Nation be under extreme financial distress for the budget contingency plan to be implemented. The Oneida Business Committee adopted resolution BC-03-17-20-A which declared that Tier IV budget contingency measures are implemented which required a four percent (4%) reduction in overall expenditures and budgets. On April 8, 2020, the Oneida Business Committee will consider the adoption of a resolution to declare that Tier V budget contingency measures be implemented.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency amendments to the General Tribal Council Meeting Stipend Payment Policy are necessary for the preservation of the general welfare of the Reservation population. The emergency amendments would allow for the Oneida Business Committee to discontinue the payment of GTC meeting stipends in an effort to protect the general welfare of the Reservation population by maintaining essential governmental services and employment when no revenues are generated through gaming operations and during the period of time it takes after gaming operations start back up for the Nation to recover from the financial distress caused by the COVID-19 pandemic.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately preserve funding for necessary governmental services and activities as a result of the COVID-19 pandemic.

The emergency amendments to the General Tribal Council Meeting Stipend Payment Policy will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

### **Requested Action**

Approve the Resolution: Emergency Amendments to the General Tribal Council Meeting Stipend Payment Policy.



### **Oneida Nation**

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

1 2	Emerge	BC Resolution # ncy Amendments to the General Tribal Council Meeting Stipend Payment Policy
3 4 5 6	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
7 8	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and
9 10 11	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
12 13 14 15	WHEREAS,	the federal government has proclaimed a public health emergency related to the spread of the COVID-19 virus and has identified that the spread of the virus has resulted in large numbers of individuals becoming ill and high mortality rates, impacts to the stock markets, and businesses; and
16 17 18 19 20	WHEREAS,	state governors, including the State of Wisconsin, have declared public health emergencies and state public health officers have issued orders, for example, closing public schools, limiting public gatherings, and closing restaurants and bars except for take-out orders; and
21 22 23 24 25 26 27	WHEREAS,	on March 12, 2020, Chairman Hill declared a public health state of emergency, and the Oneida Business Committee took actions to take steps to protect the health and welfare of the members, employees and the community, including instituting expenditure restrictions to preserve resources for the provision of governmental services to members most at risk, closure of the Nation's gaming operations, and insuring that employees will continued to be paid during the public health emergency as long as the Nation's resources will allow; and
28 29 30 31 32	WHEREAS,	the Oneida Business Committee adopted resolution BC-03-17-20-A which declared that Tier IV budget contingency measures are implemented which required a four percent (4%) reduction in overall expenditures and budgets; and
33 34 35 36	WHEREAS,	the Oneida Business Committee adopted resolution BC-0420, which declared that Tier V budget contingency measures be implemented and directed expenditure reductions regarding non-essential government functions and instituted lay-offs regarding non-critical personnel; and
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WHEREAS,

WHEREAS, the Finance Team has determined the following rules shall apply to all decisions being made regarding the finances of the Nation and how those limited resources shall be allocated:

regarding COVID-19 and the health impacts of the virus; and

the Treasurer has implemented a COVID-19 Finance Team ("Finance Team") to monitor

the financial status of the Nation and make recommendations regarding expenditure

restrictions for the remainder of FY2020, budgeting for FY2021, development of directions

for a continuing resolution for FY2021, and other actions necessary to ensure

governmental services can continue to be provided to those most in need and at risk

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- 1. All decisions are employee/member/community empathetic/compassionate balanced against cash flow; and
- 2. All decisions shall protect investments; and utilize only available cash; and
- the Finance Team has identified that the Nation can, if funding is carefully managed, meet the needs of the operations in providing services for a thirty (30) day period beginning from the closure date of the gaming operations; and
- the Finance Team, working closely with Intergovernmental Affairs and Communications, is kept up-to-date regarding federal emergency funding opportunities which will assist the Nation in managing the public health crisis and has identified that the Nation has a potential gap of thirty (30) to sixty (60) days where federal financial assistance will be authorized
- the Finance Team, working closely with the Grants Office, has identified that granting agencies will be providing approvals to delay or amend existing grants considering the current public health crisis which will assist the Nation in managing expenses during the financial constraints; and
- the Oneida Nation has had in place the General Tribal Council Meeting Stipend Payment Policy that makes payment of stipends mandatory to attendees of a General Tribal Council meeting who meet the eligibility requirements, without exception, even if said payments would be detrimental to the resources and general welfare of the Nation; and
- the proposed emergency amendments allow for GTC meeting stipend payments to be discontinued when the Oneida Business Committee determines, through adoption of a resolution, that it is a necessary measure to protect and safeguard the resources and general welfare of the Nation; and
- adopting emergency amendments to the General Tribal Council Meeting Stipend Payment Policy is necessary to give the Oneida Business Committee the authority to halt payments of GTC meeting stipends as necessary to maintain essential governmental services and employment during a time when no revenues are generated through gaming operations;
- the Chief Financial Officer, Treasurer, and Finance Team, are recommending the Oneida Business Committee adopt a resolution regarding emergency amendments to the General Tribal Council Meeting Stipend Payment Policy to include an exception to the mandatory payment of GTC meeting stipends when necessary to protect and safeguard the resources and general welfare of the Nation; and
- the Oneida Business Committee, after being informed regarding the current financial status and near-term future financial resources, has determined that implementation of the emergency amendments is needed to preserve funding for necessary governmental services and activities; and
- the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis, to be in effect for a period of six (6) months, renewable for an additional six (6) months; and
- emergency adoption of legislation is allowed when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act; and

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BC Resolution \_\_\_\_\_\_
Emergency Amendments to the General Tribal Council Meeting Stipend Payment Policy

Page 3 of 3

**NOW THEREFORE BE IT RESOLVED,** that the Oneida Business Committee hereby adopts the emergency amendments to the General Tribal Council Meeting Stipend Payment Policy effective immediately.

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### Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



### **Statement of Effect**

Emergency Amendments to the General Tribal Council Meeting Stipend Payment Policy Summary

This resolution adopts emergency amendments to the General Tribal Council Meeting Stipend Payment Policy which provide an exception to the mandatory payment of stipends to eligible attendees of a General Tribal Council ("GTC") meeting when the Oneida Business Committee determines, through adoption of a resolution, that the halting of stipend payments is necessary to protect and safeguard the resources and general welfare of the Oneida Nation.

Submitted by: Kristen M. Hooker, Staff Attorney, Legislative Reference Office

Date: April 1, 2020

### Analysis by the Legislative Reference Office

This resolution adopts emergency amendments to the General Tribal Council Meeting Stipend Payment Policy ("Law"). The purpose of the Law is to govern the payment of stipends for attendance at meetings of the GTC. [1 O.C. 111.1-1]. The emergency amendments to the Law will:

• Provide the Oneida Business Committee with authority to adopt a resolution that halts the payment of General Tribal Council meeting stipends to all eligible members of Nation when the Oneida Business Committee determines it is necessary to protect and safeguard the resources and general welfare of the Nation. [1 O.C. 111.4-3(c)].

The Legislative Procedures Act ("LPA") allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [1 O.C. 109.9-5].

The resolution provides various information on the COVID-19 pandemic that the world is now facing. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts.

On March 12, 2020, in accordance with the Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "*Declaration of Public Health State of Emergency*" regarding COVID-19. [3 O.C. 302.8-1]. On March 17, 2020, the Oneida Business Committee adopted resolution BC-03-17-20-A declaring that Tier IV budget contingency measures be implemented which required a four percent (4%) reduction in overall expenditures and budgets. On April 8, 2020, the Oneida Business Committee will consider the adoption of a resolution to declare that Tier V budget contingency measures be implemented.

The resolution provides that the emergency amendments to this Law are necessary for the preservation of the general welfare of the Reservation population. The emergency amendments provide an exception to the otherwise mandatory payment of GTC meeting stipends when the

Oneida Business Committee determines that the halting of said payments would protect and safeguard the resources and general welfare of the Oneida Nation.

Additionally, the resolution provides that observance of the requirements under the LPA for adoption of this amendment would be contrary to public interest. The process and requirements of the LPA cannot be completed in time to allow the Nation the ability to adequately preserve funding for necessary governmental services and activities as a result of the COVID-19 pandemic.

The emergency amendments to the General Tribal Council Meeting Stipend Payment Policy will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

### Conclusion

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





# TRIBAL COUNCIL MEETING STIPEND PAYMENT POLICY LEGISLATIVE ANALYSIS

### **SECTION 1. EXECUTIVE SUMMARY**

Analysis by the Legislative Reference Office				
Intent of the	To provide the Oneida Business Committee with the authority to adopt a			
<b>Proposed Amendments</b>	resolution that halts the payment of General Tribal Council meeting stipends			
	to all eligible members of Nation when necessary to protect and safeguard the			
	resources and general welfare of the Nation.			
Purpose	To govern the payment of stipends for attendance at General Tribal Council			
	meetings. [1 O.C. 111.1-1].			
Affected Entities	Members of the General Tribal Council.			
Public Meeting	A public meeting is not required for emergency legislation [1 O.C. 109.8-			
	1(b) and 109.9-5(a)].			
Fiscal Impact	A fiscal impact statement is not required for emergency legislation [1 O.C.			
	109.9-5(a)].			
<b>Expiration of Emergency</b>	Emergency amendments expire six (6) months after adoption and may be			
Amendments	renewed for one additional six (6) month period. [1 O.C. 109.9-5(b)].			

### **SECTION 2. LEGISLATIVE DEVELOPMENT**

- **A.** *Background*. The General Tribal Council Meeting Stipend Payment Policy ("Law") sets forth the standards for determining the stipend eligibility of members of the Oneida Nation who attend General Tribal Council meetings, as well as the process for paying such members their meeting stipends. [1 O.C. 111.1-2].
- **B.** *COVID-19 Pandemic*. The world is currently facing a pandemic of the coronavirus disease 2019 (COVID-19). The COVID-19 outbreak originated in Wuhan, China and has spread to many other countries throughout the world, including the United States. The World Health Organization has identified that the spread of COVID-19 is now a pandemic resulting in many countries experiencing the effects of illness and health issues related to COVID-19 and economic impacts.
  - Declarations of Emergency.
    - Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" on March 12, 2020, regarding COVID-19 which sets into place the necessary authority should action need to be taken, and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. Through the adoption of resolution BC-03-26-20-A, the Nation extended the Public Health State of Emergency to May 12, 2020.
      - Since the public health emergency was declared, the Oneida Business Committee has taken action to protect the health and welfare of the members, employees and the community, including instituting expenditure restrictions to preserve resources for the provision of governmental services to members most at risk, closure of the Nation's gaming operations, and insuring that employees will continued to be paid during the public health emergency as long as the Nation's resources will allow.

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- **SECTION 4. PROCESS**

- The Oneida Business Committee adopted resolution BC-03-17-20-A which declared that Tier IV budget contingency measures be implemented in accordance with the Budget Management and Control law. Tier IV budget contingency measures included a four percent (4%) reduction in overall expenditures and budgets.
- On April 8, 2020, the Oneida Business Committee will consider the adoption of a resolution which would declare that Tier V budget contingency measures be implemented and direct expenditure reductions regarding non-essential government functions and institute lay-offs regarding non-critical personnel.
- Governor Evers declared a public health emergency for the State of Wisconsin on March 12, 2020, based on COVID-19 cases in Wisconsin.
  - The State of Wisconsin has now closed public schools, limited public gatherings, and closed restaurants and bars except for take-out orders or delivery.
- President Trump declared a national emergency for the United States over the COVID-19 outbreak on March 13, 2020.
- Center of Disease Control Precautions. The Center of Disease Control has identified that March, April, and May should be the time when the potential for the highest increases in the number of confirmed cases would occur, and issued the following precautions to avoid further spread of COVID-19:
  - Clean your hands often.
    - Wash your hands often with soap and water for at least twenty (20) seconds especially after you have been in a public place, or after blowing your nose, coughing, or sneezing.
    - If soap and water are not readily available, use a hand sanitizer that contains at least sixty percent (60%) alcohol. Cover all surfaces of your hands and rub them together until they feel dry.
    - Avoid touching your eyes, nose, and mouth with unwashed hands.
  - Avoid close contact.
    - Avoid close contact with people who are sick
    - Put distance between yourself and other people if COVID-19 is spreading in your community. This is especially important for people who are at higher risk of getting very sick.
- C. In response to the COVID-19 pandemic, emergency amendments to the General Tribal Council Meeting Payment Policy are being sought to allow the Oneida Business Committee to make an exception to the requirement that all eligible attendees at a meeting of the General Tribal Council receive a stipend for their attendance when it is necessary to protect and safeguard the resources and general welfare of the Oneida Nation.

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

- **A.** Representatives from the following departments or entities participated in the development of this Law and legislative analysis:
  - Oneida Law Office.

- **A.** These amendments are being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency law "where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the Reservation population and enactment or amendment of legislation is required sooner than would be possible under this law." [1 O.C. 109.9-5].
  - Emergency amendments are being pursued for the immediate preservation of the general welfare of the Reservation population against the public health crisis that is the COVID-19 pandemic and its resulting effects. Chairman Tehassi Hill declared a public health state of emergency for the Nation on March 12, 2020. Adopting emergency amendments to the General Tribal Council Meeting Stipend Payment Policy to authorize the halting of meeting stipend payments is necessary to maintain essential governmental services and employment when no revenues are generated through gaming operations and during the time it takes after gaming operations start back up for the Nation to recover from the financial damage caused by the COVID-19 pandemic.
  - Observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately preserve funding for necessary governmental services and activities as a result of the COVID-19 pandemic.
  - **B.** The emergency amendments will expire six (6) months after adoption, with one (1) opportunity for a six (6) month extension of the emergency amendments. [1 O.C. 109.9-5(b)].
  - **C.** The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact statement will eventually be required when considering permanent adoption of these amendments.
  - **D.** Now, emergency amendments are being pursued to address situations where the payment of meeting stipends would be contrary to the welfare of the Nation.

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

- **A.** Exception to Mandatory Payment of GTC Meeting Stipends. The proposed emergency amendments provide that the Oneida Business Committee may decide through adoption of a resolution to halt the payment of General Tribal Council meeting stipends to all eligible members for a period of time deemed necessary by the Oneida Business Committee to protect and safeguard the resources and general welfare of the Nation. [1 O.C. 111.4-3(c)]. Previously, payment of the stipend was mandatory so long as those who attended the General Tribal Council meeting met the eligibility requirements, without exception, even if the payment would be detrimental to the resources and general welfare of the Nation.
  - Effect. The proposed emergency amendments allow for GTC meeting stipend payments to be discontinued when the Oneida Business Committee determines, through adoption of a resolution, that it is a necessary measure to protect and safeguard the resources and general welfare of the Nation. Due to the COVID-19 pandemic and the resulting closures of the Nation's gaming operations, it has been determined that it is necessary to maintain essential governmental services and activities during a time when no revenues are generated through gaming operations. These emergency amendments are being sought to allow for the Nation's essential services and activities to continue by halting the payment of GTC meeting stipends for a period of time deemed necessary by the Oneida Business Committee for said continuance.

### **SECTION 6. EXISTING LEGISLATION**

- **A.** *Related Legislation*. The following laws of the Nation are related to the emergency amendments to this Law:
  - Legislative Procedures Act. The Legislative Procedures Act was adopted by the General Tribal Council on January 7, 2013, for the purpose of providing a standard process for the adoption of laws of the Nation which includes taking into account comments from members of the Nation and input from agencies of the Nation. [1 O.C. 109.1-1, 109.1-2].
    - The Legislative Procedures Act provides a process for the adoption of emergency legislation when the legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population and the enactment or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].
      - The Legislative Operating Committee is responsible for first reviewing the emergency legislation and for forwarding the legislation to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
      - The proposed emergency legislation is required to have a legislative analysis completed and attached prior to being sent to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
        - A legislative analysis is a plain language analysis describing the important features of the legislation being considered and factual information to enable the Legislative Operating Committee to make informed decisions regarding legislation. A legislative analysis includes a statement of the legislation's terms and substance; intent of the legislation; a description of the subject(s) involved, including any conflicts with Oneida or other law, key issues, potential impacts of the legislation and policy considerations. [1 O.C. 109.3-1(g)].
      - Emergency legislation does not require a fiscal impact statement to be completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
      - Upon the determination that an emergency exists the Oneida Business Committee can adopt emergency legislation. The emergency legislation becomes effective immediately upon its approval by the Oneida Business Committee. [1 O.C. 109.9-5(b)].
      - Emergency legislation remains in effect for a period of up to six (6) months, with an opportunity for a one-time emergency law extension of up to six (6) months. [1 O.C. 109.9-5(b)].
    - Adoption of these proposed emergency amendments would conform with the requirements of the Legislative Procedures Act.
  - Emergency Management and Homeland Security law. The Emergency Management and Homeland Security law provides for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; and provides for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; and establishes the use of the National Incident Management System; and designates authority and responsibilities for public health preparedness. [3 O.C. 302.1-1].

156	■ The Emergency Management and Homeland Security law provides that the Oneida Business
157	Committee shall be responsible for proclaiming or ratifying the existence of an emergency.
158	[3 O.C. 302.8-1]. A public health emergency is defined as the occurrence or imminent threat
159	of an illness or health condition which:
160	(1) is a quarantinable disease, or is believed to be caused by bioterrorism or a biological
161	agent; and
162	(2) poses a high probability of any of the following:
163	(A) a large number of deaths or serious or long-term disability among humans; or
164	(B) widespread exposure to a biological, chemical, or radiological agent that
165	creates a significant risk of substantial future harm to a large number of people.

 Chairman Tehassi Hill's March 12, 2020, "Declaration of Public Health State of Emergency" conform with the requirements of the Emergency Management and Homeland Security law.

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### **SECTION 7. OTHER CONSIDERATIONS**

[3 O.C. 302.3-1(o)].

- **A.** *Deadline for Permanent Adoption of Amendments.* The emergency amendments will expire six (6) months after adoption, with one (1) opportunity for an extension of an additional six (6) month period.
  - Conclusion: The Legislative Operating Committee will need to consider the development and adoption of permanent amendments to this Law within the next six (6) to twelve (12) months. Permanent adoption would require approval by the Oneida General Tribal Council.
- B. Fiscal Impact. A fiscal impact statement is not required for emergency legislation.
  - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

111.1. Pui	rpose and Policy	111.4. Stipends
111.2. Ad	loption, Amendment, Repeal	111.5. General Tribal Council Meetings
11 <u>1.3.</u> De	efinitions	111.6. Appeals

### 111.1. Purpose and Policy

111.1-1. The purpose of this policylaw is to govern the payment of stipends for attendance at General Tribal Council meetings.

111.1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin Nation to pay eligible General Tribal Council members a stipend for attending a General Tribal Council meeting at which a quorum is established and maintained and where official Tribal business is conducted.<sup>1</sup>

### 111.2. Adoption, Amendment, Repeal Conflicts

11 11.2-1. This policylaw was adopted by the Oneida Business Committee by Resolution BC-12-10-08-K-and, amended by resolution BC-02-13-13-E- and emergency amended by resolution

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- 14 111.2-2. This policylaw may be amended pursuant to Tribal lawor repealed by the Oneida General
  Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 16 111.2-3. Should a provision of this policylaw or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this policylaw which are considered to have legal force without the invalid portions.
- 19 111.2-4. In the event of a conflict between a provision of this policylaw and a provision of another law, ordinance, policy, regulation, rule, resolution or motion, the provisions of this policylaw shall control. Provided that, nothing in this policy is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.
  - 111.2-5. This policylaw is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin Nation.

### 111.3. Definitions

- 111.3-1. This section shall govern the definitions of words and phrases <u>as</u> used within this law.- All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "General Tribal Council" means the governing body of the Oneida Tribe of Indians of WisconsinNation, which is composed of the qualified voters of the TribeOneida Nation, as determined by the Constitution of the Oneida Tribe of Indians of WisconsinNation.
  - (b) "Tribe" or "Tribal Nation" means the Oneida Tribe of Indians of Wisconsin Nation.

### 111.4. Stipends

111.4-1. Any TribalExcept as provided in section 111.4-3(c) of this law, any member of the Nation who meets the requirements of section 111.4-2 shall receive a stipend in an amount determined by General Tribal Council for attending a General Tribal Council meeting, if a quorum is established.

(a) If a quorum has not been established within fifteen (15) minutes after the published

<sup>&</sup>lt;sup>1</sup>August 11, 2007 GTC Directive: "Motion by Madelyn Genskow that a stipend of \$100 be paid to any General Tribal Council member who attends a GTC meeting and is eligible to vote and stays until the end of the meeting effective in calendar year 2008 and for all time, seconded by Nancy Skenandore."

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starting time, the meeting shall not be held and no stipend shall be paid.

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- 111.4-2. In order to receive a stipend for attending a General Tribal Council meeting, a person shall:
  - (a) be a qualified voter, in accordance with the Oneida Constitution of the Oneida Nation;
  - (b) except as provided under (1), register no later than fifteen (15) minutes after the published starting time of the meeting by checking in at a registration table, filling out any required forms, and providing a valid Tribal or state issued picture identification;
    - (1) A person who is physically in line to register for a General Tribal Council meeting within fifteen (15) minutes after the published starting time of the meeting, may receive a stipend for attending a General Tribal Council meeting if he or she registers and meets the other requirements under this section.
  - (c) be present for the entire meeting, from the time the meeting is called to order until the meeting is adjourned; and
    - (1) For purposes of this policylaw, a Tribal-member of the Nation who leaves the meeting area and any related bathroom facilities, as identified by the Tribal Secretary's Office of the Nation's Secretary, is not considered present for the entire meeting.
  - (d) check out and provide a valid Tribal or state issued picture identification card after the meeting ends.
    - (1) -For the purposes of this policylaw, a meeting ends when the meeting is adjourned, the meeting is recessed to a later date, or a quorum is lost.
- 111.4-3. Payment. -The stipend payment shall be made by an acceptable distribution process approved by the Accounting Department. Any fees associated with reissuing a payment shall be deducted from a reissued payment.
  - (a) The Accounting Department shall distribute stipend payments no later than fifteen (15) business days after a General Tribal Council meeting is held.
  - (b) If a Tribal member of the Nation does not receive a stipend payment after meeting the requirements of section 111.4-2, he or she may contact the Enrollment Department to verify his or her eligibility to receive the stipend payment.
  - (c) Exception. The Oneida Business Committee may decide through adoption of a resolution to halt the payment of General Tribal Council meeting stipends to all eligible members for a period of time deemed necessary by the Oneida Business Committee to protect and safeguard the resources and general welfare of the Nation.

### 111.5. General Tribal Council Meetings

- 111.5-1. Enrollment Department.
  - (a) The Enrollment Department shall be responsible for the following at each General Tribal Council meeting:
    - (1) Conducting check in/out of Tribal-members of the Nation and verifying voter eligibility.
    - (2) Verifying mailing address of each Tribal member of the Nation.
    - (3) Providing eligible Tribal members of the Nation with a hand stamp, bracelet or other identifier that can be displayed upon request to prove they are eligible to attend the meeting and/or vote during the meeting.
  - (b)- Enrollment Department officials shall be responsible for verifying the information provided by Tribal members of the Nation while checking in and out.- A Tribal or state issued

picture identification card shall be required to verify the identity of the person registering.

- (c) The Enrollment Department shall send the relevant information regarding Tribal-members of the Nation who are eligible to receive a stipend to the Accounting Department as soon as possible after the meeting.
- 111.5-2. If the facility where the meeting is held does not seat at least twenty-two thousand five hundred (2,500) people, the Oneida Business Committee shall have the Security Department or other applicable individuals limit meeting attendees to those Tribal members of the Nation who are eligible to vote.

111.6. Appeals

- 111.6-1. Any <u>Tribal</u> member of the <u>Nation</u> denied a stipend payment may file an appeal with the Enrollment Department within forty-five (45) days after the meeting for which the meeting stipend was denied. The review shall be conducted by the Enrollment Director or his/her designee. –A determination as to whether the <u>Tribal</u> member was eligible for the stipend shall be made within five (5) business days of receipt of the appeal.
  - (a) The determination shall be sent by registered mail (return receipt requested) or delivered in person to the Tribal-member.
  - (b) In the event a stipend payment is denied, the determination shall include a statement notifying the Tribal member that he or she has fourteen (14) calendar days to file an appeal with the Oneida Trust/Enrollment Committee.
  - (c) In the event a stipend payment is granted, the determination shall include a statement notifying the Tribal member that the Enrollment Department will forward his or her relevant information to the Accounting Department to process the payment.
- 111.6-2. Any Tribal-member of the Nation denied a stipend payment after an appeal to the Enrollment Director may appeal the Director's determination to the Oneida Trust/Enrollment Committee. -The appeal shall be filed within fourteen (14) calendar days of receipt of the determination.- An appeal shall be filed with the Oneida Trust/Enrollment Committee in care of the Enrollment Department. The Enrollment Department shall forward the appeal to the Oneida Trust/Enrollment Committee no later than the next business day.
- 111.6-3. A quorum of the Oneida Trust/Enrollment Committee shall conduct a hearing of the appeal and issue a determination within forty-five (45) days of the receipt of the Tribal member=smember's request for review.
  - (a) The Oneida Trust/Enrollment Committee determination shall be sent by registered mail (return receipt requested) or delivered in person to the Tribal member.
- 111.6-4. Payments after an Appeal.
  - (a) Within five (5) business days after the Enrollment Director or the Oneida Trust/Enrollment Committee determines that a stipend should have been granted, the Enrollment Department shall notify the Accounting Department of the determination, the name of the Tribal member and any additional relevant information needed by the Accounting Department to make the payment.
  - (b) The Accounting Department shall distribute a stipend payment to the Tribal member within fifteen (15) business days from the notification.
- 111.6-5. The determination of the Oneida Trust/Enrollment Committee shall be final.

## Draft 1 for OBC Emergency Consideration (Redline to Current) 2020 04 08

### 127 End.

GTC Directive – 8/11/07
Emergency Adoption – BC-12-07-07-A
Emergency Extension – BC-05-28-08-C
Permanent Adoption – BC-12-10-08-K
GTC Directive – GTC-11-21-11-A
Emergency Adoption – BC-05-09-12-A
Emergency Extension – BC-10-14-12-B
Adopted – BC-02-13-13-E
Emergency Amended – BC- - -

### Title 1. Government and Finances – Chapter 111 GENERAL TRIBAL COUNCIL MEETING STIPEND PAYMENT POLICY

111.1.	Purpose and Policy	111.4. Stipends
111.2.	Adoption, Amendment, Repeal	111.5. General Tribal Council Meetings
111.3.	Definitions	111.6. Appeals

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### 111.1. Purpose and Policy

- 111.1-1. The purpose of this law is to govern the payment of stipends for attendance at General Tribal Council meetings.
- 111.1-2. It is the policy of the Oneida Nation to pay eligible General Tribal Council members a stipend for attending a General Tribal Council meeting at which a quorum is established and maintained and where official Tribal business is conducted.<sup>1</sup>

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### 111.2. Adoption, Amendment, Conflicts

- 11 11.2-1. This law was adopted by the Oneida Business Committee by resolution BC-12-10-08-K, amended by resolution BC-02-13-13-E and emergency amended by resolution BC-\_\_-\_\_.
- 13 111.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the 14 procedures set out in the Legislative Procedures Act.
- 15 111.2-3. Should a provision of this law or the application thereof to any person or circumstances be 16 held as invalid, such invalidity shall not affect other provisions of this law which are considered to 17 have legal force without the invalid portions.
- 18 111.2-4. 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.
  - 111.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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### 111.3. Definitions

- 111.3-1. This section shall govern the definitions of words and phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "General Tribal Council" means the governing body of the Oneida Nation, which is composed of the qualified voters of the Oneida Nation, as determined by the Constitution of the Oneida Nation.
  - (b) "Nation" means the Oneida Nation.

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### 111.4. Stipends

- 111.4-1. Except as provided in section 111.4-3(c) of this law, any member of the Nation who meets the requirements of section 111.4-2 shall receive a stipend in an amount determined by General Tribal Council for attending a General Tribal Council meeting, if a quorum is established.
  - (a) If a quorum has not been established within fifteen (15) minutes after the published starting time, the meeting shall not be held and no stipend shall be paid.
- 111.4-2. In order to receive a stipend for attending a General Tribal Council meeting, a person shall:
  - (a) be a qualified voter, in accordance with the Constitution of the Oneida Nation;
  - (b) except as provided under (1), register no later than fifteen (15) minutes after the published

<sup>&</sup>lt;sup>1</sup>August 11, 2007 GTC Directive: "Motion by Madelyn Genskow that a stipend of \$100 be paid to any General Tribal Council member who attends a GTC meeting and is eligible to vote and stays until the end of the meeting effective in calendar year 2008 and for all time, seconded by Nancy Skenandore."

starting time of the meeting by checking in at a registration table, filling out any required forms, and providing a valid Tribal or state issued picture identification;

- (1) A person who is physically in line to register for a General Tribal Council meeting within fifteen (15) minutes after the published starting time of the meeting, may receive a stipend for attending a General Tribal Council meeting if he or she registers and meets the other requirements under this section.
- (c) be present for the entire meeting, from the time the meeting is called to order until the meeting is adjourned; and
  - (1) For purposes of this law, a member of the Nation who leaves the meeting area and any related bathroom facilities, as identified by the Office of the Nation's Secretary, is not considered present for the entire meeting.
- (d) check out and provide a valid Tribal or state issued picture identification card after the meeting ends.
  - (1) For purposes of this law, a meeting ends when the meeting is adjourned, the meeting is recessed to a later date, or a quorum is lost.
- 111.4-3. *Payment*. The stipend payment shall be made by an acceptable distribution process approved by the Accounting Department. Any fees associated with reissuing a payment shall be deducted from a reissued payment.
  - (a) The Accounting Department shall distribute stipend payments no later than fifteen (15) business days after a General Tribal Council meeting is held.
  - (b) If a member of the Nation does not receive a stipend payment after meeting the requirements of section 111.4-2, he or she may contact the Enrollment Department to verify his or her eligibility to receive the stipend payment.
  - (c) *Exception*. The Oneida Business Committee may decide through adoption of a resolution to halt the payment of General Tribal Council meeting stipends to all eligible members for a period of time deemed necessary by the Oneida Business Committee to protect and safeguard the resources and general welfare of the Nation.

### 111.5. General Tribal Council Meetings

111.5-1. Enrollment Department.

- (a) The Enrollment Department shall be responsible for the following at each General Tribal Council meeting:
  - (1) Conducting check in/out of members of the Nation and verifying voter eligibility.
  - (2) Verifying mailing address of each member of the Nation.
  - (3) Providing eligible members of the Nation with a hand stamp, bracelet or other identifier that can be displayed upon request to prove they are eligible to attend the meeting and/or vote during the meeting.
- (b) Enrollment Department officials shall be responsible for verifying the information provided by members of the Nation while checking in and out. A Tribal or state issued picture identification card shall be required to verify the identity of the person registering.
- (c) The Enrollment Department shall send the relevant information regarding members of the Nation who are eligible to receive a stipend to the Accounting Department as soon as possible after the meeting.
- 111.5-2. If the facility where the meeting is held does not seat at least two thousand five hundred 1 O.C. 111 Page 2

### Draft 1 for OBC Emergency Consideration 2020 04 08

(2,500) people, the Oneida Business Committee shall have the Security Department or other applicable individuals limit meeting attendees to those members of the Nation who are eligible to vote.

### 111.6. Appeals

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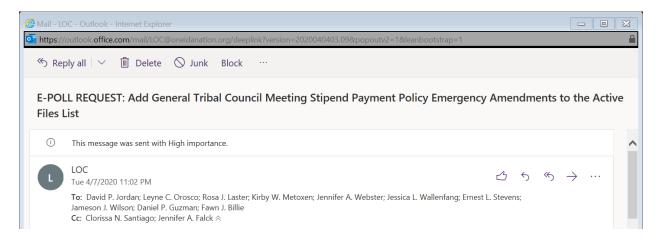
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- 111.6-1. Any member of the Nation denied a stipend payment may file an appeal with the Enrollment Department within forty-five (45) days after the meeting for which the meeting stipend was denied. The review shall be conducted by the Enrollment Director or his/her designee. A determination as to whether the member was eligible for the stipend shall be made within five (5) business days of receipt of the appeal.
  - (a) The determination shall be sent by registered mail (return receipt requested) or delivered in person to the member.
  - (b) In the event a stipend payment is denied, the determination shall include a statement notifying the member that he or she has fourteen (14) calendar days to file an appeal with the Oneida Trust/Enrollment Committee.
  - (c) In the event a stipend payment is granted, the determination shall include a statement notifying the member that the Enrollment Department will forward his or her relevant information to the Accounting Department to process the payment.
- 111.6-2. Any member of the Nation denied a stipend payment after an appeal to the Enrollment Director may appeal the Director's determination to the Oneida Trust/Enrollment Committee. The appeal shall be filed within fourteen (14) calendar days of receipt of the determination. An appeal shall be filed with the Oneida Trust/Enrollment Committee in care of the Enrollment Department. The Enrollment Department shall forward the appeal to the Oneida Trust/Enrollment Committee no later than the next business day.
- 111.6-3. A quorum of the Oneida Trust/Enrollment Committee shall conduct a hearing of the appeal and issue a determination within forty-five (45) days of the receipt of the member's request for review.
  - (a) The Oneida Trust/Enrollment Committee determination shall be sent by registered mail (return receipt requested) or delivered in person to the member.
- 111.6-4. Payments after an Appeal.
  - (a) Within five (5) business days after the Enrollment Director or the Oneida Trust/Enrollment Committee determines that a stipend should have been granted, the Enrollment Department shall notify the Accounting Department of the determination, the name of the member and any additional relevant information needed by the Accounting Department to make the payment.
  - (b) The Accounting Department shall distribute a stipend payment to the member within fifteen (15) business days from the notification.
- 111.6-5. The determination of the Oneida Trust/Enrollment Committee shall be final.

120 121 End.

Draft 1 for OBC Emergency Consideration 2020 04 08

Emergency Extension – BC-10-14-12-B Adopted – BC-02-13-13-E Emergency Amended – BC-\_\_-\_\_-\_\_-



### **Good Afternoon Legislative Operating Committee,**

This e-mail serves as the e-poll for adding the emergency amendments to the General Tribal Council Meeting Stipend Payment Policy to the active files list. On April 2, 2020, the LOC unanimously approved the e-poll request to approve the General Tribal Council Meeting Stipend Payment Policy adoption packet and forward to the Oneida Business Committee for consideration. The April 2, 2020 e-poll inadvertently failed to request that the LOC first add the General Tribal Council Meeting Stipend Payment Policy emergency amendments to the active files list as required under the Legislative Procedures Act (LPA) before legislation is sent to the Oneida Business Committee for consideration. [1 O.C. 109.5-2]. This e-poll is being sent to satisfy the requirements of the LPA by requesting that the LOC add the emergency amendments to the General Tribal Council Meeting Stipend Payment Policy to the active files list in advance of the amendments being considered for adoption by the Oneida Business Committee during its meeting of April 8, 2020.

Please note: that you will have to respond with the word "approve" or "disapprove" as the voting button does not appear to be available when sending remotely.

### **EXECUTIVE SUMMARY**

The world is currently facing a pandemic of coronavirus disease (COVID-19) after an outbreak began in Wuhan, China and quickly spread to many other countries throughout the world, including the United States. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. On March 12, 2020, in accordance with Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a public health state of emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. The declaration of a public health emergency by the Nation and the potential financial impacts of the COVID-19 pandemic met the Budget Management and Control law's requirement that the Nation be under extreme financial distress for the budget contingency plan to be implemented. The

Oneida Business Committee adopted resolution BC-03-17-20-A which declared that Tier IV budget contingency measures are implemented which required a four percent (4%) reduction in overall expenditures and budgets. On April 8, 2020, the Oneida Business Committee will consider the adoption of a resolution to declare that Tier V budget contingency measures be implemented.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5].

Emergency amendments to the General Tribal Council Meeting Stipend Payment Policy are being sought to provide an exception to the mandatory payment of stipends to eligible attendees of a General Tribal Council meeting when necessary to protect and safeguard the resources and general welfare of the Oneida Nation. The emergency amendments to the General Tribal Council Meeting Stipend Payment Policy will:

Provide the Oneida Business Committee with authority to adopt a resolution that halts
the payment of General Tribal Council meeting stipends to all eligible members of the
Nation for a period of time that the Oneida Business Committee deems necessary to
protect and safeguard the resources and general welfare of the Oneida Nation.

The emergency amendments to the General Tribal Council Meeting Stipend Payment Policy are necessary for the preservation of the general welfare of the Reservation population. The emergency amendments allow the Oneida Business Committee to discontinue the payment of otherwise mandatory General Tribal Council meeting stipends to maintain essential governmental services and employment when no revenues are being generated through gaming operations and during such time as it takes once gaming operations start back up for the Nation to recover from the financial damage caused by the COVID-19 pandemic.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately preserve funding for necessary governmental services and activities as a result of the COVID-19 pandemic.

An e-poll is necessary for this matter because the Legislative Operating Committee approved the April 2, 2020 e-poll request to approve the materials for the emergency adoption of amendments to the General Tribal Council Meeting Stipend Payment Policy. The April 2, 2020 e-poll was necessary because the April 1, 2020 meeting was canceled due to the COVID-19 pandemic, and immediate action was required by Legislative Operating Committee to approve the materials for the emergency adoption of amendments to the General Tribal Council Meeting Stipend Payment Policy so the materials could be forwarded to the Oneida Business Committee for consideration during its April 8, 2020, Oneida Business Committee meeting. The April 2, 2020 e-poll request

inadvertently failed to include the request that the LOC first add the emergency amendments to the active files list as required by the Legislative Procedures Act before legislation is considered by the Oneida Business Committee for adoption. This e-poll serves to satisfy the requirements of the Legislative Procedures Act by taking immediate action to add the emergency amendments to the General Tribal Council Meeting Stipend Payment Policy to the active files list in advance of the Oneida Business Committee's meeting of April 8, 2020.

### **REQUESTED ACTION**

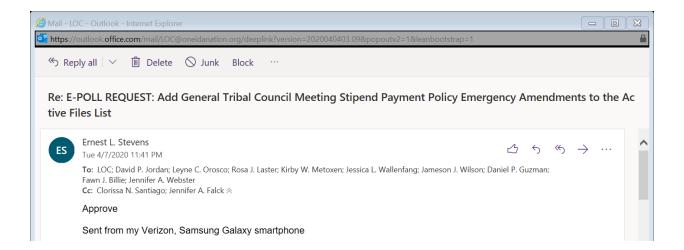
 Approve adding the General Tribal Council Meeting Stipend Payment Policy emergency amendments to the Active Files List.

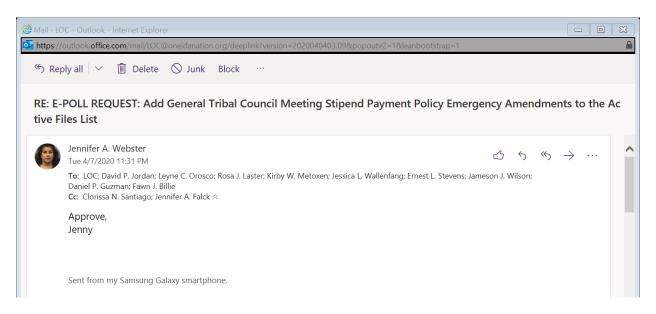
### **DEADLINE FOR RESPONSE**

April 8, 2020 at 7:30 a.m.

### **E-POLL RESULTS:**

The e-poll was approved by Ernest Stevens III, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, and David P. Jordan.











# April 20, 2020, Legislative Operating Committee E-Poll Approval of the Curfew Law Amendments Materials and Fiscal Impact Request Memorandum



**Good Morning Legislative Operating Committee,** 

This e-mail serves as the e-poll for the approval of the Curfew law amendments public comment period review memorandum, draft, updated legislative analysis, and fiscal impact statement request memorandum to the Finance Department.

#### **EXECUTIVE SUMMARY**

The Legislative Operating Committee has been developing amendments to the Curfew law and scheduled a public meeting for the Curfew law amendments to be held on April 2, 2020. After the public meeting was scheduled, the world was hit with a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts. On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a public health emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. This public health emergency was extended to May 12, 2020, through the adoption of resolution BC-03-28-20-A. On March 24, 2020, the Nation's COVID-19 Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. The "Safer at Home" declaration prohibits all public gatherings of any number of people. Then on March 27, 2020, the Nation's COVID-19 Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period. The April 2, 2020, public meeting for the amendments to the Curfew law was canceled by the Legislative Operating Committee on March 30, 2020. The public comment period for the Curfew law amendments was still held open until April 9, 2020, to allow members of the community to provide written submissions of comments or questions to the Legislative Operating Committee through e-mail. No written comments were received during the public comment period for the proposed amendments to the Curfew law.

Receiving no public comments, the proposed amendments to the Curfew law are now ready to continue through the legislative process. The next step in the legislative process is to request a fiscal impact statement. 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 can 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)].

Attached to this e-poll please find the follow documentation:

- Public comment period review memorandum with attached public meeting draft;
- Curfew law amendments draft (redline to current);
- Curfew law amendments draft (clean);
- Updated Curfew law amendments legislative analysis; and
- Fiscal impact statement request memorandum.

The Legislative Operating is now being asked to approve by e-poll the public comment period review memorandum, draft, updated legislative analysis, and fiscal impact statement request memorandum, and to forward the fiscal impact statement request memorandum to the Finance Department directing that a fiscal impact statement of the proposed amendments to the Curfew law be prepared and submitted to the LOC by May 4, 2020.

An e-poll is necessary for this matter because the Legislative Operating Committee has canceled all meetings until June 2020 due to the COVID-19 pandemic, and immediate action is required by Legislative Operating Committee to approve these materials so a fiscal impact statement from the Finance Department can be requested.

#### **REQUESTED ACTION**

To approve the following actions:

- Approve the public comment period review memorandum, draft, updated legislative analysis, and fiscal impact statement request memorandum; and
- Forward the fiscal impact statement request memorandum to the Finance Department directing that a fiscal impact statement of the proposed amendments to the Curfew law be prepared and submitted to the Legislative Operating Committee by May 4, 2020.

#### **DEADLINE FOR RESPONSE**

April 20, 2020 at 3:00 p.m.

All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by Kirby Metoxen, Jennifer Webster, David P. Jordan. Ernest Stevens III and Daniel Guzman King did not provide a response.

#### Approval of the Curfew Law Amendments Materials and Fiscal Impact Request Memorandum



Kirby W. Metoxen

To Daniel P. Guzman; David P. Jordan; LOC; Ernest L. Stevens; Jennifer A. Webster Cc Jameson J. Wilson; Leyne C. Orosco; Clorissa N. Santiago; Rosa J. Laster; Jessica L. Wallenfang; Fawn J. Billie

 $\leftarrow$  Reply  $\ll$  Reply All  $\rightarrow$  Forward  $\cdots$ 

Mon 4/20/2020 12:05 PM

Approve public period & forward for fiscal analysis

Sent from Workspace ONE Boxer

#### RE: Approval of the Curfew Law Amendments Materials and Fiscal Impact Request Memorandum



Jennifer A. Webster

To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Clorissa N. Santiago



Mon 4/20/2020 12:39 PM

Approve

Sent from my Samsung Galaxy smartphone

#### RE: Approval of the Curfew Law Amendments Materials and Fiscal Impact Request Memorandum



David P. Jordan

To LOC; Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Clorissa N. Santiago  $\leftarrow$  Reply  $\ll$  Reply All  $\rightarrow$  Forward  $\cdots$ 

Mon 4/20/2020 1:04 PM

Approve



# Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54115-0365



TO: Legislative Operating Committee (LOC)

FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney

DATE: April 20, 2020

RE: Curfew Law Amendments: Public Comment Period Review

On March 4, 2020, the Legislative Operating Committee approved the public meeting packet and forwarded the Curfew law amendments to a public meeting to be held on April 2, 2020. After the public meeting was scheduled, the world was hit with a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts.

On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a public health emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

On March 24, 2020, the Nation's COVID-19 Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. The "Safer at Home" declaration prohibits all public gatherings of any number of people.

Then on March 27, 2020, the Nation's COVID-19 Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

On March 28, 2020 the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's public health emergency declaration until May 12, 2020.

The April 2, 2020, public meeting for the amendments to the Curfew law was canceled by the Legislative Operating Committee on March 30, 2020. The public comment period for the Curfew law amendments was still held open until April 9, 2020, to allow members of the community to provide written submissions of comments or questions to the Legislative Operating Committee through e-mail.

No written comments were received during the public comment period for the proposed amendments to the Curfew law. A copy of the public meeting draft has been attached to this memorandum.

## Title 3. Health and Public Safety - Chapter 308 T<yethin<tshaw^=late> Kayanl^sla>

We'll put our arms across to stop them CURFEW

308.2. Adoption, Amendment, Repeal

308.3. Definitions

308.4. Jurisdiction

#### 308.5. Curfew

308.6. Enforcement of Curfew Violations 308.7. Penalties of Curfew Violations

#### 308.1. Purpose and Policy

3 308.1-1. *Purpose*. The purpose of this law is to protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor.

308.1-2. *Policy*. It is the policy of the Nation to support all drug use prevention initiatives of the Nation by protecting the health, safety, and welfare of persons through the establishment of a curfew for minors in public spaces within the Reservation during certain hours in an effort to minimize the opportunity for harm to come to minors during those hours.

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#### 308.2. Adoption, Amendment, Repeal

- 308.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-09-19-F<sub>-2</sub> and amended by resolution BC- - - - .
- 308.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 308.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered
- to have legal force without the invalid portions.
- 308.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 22 308.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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#### 308.3. Definitions

- 308.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Court of Appeals" means the branch of the Nation's Judiciary delegated the authority of final appeal within the Nation's Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.
  - (b) "Family Court" means the branch of the Nation's Judiciary delegated the authority to administer the judicial authorities and responsibilities of the Nation related to the family and/or children, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.
  - (c) "Guardian" means the person, department, and/or agency appointed the duty and authority of guardianship of a child by a Court for the purpose of managing and caring for the child. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment

- in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

  (d) "Legal custodian" means any person, department, and/or agency, other than a parent
  - (d) "Legal custodian" means any person, department, and/or agency, other than a parent or guardian, to whom legal custody of a child has been granted by Court order and has the rights and responsibilities for the following:
    - (1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;
    - (2) To protect, educate and discipline the child so long as it is in the child's best interest; and
    - (3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.
  - (e) "Member of the Nation" means an individual enrolled in the Oneida Nation.
  - (f) "Minor" means a person age sixteen (16) years old or younger.
  - (g) "Nation" means the Oneida Nation.
  - (h) "Parent" means the biological or adoptive parent of a child.
  - (j) "Public space" means any public streets, highways, roads, alleys, parks, vacant lots, or any public lands.
  - (j) "Relative" means any person connected with a child by blood, marriage or adoption.
  - (k) "Reservation" means all the property within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

#### 308.4. Jurisdiction

304.4-1. *Jurisdiction of the Court*. The Family Court has jurisdiction over any action brought under this law.

308.4-2. Personal Jurisdiction. This law applies to:

- (a) All members of the Nation, individuals eligible for enrollment in the Nation, and members of other federally-recognized tribes.
- (b) Individuals leasing, occupying or otherwise using fee land owned by the Nation or by individual members of the Nation; and/or lands held in trust on behalf of the Nation or individual members of the Nation.
- (c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the jurisdiction of the Nation:
  - (1) By entering into a consensual relationship with the Nation, or with the Nation's entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or
  - (2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.
- 308.4-3. *Territorial Jurisdiction*. This law extends within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation.

#### 83 **308.5.** Curfew

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- 308.5-1. *Curfew Established*. No minor shall be on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation, unless the minor is accompanied by a parent, guardian, or legal custodian.
- 308.5-2. *Parental Responsibility*. No parent, guardian, or legal custodian shall knowingly permit or fail to take action to prevent the minor from being on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation.
- 308.5-3. *Exemptions to Curfew*. A minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was:
  - (a) in the performance of a duty directed by such parent, guardian, or legal custodian;
  - (b) engaged in employment or an employment related activity, or traveling to or returning home from employment;
  - (c) engaged in interstate travel;
  - (d) attending an educational, cultural, religious, or recreational activity that was supervised by adults, or traveling to or returning home from such activity;
  - (e) on the sidewalk in front of his or her home or an adjacent home;
  - (f) going to, attending, or returning home from a movie theatre;
  - (g) engaged in hunting, fishing, or trapping in accordance with the laws, policies, and rules of the Nation:
  - (h) exercising rights protected by the Nation's Constitution and the United States Constitution, such as free exercise of religion, freedom of speech, and the right of assembly;
  - (i) involved in an emergency situation; and/or
  - (j) engaged in any other activity as deemed appropriate by the Oneida Police Department officer.

#### 308.6. Enforcement of Curfew Violations

308.6-1. *Enforcement Procedure*. A suspected violation of curfew shall be enforced by the Oneida Police Department in the following ways:

- (a) A minor who is suspected of violating curfew may be stopped by an Oneida Police Department officer. No person shall assault, obstruct or flee from any Oneida Police Department officer enforcing or attempting to enforce the provisions of this law.
- (b) The Oneida Police Department officer shall ask the minor's name, age, and reason for violating curfew. The minor shall provide the Oneida Police Department officer identification if available. No person shall falsely represent his or her name or age to an Oneida Police Department officer.
- (c) If the Oneida Police Department officer reasonably believes based on the totality of the circumstances that a violation of curfew has occurred and not one of the exemptions in section 308.5-3 apply, the Oneida Police Department officer may take custody of the minor for the purpose of returning such minor to the care and custody of a parent, guardian, or legal custodian.
- (d) Once the Oneida Police Department officer has taken the minor into his or her custody, the minor shall provide the Oneida Police Department officer with contact information for his or her parent, guardian, or legal custodian. The Oneida Police Department officer shall contact the minor's parent, guardian, or legal custodian to come and pick up the minor and take the minor into his or her care and custody. If the minor's parent, guardian, or legal

- custodian is unable to pick the minor up, then the Oneida Police Department officer may bring the minor home to release the minor to the custody and care of the minor's parent, guardian, or legal custodian.

  (e) If the Oneida Police Department officer is unable to contact the minor's parent, guardian, or legal custodian after reasonable efforts are made, the Oneida Police
  - into the care and custody of such person.

    308.6-2. *Warning*. The first time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer shall provide the minor and the minor's parent, guardian, or legal custodian a warning and advise the minor and parent, guardian, or legal custodian of the provisions of this law and that any subsequent curfew violations may result in the issuance of a citation and the imposition of a penalty.

Department officer shall attempt to locate an adult relative or other responsible adult

willing and able to accept the care and custody of the minor, and may release the minor

- 308.6-3. *Issuance of a Citation*. Any subsequent time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer may issue a citation to the minor and the minor's parent, guardian, or legal custodian.
  - (a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Family Court.
  - (b) A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.
  - (c) All citations for violations of this law require a mandatory appearance at the citation pre-hearing by the minor and his or her parent, guardian, or legal custodian.

#### 308.7. Penalties of Curfew Violations

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- 308.7-1. Upon a finding by the Family Court that a violation of this law has occurred, the minor and/or the minor's parent, guardian, or legal custodian may be subject to the following penalties:
  - (a) *Fines*. An individual may be ordered to pay a fine as a result of a violation of this law. The Oneida Business Committee shall hereby be delegated the authority to adopt through resolution a fine schedule which sets forth specific fine amounts for violations of this law.
    - (1) All fines shall be paid to the Judiciary.
    - (2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later.
      - (A) The ninety (90) day deadline for payment of fines may be extended if an alternative payment plan is approved by the Family Court.
    - (3) If an individual does not pay his or her fine the Family Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process or any other collection process available to the Family Court.
    - (4) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.
  - (b) *Community service*. An individual may be ordered to perform community service. Community service can be used in lieu of, or in addition to, a fine.
    - (1) All community service assignments shall be approved by the Family Court. The Family Court shall give preference to culturally relevant community service assignments and/or community service assignments that focus on the betterment of the individual's community.

175	(2) The Family Court shall provide the individual a written statement of the terms
176	of the community service order, and a statement that the community service order
177	is monitored.
178	(3) The Family Court's community service order shall specify:
179	(A) how many hours of community service the individual is required to
180	complete;
181	(B) the time frame in which the hours shall be completed;
182	(C) how the individual shall obtain approval for his or her community
183	service assignment;
184	(D) how the individual shall report his or her hours; and
185	(E) any other information the Family Court determines is relevant.
186	(c) Family counseling and/or parenting programs. An individual may be ordered to
187	participate in a family counseling and/or a parenting program.
188	(d) Any other penalty as deemed appropriate by the Family Court.
189	308.7-2. Staying a Curfew Penalty. The Family Court may stay the enforcement of a penalty
190	issued as a result of a curfew violation for a period of time to be determined by the Family Court.
191	If the individual maintains compliance with the law during the time period in which the penalty is
192	stayed, then the Family Court may dismiss the citation. If the individual commits another violation
193	of the law during the time period in which the penalty is stayed, then the penalty shall go into
194	effect.
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196	End.
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198  199	Adopted – BC-10-09-19-F <u>Amended – BC</u>
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## Title 3. Health and Public Safety - Chapter 308 T<yethin<tshaw^=late> Kayanl^sla>

We'll put our arms across to stop them **CURFEW** 

308.1. Purpose and Policy

308.2. Adoption, Amendment, Repeal

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#### 308.1. Purpose and Policy

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308.1-2. *Policy*. It is the policy of the Nation to support all drug use prevention initiatives of the Nation by protecting the health, safety, and welfare of persons through the establishment of a curfew for minors in public spaces within the Reservation during certain hours in an effort to minimize the opportunity for harm to come to minors during those hours.

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- 308.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered
- 19 to have legal force without the invalid portions.
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- 22 308.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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38	in the armed forces, to major surgery and medical treatment and to adoption, or make
39	recommendations as to adoption.

- (d) "Legal custodian" means any person, department, and/or agency, other than a parent or guardian, to whom legal custody of a child has been granted by Court order and has the rights and responsibilities for the following:
  - (1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;
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- (e) "Member of the Nation" means an individual enrolled in the Oneida Nation.
- (f) "Minor" means a person age sixteen (16) years old or younger.
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- (h) "Parent" means the biological or adoptive parent of a child.
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- (c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the jurisdiction of the Nation:
  - (1) By entering into a consensual relationship with the Nation, or with the Nation's entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or
  - (2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.
- 308.4-3. Territorial Jurisdiction. This law extends within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation.

#### 83 **308.5.** Curfew

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- 308.5-2. *Parental Responsibility*. No parent, guardian, or legal custodian shall knowingly permit or fail to take action to prevent the minor from being on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation.
- 308.5-3. *Exemptions to Curfew*. A minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was:
  - (a) in the performance of a duty directed by such parent, guardian, or legal custodian;
  - (b) engaged in employment or an employment related activity, or traveling to or returning home from employment;
  - (c) engaged in interstate travel;
  - (d) attending an educational, cultural, religious, or recreational activity that was supervised by adults, or traveling to or returning home from such activity;
  - (e) on the sidewalk in front of his or her home or an adjacent home;
  - (f) going to, attending, or returning home from a movie theatre;
  - (g) engaged in hunting, fishing, or trapping in accordance with the laws, policies, and rules of the Nation:
  - (h) exercising rights protected by the Nation's Constitution and the United States Constitution, such as free exercise of religion, freedom of speech, and the right of assembly;
  - (i) involved in an emergency situation; and/or
  - (j) engaged in any other activity as deemed appropriate by the Oneida Police Department officer.

#### 308.6. Enforcement of Curfew Violations

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- (a) A minor who is suspected of violating curfew may be stopped by an Oneida Police Department officer. No person shall assault, obstruct or flee from any Oneida Police Department officer enforcing or attempting to enforce the provisions of this law.
- (b) The Oneida Police Department officer shall ask the minor's name, age, and reason for violating curfew. The minor shall provide the Oneida Police Department officer identification if available. No person shall falsely represent his or her name or age to an Oneida Police Department officer.
- (c) If the Oneida Police Department officer reasonably believes based on the totality of the circumstances that a violation of curfew has occurred and not one of the exemptions in section 308.5-3 apply, the Oneida Police Department officer may take custody of the minor for the purpose of returning such minor to the care and custody of a parent, guardian, or legal custodian.
- (d) Once the Oneida Police Department officer has taken the minor into his or her custody, the minor shall provide the Oneida Police Department officer with contact information for his or her parent, guardian, or legal custodian. The Oneida Police Department officer shall contact the minor's parent, guardian, or legal custodian to come and pick up the minor and take the minor into his or her care and custody. If the minor's parent, guardian, or legal

- custodian is unable to pick the minor up, then the Oneida Police Department officer may bring the minor home to release the minor to the custody and care of the minor's parent, guardian, or legal custodian.

  (e) If the Oneida Police Department officer is unable to contact the minor's parent.
  - (e) If the Oneida Police Department officer is unable to contact the minor's parent, guardian, or legal custodian after reasonable efforts are made, the Oneida Police Department officer shall attempt to locate an adult relative or other responsible adult willing and able to accept the care and custody of the minor, and may release the minor into the care and custody of such person.
  - 308.6-2. Warning. The first time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer shall provide the minor and the minor's parent, guardian, or legal custodian a warning and advise the minor and parent, guardian, or legal custodian of the provisions of this law and that any subsequent curfew violations may result in the issuance of a citation and the imposition of a penalty.
  - 308.6-3. *Issuance of a Citation*. Any subsequent time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer may issue a citation to the minor and the minor's parent, guardian, or legal custodian.
    - (a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Family Court.
    - (b) A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.
    - (c) All citations for violations of this law require a mandatory appearance at the citation pre-hearing by the minor and his or her parent, guardian, or legal custodian.

#### **308.7.** Penalties of Curfew Violations

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#### 308.1. Purpose and Policy

308.1-1. *Purpose*. The purpose of this law is to protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor.

308.1-2. *Policy*. It is the policy of the Nation to support all drug use prevention initiatives of the Nation by protecting the health, safety, and welfare of persons through the establishment of a curfew for minors in public spaces within the Reservation during certain hours in an effort to minimize the opportunity for harm to come to minors during those hours.

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#### 308.2. Adoption, Amendment, Repeal

- 308.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-09-19-F, and amended by resolution BC- - .
- 308.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 308.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered
- 19 to have legal force without the invalid portions.
- 308.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 22 308.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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#### 308.3. Definitions

- 308.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Court of Appeals" means the branch of the Nation's Judiciary delegated the authority of final appeal within the Nation's Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.
  - (b) "Family Court" means the branch of the Nation's Judiciary delegated the authority to administer the judicial authorities and responsibilities of the Nation related to the family and/or children, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.
  - (c) "Guardian" means the person, department, and/or agency appointed the duty and authority of guardianship of a child by a Court for the purpose of managing and caring for the child. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment

- in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.
  - (d) "Legal custodian" means any person, department, and/or agency, other than a parent or guardian, to whom legal custody of a child has been granted by Court order and has the rights and responsibilities for the following:
    - (1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;
    - (2) To protect, educate and discipline the child so long as it is in the child's best interest; and
    - (3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.
  - (e) "Member of the Nation" means an individual enrolled in the Oneida Nation.
  - (f) "Minor" means a person age sixteen (16) years old or younger.
  - (g) "Nation" means the Oneida Nation.
  - (h) "Parent" means the biological or adoptive parent of a child.
  - (j) "Public space" means any public streets, highways, roads, alleys, parks, vacant lots, or any public lands.
  - (j) "Relative" means any person connected with a child by blood, marriage or adoption.
  - (k) "Reservation" means all the property within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

#### 308.4. Jurisdiction

304.4-1. *Jurisdiction of the Court*. The Family Court has jurisdiction over any action brought under this law.

#### **308.5.** Curfew

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- 308.5-1. *Curfew Established*. No minor shall be on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation, unless the minor is accompanied by a parent, guardian, or legal custodian.
- 308.5-2. Parental Responsibility. No parent, guardian, or legal custodian shall knowingly permit or fail to take action to prevent the minor from being on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation.
- 74 308.5-3. *Exemptions to Curfew*. A minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was:
  - (a) in the performance of a duty directed by such parent, guardian, or legal custodian;
  - (b) engaged in employment or an employment related activity, or traveling to or returning home from employment;
  - (c) engaged in interstate travel;
  - (d) attending an educational, cultural, religious, or recreational activity that was supervised by adults, or traveling to or returning home from such activity;
  - (e) on the sidewalk in front of his or her home or an adjacent home:
  - (f) going to, attending, or returning home from a movie theatre;

- (g) engaged in hunting, fishing, or trapping in accordance with the laws, policies, and rules of the Nation:
  - (h) exercising rights protected by the Nation's Constitution and the United States Constitution, such as free exercise of religion, freedom of speech, and the right of assembly;
  - (i) involved in an emergency situation; and/or
  - (j) engaged in any other activity as deemed appropriate by the Oneida Police Department officer.

#### 308.6. Enforcement of Curfew Violations

- 308.6-1. *Enforcement Procedure*. A suspected violation of curfew shall be enforced by the Oneida Police Department in the following ways:
  - (a) A minor who is suspected of violating curfew may be stopped by an Oneida Police Department officer. No person shall assault, obstruct or flee from any Oneida Police Department officer enforcing or attempting to enforce the provisions of this law.
  - (b) The Oneida Police Department officer shall ask the minor's name, age, and reason for violating curfew. The minor shall provide the Oneida Police Department officer identification if available. No person shall falsely represent his or her name or age to an Oneida Police Department officer.
  - (c) If the Oneida Police Department officer reasonably believes based on the totality of the circumstances that a violation of curfew has occurred and not one of the exemptions in section 308.5-3 apply, the Oneida Police Department officer may take custody of the minor for the purpose of returning such minor to the care and custody of a parent, guardian, or legal custodian.
  - (d) Once the Oneida Police Department officer has taken the minor into his or her custody, the minor shall provide the Oneida Police Department officer with contact information for his or her parent, guardian, or legal custodian. The Oneida Police Department officer shall contact the minor's parent, guardian, or legal custodian to come and pick up the minor and take the minor into his or her care and custody. If the minor's parent, guardian, or legal custodian is unable to pick the minor up, then the Oneida Police Department officer may bring the minor home to release the minor to the custody and care of the minor's parent, guardian, or legal custodian.
  - (e) If the Oneida Police Department officer is unable to contact the minor's parent, guardian, or legal custodian after reasonable efforts are made, the Oneida Police Department officer shall attempt to locate an adult relative or other responsible adult willing and able to accept the care and custody of the minor, and may release the minor into the care and custody of such person.
- 308.6-2. Warning. The first time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer shall provide the minor and the minor's parent, guardian, or legal custodian a warning and advise the minor and parent, guardian, or legal custodian of the provisions of this law and that any subsequent curfew violations may result in the issuance of a citation and the imposition of a penalty.
- 308.6-3. *Issuance of a Citation*. Any subsequent time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer may issue a citation to the minor and the minor's parent, guardian, or legal custodian.
  - (a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Family Court.

131	(b) A citation for a violation of this law shall be processed in accordance with the
132	procedure contained in the Nation's laws and policies governing citations.
133	(c) All citations for violations of this law require a mandatory appearance at the citation

(c) All citations for violations of this law require a mandatory appearance at the citation pre-hearing by the minor and his or her parent, guardian, or legal custodian.

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#### **308.7. Penalties of Curfew Violations**

- 308.7-1. Upon a finding by the Family Court that a violation of this law has occurred, the minor and/or the minor's parent, guardian, or legal custodian may be subject to the following penalties:
  - (a) *Fines*. An individual may be ordered to pay a fine as a result of a violation of this law. The Oneida Business Committee shall hereby be delegated the authority to adopt through resolution a fine schedule which sets forth specific fine amounts for violations of this law.
    - (1) All fines shall be paid to the Judiciary.
    - (2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later.
      - (A) The ninety (90) day deadline for payment of fines may be extended if an alternative payment plan is approved by the Family Court.
    - (3) If an individual does not pay his or her fine the Family Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process or any other collection process available to the Family Court.
    - (4) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.
  - (b) *Community service*. An individual may be ordered to perform community service. Community service can be used in lieu of, or in addition to, a fine.
    - (1) All community service assignments shall be approved by the Family Court. The Family Court shall give preference to culturally relevant community service assignments and/or community service assignments that focus on the betterment of the individual's community.
    - (2) The Family Court shall provide the individual a written statement of the terms of the community service order, and a statement that the community service order is monitored.
    - (3) The Family Court's community service order shall specify:
      - (A) how many hours of community service the individual is required to complete;
      - (B) the time frame in which the hours shall be completed;
      - (C) how the individual shall obtain approval for his or her community service assignment;
      - (D) how the individual shall report his or her hours; and
      - (E) any other information the Family Court determines is relevant.
  - (c) Family counseling and/or parenting programs. An individual may be ordered to participate in a family counseling and/or a parenting program.
  - (d) Any other penalty as deemed appropriate by the Family Court.
- 308.7-2. Staying a Curfew Penalty. The Family Court may stay the enforcement of a penalty issued as a result of a curfew violation for a period of time to be determined by the Family Court. If the individual maintains compliance with the law during the time period in which the penalty is stayed, then the Family Court may dismiss the citation. If the individual commits another violation of the law during the time period in which the penalty is stayed, then the penalty shall go into effect.



## AMENDMENTS TO CURFEW LAW LEGISLATIVE ANALYSIS

#### **SECTION 1. EXECUTIVE SUMMARY**

	Analysis by the Legislative Reference Office
Intent of the Amendments	<ul> <li>Remove an incorrect reference to the Nation's territorial jurisdiction as the Nation's territorial jurisdiction is provided by the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law; and</li> <li>Remove a duplicative provision regarding personal jurisdiction as personal jurisdiction is already provided by the Nation's Judiciary law.</li> </ul>
Purpose	To protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor [3 O.C. 308.1-1].
Affected Entities	Oneida Police Department and Oneida Family Court
<b>Related Legislation</b>	Judiciary law, Citations law
Public Meeting	Although the April 2, 2020, public meeting was canceled due to Nation's COVID-19 Team's declaration titled, "Suspension of Public Meetings under the Legislative Procedures Act," the public comment period was still held open until April 9, 2020.
Fiscal Impact	A fiscal impact statement has not yet been requested.

#### **SECTION 2. LEGISLATIVE DEVELOPMENT**

- **A. Background.** The Curfew law was first adopted by the Oneida Business Committee on October 9, 2019, for the purpose of protecting the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor. [3 O.C. 308.1-1].
- **B.** Upon a review of the Nation's Code of Laws, the Oneida Law Office and Legislative Operating Committee (LOC) identified references to the Nation's jurisdiction that were either inaccurate or duplicative. In consultation with the Oneida Law Office, the LOC proposes technical amendments to the Curfew law to remove these inaccurate or unnecessary references. The intent of these changes is not to alter how the Curfew law is currently being enforced, but to ensure that all references to jurisdiction in the Nation's Code of Laws are accurate.

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

- **A.** Representatives from the following departments or entities participated in the development of this law and legislative analysis: Oneida Law Office.
- **B.** The following laws were reviewed in the drafting of this analysis: Judiciary law, Domestic Animals law, Oneida Nation Gaming Ordinance, Tribal Environmental Response law, Judiciary Rules of Evidence, and Citations law.

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

- A. The amendments to this law have followed the process set forth in the Legislative Procedures Act.
  - The LOC added the amendments to the Active Files List on February 5, 2020.
  - A public meeting was scheduled for April 2, 2020.
  - On March 27, 2020, the Nation's COVID-19 Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period.
  - The public comment period for the amendments to the Curfew law was held open until April 9, 2020
  - **B.** At the time this legislative analysis was developed the following work meetings had been held regarding the development of these amendments:
    - February 19, 2020: LOC work meeting.
    - April 15, 2020: LOC work meeting.
  - C. COVID-19 Pandemic's Effect on the Legislative Process. The public meeting for the proposed amendments to this Law was canceled due to the COVID-19 pandemic.
    - On March 4, 2020, the Legislative Operating Committee approved the public meeting packet and forwarded the Curfew law amendments to a public meeting to be held on April 2, 2020. The public comment period was scheduled to remain open until April 9, 2020.
    - After the public meeting was scheduled, the world was hit with a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts.
    - On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a public health emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
    - On March 24, 2020, the Nation's COVID-19 Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibits all public gatherings of any number of people.
    - Then on March 27, 2020, the Nation's COVID-19 Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.
    - On March 28, 2020 the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's public health emergency declaration until May 12, 2020.
    - On March 30, 2020, the Legislative Operating Committee provided additional notice that the April 2, 2020, public meeting was canceled.
    - The public comment period was still held open until April 9, 2020. No written comments were received during the public comment period.

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

**A.** *Deletion of Territorial Jurisdiction Section.* These amendments delete an incorrect reference to the Nation's territorial jurisdiction for this law. The Curfew law incorrectly states that the territorial jurisdiction of this law is limited to land owned by the Nation or individual trust and/or fee land of a member of the Nation.

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- Territorial Jurisdiction. The Nation's territorial jurisdiction is properly defined in the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law (see below).
- Conclusion. Since the reference included in the Curfew law is inaccurate, unnecessary and already located in the Nation's Constitution and Judiciary law, it has been deleted for clarity.

Table 1. Comparison: Territorial Jurisdiction as Referenced in Constitution and Laws of the Nation.

	Language in Constitution of	Language in Judiciary law
Current Curfew law	the Oneida Nation	
This law extends within the	The jurisdiction of the Oneida	"The territorial jurisdiction of the
Reservation to all land	Nation shall extend to the	Trial Court shall extend to the
owned by the Nation and	territory within the present	Reservation and all lands held in
individual trust and/or fee	confines of the Oneida	trust by the United States for the
land of a member of the	Reservation and to such other	benefit of the Tribe within the State
Nation [3 O.C. 308.4-3].	lands as may be hereafter added	of Wisconsin." [8 O.C. 801.5-3].
	thereto within or without said	
	boundary lines under any law	
	of the United States, except as	
	otherwise provided by law	
	[Article 1 – Territory]	

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- B. Deletion of Personal Jurisdiction Section. These amendments also delete references to the Nation's personal jurisdiction from this law. The personal jurisdiction of the Nation is already provided for in the Nation's Judiciary law.
  - Personal Jurisdiction. The Judiciary law already clarifies that the Nation has personal jurisdiction over members of the Oneida Nation, members of other federally-recognized Indian tribes, and any "non-Indians" who have consented to the jurisdiction of the Nation (examples include a contract or lease agreement.)
  - Conclusion. Since the Nation's personal jurisdiction is already provided for in the Judiciary law, it has been deleted from this law for clarity.

Table 2. Comparison: Personal Jurisdiction in laws of the Nation.		
<u>Deleted</u> Language in Current Curfew law	Language in Judiciary law	
Personal Jurisdiction. This law applies to:	Personal Jurisdiction	
(a) All members of the Nation; the	(a) Indians. The Trial Court shall have	
Nation's entities and corporations; and	jurisdiction over all Indians. 8 O.C. 801 – Page	
members of other federally-recognized	5 (b) Non-Indians. The Trial Court shall have	
tribes;	jurisdiction over non-Indians who have	
(b) Individuals and businesses leasing,	consented to the jurisdiction of the Tribe or Trial	
occupying or otherwise using fee land	Court or as otherwise consistent with federal	
owned by the Nation or by individual	law.	
members of the Nation; and/or lands held	(1) Consent to Jurisdiction. For	
in trust on behalf of the Nation or	purposes of subsection 801.5-4(b)	
individual members of the Nation; and	above, a person shall have consented to	
(c) Individuals who have consented to the	the jurisdiction of the Trial Court by:	
jurisdiction of the Nation or as otherwise	(A) entering into a consensual	
consistent with federal law. An individual	relationship with the Tribe,	
shall be considered to have consented to	Tribal entities, Tribal	
the jurisdiction of the Nation:	corporations, or Tribal	
(1) By entering into a consensual	members, including but not	
relationship with the Nation, or		

with	the	Nation'	s entities,
corpor	ations,	or men	nbers of the
Nation	, inclu	ding but	not limited
to con	tracts	or other	agreements;
or			

(2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner. [3 O.C. 304.4-1].

limited to contracts or other agreements; or

(B) other facts which the Trial Court determines manifest an intent to consent to the authority of the Tribe or the jurisdiction of the Trial Court, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner. [8 O.C. 801.5-4].

#### **SECTION 6. EXISTING LEGISLATION**

- **A.** *References to Territorial Jurisdiction in Other Oneida laws.* The following laws of the Nation also include references to the Nation's territorial jurisdiction:
  - Domestic Animals law. The Domestic Animals law provides that "This law extends within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation." [3 O.C. 304.4-2].
    - The reference to territorial jurisdiction in the Domestic Animals law is similar to the provision that was included in this Law, and therefore is also erroneous. The LOC has added the Domestic Animals law to its Active Files List for amendments to address this issue.
  - *Judiciary law*. The Judiciary law provides "The territorial jurisdiction of the Trial Court shall extend to the Reservation and all lands held in trust by the United States for the benefit of the Tribe within the State of Wisconsin." [8 O.C. 801.5-3].
    - The reference to territorial jurisdiction in the Judiciary law is correct and no amendments are necessary.
  - Oneida Nation Gaming Ordinance. The Oneida Nation Gaming Ordinance provides "This Ordinance extends to all land within the exterior boundaries of the Reservation of the Tribe, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law." [5 O.C. 501.3-1].
    - The reference to territorial jurisdiction in the Oneida Nation Gaming Ordinance is correct and no amendments are necessary.
  - *Tribal Environmental Response law*. The Tribal Environmental Response law provides "This law extends to all land within the exterior boundaries of the Reservation of the Nation, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, any lands added thereto pursuant to federal law and all lands held in trust for the Nation within the State of Wisconsin." [4 O.C. 401.4-2].
    - The reference to territorial jurisdiction in the Tribal Environmental Response law is correct and no amendments are necessary.
  - Judiciary Rules of Evidence law. The Judiciary Rules of Evidence provides that "The Court may judicially notice a fact that shall not subject to reasonable dispute because it: (a) is generally known within the Court's territorial jurisdiction; or (b) may be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." [8 O.C. 804.5-2(a)].
    - The reference to territorial jurisdiction in the Judiciary Rules of Evidence is correct and no amendments are necessary.
- **B.** References to other Laws of the Nation. The following laws of the Nation are referenced in this Law:
  - Citations law. This Law provides that 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. [3 O.C. 308.6-3(b)].

- The Citations law is the Nation's law governing citations. The Citations law provides how a citation action is started such as who has the authority to issue a citation, the requirements of the form of the citation, and how a citation is served and filed; stipulations for the settlement of a citation; and the citation hearing procedures. [8 O.C. 807].
  - Any citations issued by the Oneida Police Department for a violation of this Law must comply with the requirements and procedures of the Citations law.
- Hunting, Fishing and Trapping law. This Law provide that a minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was engaged in hunting, fishing, or trapping in accordance with the laws, policies, and rules of the Nation. [3 O.C. 308.5-3(g)].
  - The Hunting, Fishing and Trapping law provides an adequate and flexible system for the protection, management, supervision, conservation, and enhancement of all wildlife and natural resources on the reservation; as well as an enforceable system of licensing and permitting which establishes clear rules pursuant to the Administrative Rulemaking law related to hunting, fishing and trapping, and associated fines and penalties for violations of this law and the said rules. [4 O.C. 406.1-1].
  - A minor must be following all provisions of the Hunting, Fishing and Trapping law and accompanying rules in order to receive the exemption for breaking curfew hours.

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

- **A.** *Enforcement.* The Oneida Police Department is delegated the authority to enforce violations of curfew. [3 O.C. 308.6-1]. The Oneida Police Department can issue warnings and citations for violations of this Law. [3 O.C. 308.6-1].
- **B.** *Accountability.* A minor and/or his or her parents, guardians, or legal custodians can be held accountable by the Family Court for violations of curfew by the issuance of the following penalties:
  - Fines:
  - Community service;
  - Participation in family counseling and/or parenting programs; and
  - Any other penalty as deemed appropriate by the Family Court. [3 O.C. 308.7-1(a)-(d)].
- C. *Fine and Penalty Schedule Resolution*. The Oneida Business Committee adopted a Curfew Law Penalty and Fine Schedule through resolution BC-10-09-19-G. This resolution sets forth specific fine amounts to be used by the Family Court if it is determined that a fine is the most appropriate penalty.

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

- **A.** *Fiscal Impact*. A fiscal impact statement has not yet been requested.
  - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].
  - A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee [1 O.C. 109.6-1(a) and (b)].



## Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365

ONEIDA

TO: Lawrence E. Barton, Chief Financial Officer

Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer

FROM: David P. Jordan, Legislative Operating Committee Chairman

DATE: April 20, 2020

RE: Curfew Law Amendments Fiscal Impact Statement

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

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

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed legislation being forwarded to the Oneida Business Committee for consideration. [1 O.C. 109.6-2]. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct the Finance Department or any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. [1 O.C. 109.6-1].

Oneida Business Committee resolution BC-09-25-19-A titled, "Interpreting 'Fiscal Impact Statement' in the Legislative Procedures Act" provides further clarification on the process for directing a fiscal impact statement be completed. This resolution provides that when developing a fiscal impact statement for proposed legislation to be used for presentation to and consideration of adoption by the Oneida Business Committee, the Finance Department shall, within ten (10) business days of final approval of draft legislation by the LOC, provide a fiscal impact statement to the LOC.

On April 20, 2020, the Legislative Operating Committee approved the final draft of the proposed amendments to the Curfew law. Therefore, the LOC is directing the Finance Department to provide a fiscal impact statement on the proposed amendments to the Curfew law by May 4, 2020.

A copy of the proposed amendments to the Curfew law, as well as the legislative analysis, have been attached to this memorandum for your convenience.

#### **Requested Action**

Provide the LOC a fiscal impact statement of the proposed amendments to the Curfew law by May 4, 2020.



# April 20, 2020, Legislative Operating Committee E-Poll Approval of the Domestic Animals Law Amendments Materials and Fiscal Impact Request Memorandum

Approval of the Domestic Animals Law Amendments Materials and Fiscal Impact Request Memorandum



**Good Morning Legislative Operating Committee,** 

This e-mail serves as the e-poll for the approval of the Domestic Animals law amendments public comment period review memorandum, updated draft, updated legislative analysis, and fiscal impact statement request memorandum to the Finance Department.

#### **EXECUTIVE SUMMARY**

The Legislative Operating Committee has been developing amendments to the Domestic Animals law and scheduled a public meeting for the Domestic Animals law amendments to be held on April 2, 2020. After the public meeting was scheduled, the world was hit with a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts. On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a public health emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. This public health emergency was extended to May 12, 2020, through the adoption of resolution BC-03-28-20-A. On March 24, 2020, the Nation's COVID-19 Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. The "Safer at Home" declaration prohibits all public gatherings of any number of people. Then on March 27, 2020, the Nation's COVID-19 Team issued a "Suspension of Public Meetings" under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period. The April 2, 2020, public meeting for the amendments to the Domestic Animals law was canceled by the Legislative Operating Committee on March 30, 2020. The public comment period for the Domestic Animals law amendments was still held open until April 9, 2020, to allow members of the community to provide written submissions of comments or questions to the Legislative Operating Committee through e-mail. No written comments were received during the public comment period for the proposed amendments to the Domestic Animals law.

Although the Legislative Operating Committee received no public comments, the Legislative Operating Committee did update the draft to include a provision on the abandonment of animals. The proposed amendments to the Domestic Animals law are now ready to continue through the legislative process. The next step in the legislative process is to request a fiscal impact statement. 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 can 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)].

Attached to this e-poll please find the follow documentation:

- Public comment period review memorandum with attached public meeting draft;
- Domestic Animals law amendments draft (Redline to Draft 1 demonstrating changes from PM Draft);
- Domestic Animals law amendments draft (Redline to Current);
- Domestic Animals law amendments draft (Clean);
- Domestic Animals law amendments legislative analysis; and
- Fiscal impact statement request memorandum.

The Legislative Operating is now being asked to approve by e-poll the public comment period review memorandum, updated draft and legislative analysis, and fiscal impact statement request memorandum, and to forward the fiscal impact statement request memorandum to the Finance Department directing that a fiscal impact statement of the proposed amendments to the Domestic Animals law be prepared and submitted to the LOC by May 4, 2020.

An e-poll is necessary for this matter because the Legislative Operating Committee has canceled all meetings until June 2020 due to the COVID-19 pandemic, and immediate action is required by Legislative Operating Committee to approve these materials so a fiscal impact statement from the Finance Department can be requested.

#### **REQUESTED ACTION**

To approve the following actions:

- Approve the public comment period review memorandum, updated draft, updated legislative analysis, and fiscal impact statement request memorandum; and
- Forward the fiscal impact statement request memorandum to the Finance Department directing that a fiscal impact statement of the proposed amendments to the Domestic Animals law be prepared and submitted to the Legislative Operating Committee by May 4, 2020.

#### **DEADLINE FOR RESPONSE**

April 20, 2020 at 3:00 p.m.

All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by Kirby Metoxen, Jennifer Webster, David P. Jordan, Ernest Stevens III. Daniel Guzman King did not provide a response.

# Approval of the Domestic Animals Law Amendments Materials and Fiscal Impact Request Memorandum Kirby W. Metoxen To Daniel P. Guzman; David P. Jordan; LOC; Ernest L. Stevens; Jennifer A. Webster Cc Jameson J. Wilson; Leyne C. Orosco; Clorissa N. Santiago; Rosa J. Laster; Jessica L. Wallenfang; Fawn J. Billie

Approve both

Sent from Workspace ONE Boxer

#### RE: Approval of the Domestic Animals Law Amendments Materials and Fiscal Impact Request Memorandum



Approve

Sent from my Samsung Galaxy smartphone.

#### RE: Approval of the Domestic Animals Law Amendments Materials and Fiscal Impact Request Memorandum



David P. Jordan

To LOC; Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Clorissa N. Santiago

Mon 4/20/2020 1:16 PM

← Reply

≪ Reply All

Approve

#### Re: Approval of the Domestic Animals Law Amendments Materials and Fiscal Impact Request Memorandum



Approve

Sent from my Verizon, Samsung Galaxy smartphone



# Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54115-0365



TO: Legislative Operating Committee (LOC)

FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney

DATE: April 20, 2020

RE: Domestic Animals Law Amendments: Public Comment Period Review

On March 4, 2020, the Legislative Operating Committee approved the public meeting packet and forwarded the Domestic Animals law amendments to a public meeting to be held on April 2, 2020. After the public meeting was scheduled, the world was hit with a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts.

On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a public health emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

On March 24, 2020, the Nation's COVID-19 Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. The "Safer at Home" declaration prohibits all public gatherings of any number of people.

Then on March 27, 2020, the Nation's COVID-19 Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

On March 28, 2020 the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's public health emergency declaration until May 12, 2020.

The April 2, 2020, public meeting for the amendments to the Domestic Animals law was canceled by the Legislative Operating Committee on March 30, 2020. The public comment period for the Domestic Animals law amendments was still held open until April 9, 2020, to allow members of the community to provide written submissions of comments or questions to the Legislative Operating Committee through e-mail.

No written comments were received during the public comment period for the proposed amendments to the Domestic Animals law. A copy of the public meeting draft has been attached to this memorandum.

### Title 3. Health and Public Safety - Chapter 304 DOMESTIC ANIMALS

#### K@tse>na Olihw@=ke

matters concerning the pet animals

#### **DOMESTIC ANIMALS**

304.1. Purpose and Policy	304.4. Authority
304.2. Adoption, Amendment, Conflicts	304.5. Treatment of Animals
304.3. Definitions	304.6. Dogs and Cats
304.4.—Jurisdiction	304.7. Livestock
304.5.—Authority	304.8. Hens
304.6. Treatment of Animals	304.9. Prohibited Animals
304.7.—Dogs and Cats	304.10. Dangerous Animals
304.8.—Livestock	304.1211. Owner Liability
<del>304.9.—Hens</del>	304.1312. Enforcement of Violation
304.10. Prohibited Animals	<del>_</del>
304.11 Dangerous Animals	

#### **304.1. Purpose and Policy**

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304.1-1. *Purpose*. The purpose of this law is to:

- (a) protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) set minimum standards for the treatment of animals;
- (c) prohibit certain species of animals from being brought onto the Reservation;
- (d) regulate the keeping of livestock on lots zoned residential within the Reservation; and
- (e) establish consequences for damages caused by domestic animals.
- 304.1-2. *Policy*. It is the policy of the Nation to protect the health, safety, and welfare of the community by:
  - (a) requiring certain basic measures to prevent the spread of disease carried by domestic animals:
  - (b) establishing requirements for licensing domestic animals, and
  - (c) regulating the types of animals which may be kept as domestic animals.

#### 304.2. Adoption, Amendment, Repeal

304.2-1. This law was adopted by Oneida Business Committee by resolution BC-03-13-96-B and amended by resolutions BC-06-22-11-G, BC-06-28-17-B, and BC-05-08-19-C-, and BC----

- 304.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 304.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.
- 304.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 27 304.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

#### 304.3. Definitions

- 304.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Court of Appeals" means the Nation's Judiciary's Court of Appeals, which is the court of final appeal within the Nation.
- (b) "District Quarantine" means a rabid or otherwise diseased domestic animal is suspected

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- or known to be within a discernible area and all such animals reasonably suspected of being infected are subject to enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animals are tested for diseases, including rabies.
  - (c) "Fine" means a monetary punishment issued to a person violating this law.
  - (d) "Hen" means a female chicken of the order and family gallus gallus domesticus.
- (e) "Husbandry practices" means accepted manner of managing resources, cultivating, and caring for animals including the breeding, feeding, and tending of the animals.
- (f) "Judiciary" means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
- (g) "Livestock" means any equine (i.e. horse, donkey, etc.), bovine (i.e. cow, steer, heifer, etc.), sheep, goat, pig.
- (h) "Nation" means the Oneida Nation.

- (i) "Owner" means any person who owns, harbors, keeps, controls or acts as a caretaker for an animal. Absent evidence of alternative adult ownership, this law presumes that domestic animals are owned by the adult homeowner or renter.
- (j) "Penalty" means a punishment, other than a fine, imposed on a person violating this law and may include, but is not limited to, the confiscation of wildlife with return of the same at the discretion of the Trial Court and restitution.
- (k) "Reservation" means all the property within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (1) "Residential household" means a residential lot, except for those residential lots designed as multi-family lots, in which each family unit within the lot constitutes a separate household.
- (m) "Tethering" means the act of fastening an animal to a stationary object while unattended so that the animal can only range within a set radius. Tethering does not include the use of a leash to walk an animal.
- (n) "Trial Court" means the Trial Court of the Oneida Nation Judiciary.
- (o) "Quarantine" means the act of keeping an animal in enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animal is tested for diseases, including rabies.

#### 304.4. Authority Jurisdiction

- 304.4-1. Personal Jurisdiction. This law applies to:
  - (a) All members of the Nation; the Nation's entities and corporations; and members of other federally-recognized tribes;
  - (b) Individuals and businesses leasing, occupying or otherwise using fee land owned by the Nation or by individual members of the Nation; and/or lands held in trust on behalf of the Nation or individual members of the Nation; and
  - (c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the

#### Draft 1 – PM Draft (Redline to Current) 2020 04 02

## 78 <u>jurisdiction of the Nation:</u> 79 (1) By entering int

- (1) By entering into a consensual relationship with the Nation, or with the Nation's entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or
- (2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.
- 304.4-2. *Territorial Jurisdiction*. This law extends within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation.

#### 304.5. Authority

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- 304.5 1. General. This law governs the keeping of all domestic animals which are commonly owned as household pets. Domestic animals include, but are not limited to, dogs, cats, ferrets, rabbits, guinea pigs, turtles, birds, pigeons, hamsters, non-venomous reptiles, amphibians, and arachnids.
  - (a) Domestic animals do not include prohibited animals as identified by the prohibited animals resolution provided for in section 304.109-2.
- 304.54-2. Authority of the Oneida Police Department and Conservation Department. Oneida Police Officers and Conservation Wardens shall have the authority to:
  - (a) investigate complaints involving domestic animals;
  - (b) enforce the provisions of this law through appropriate means, including but not limited to:
    - (1) seizing any animal that is taken, employed, used, or possessed in violation of this law and/or mistreated, rabid or otherwise in danger or dangerous;
    - (2) issuing citations consistent with the fine and penalty schedule developed in accordance with this law; and
    - (3) using force, up to and including lethal force, to stop an immediate threat to public safety caused by an animal.
      - (A) Where lethal force is used, such execution shall be conducted in as humane manner as possible and, to the extent feasible, avoids damage to the animal's head for the purpose of rabies testing.
- 304.54-3. Fine, Penalty, and Licensing Fee Schedule. The Environmental, Health, Safety, and Land Division and the Environmental Resource Board are hereby delegated joint authority to develop a fine, penalty, and licensing fee schedule. The fine, penalty, and licensing fee schedule shall be adopted by the Oneida Business Committee through resolution.
- 113 304.54-4. Disease Investigation and Quarantine. The Environmental, Health, Safety, and Land
- Division, the Emergency Management Coordinator, and the Comprehensive Health Division are
- hereby delegated joint authority to establish standard operating procedures related to disease investigations and quarantines.
- 117 304.54-5. *Issuance of Licenses*. The Environmental, Health, Safety, and Land Division shall make all decisions related to the issuance of a license and/or permit in accordance with this law, unless
- otherwise noted.

- **304.65.** Treatment of Animals
- 122 304.65-1. *Food and Water*. An owner shall provide an animal with a daily supply of food and water sufficient to maintain the animal in good health.
  - 304.65-2. *Shelter*. An owner shall meet the minimum standards for indoor and outdoor shelter for an animal. All shelter shall be structurally sound and maintained in good repair to protect the animal from injury and to contain the animal.
    - (a) *Minimum indoor standards of shelter*. Minimum standards for indoor shelter include the following:
      - (1) *Temperature*. The ambient temperature of the indoor shelter shall be compatible with the health of the animal.
      - (2) *Ventilation*. Indoor shelter facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animal at all times.
    - (b) *Minimum outdoor standards of shelter*. Minimum standards for outdoor shelter include the following:
      - (1) Shelter from Sunlight. When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. Caged does not include farm fencing used to confine livestock.
      - (2) *Climatic Conditions*. Natural or artificial shelter appropriate to the local climatic conditions for the animal concerned shall be provided as necessary for the health of the animal.
      - (3) Adverse Weather. If an animal is tied or confined unattended outdoors under weather conditions which adversely affect the health of the animal, a weather appropriate shelter of suitable size to accommodate the animal shall be provided.
    - (c) *Space Standards*. Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress, or abnormal behavior patterns.
      - (1) *Dog Kennels*. Dog kennels shall meet the following space requirements where, if there are multiple dogs in the same kennel, the base kennel space requirement is based on the size of the largest dog and the additional kennel space requirements are based on the size of each additional dog kept in the kennel:
        - (A) Dog Size Between One and Thirty-Five Pounds. A dog that weighs between one (1) and thirty-five (35) pounds shall have a required base kennel space of sixty (60) square feet. Required additional kennel space per additional dog of this size is twelve (12) square feet.
        - (B) Dog Size Between Thirty-Six and Seventy-Five Pounds. A dog that weighs between thirty-six (36) and seventy-five (75) pounds shall have a required base kennel space of eighty (80) square feet. Required additional kennel space per additional dog of this size is eighteen (18) square feet.
        - (C) Dog Size Seventy-Six Pounds or Greater. A dog that weighs seventy-six (76) pounds or more shall have a required base kennel space of one hundred (100) square feet. Required additional kennel space per additional dog of this size is twenty-four (24) square feet.

- (d) Sanitation Standards. An owner shall meet the minimum standards of sanitation for both indoor and outdoor shelter. Minimum sanitation standards require waste matter from the animal to be removed within twenty-four (24) hours of its deposit.
- (e) Shelter Exception for Livestock. In the case of livestock kept on farms on land zoned agricultural, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices.
- 304.65-3. *Tethering*. If a kennel or enclosed yard is not available, an owner may tether an unsupervised animal as long as the owner meets the following conditions:
  - (a) the tether is connected to the animal with a buckle type collar or body harness made of nylon or leather not less than one inch (1") in width and at least two inches (2") greater in diameter than the animal's neck or torso:
    - (1) The use of a choke collar, prong collar head harness, or other similar type of head harness or collar shall be prohibited for the use of tethering.
  - (b) the tether is at least twelve feet (12') long and allows the animal to move in all directions unimpeded;
  - (c) the total weight of the tether does not exceed ten percent (10%) of the animal's body weight;
  - (d) the animal is tethered so as to prevent injury, strangulation, or entanglement, and allows the animal access to water and shelter;
  - (e) the tethered animal is not sick, injured, or nursing;
  - (f) the animal is not tethered on any vacant property or land or with an unoccupied dwelling; and
  - (g) the animal is not tethered in a manner that allows the animal to cross onto public space or property of others.
- 304.65-4. *Mistreatment of Animals*. No person shall treat any animal in a manner which causes harm, injury or death. This section does not apply to:
  - (a) normal and accepted veterinary and/or care practices; or
  - (b) teaching, research or experimentation conducted at a facility regulated under federal or applicable state law.
- 304.65-5. *Mandatory Reporting*. An employee of the Nation shall report any animal mistreatment witnessed during the regular course of his or her employment with the Nation to the Oneida Police Department and any other appropriate entity.

## 304.7. Dogs and Cats

- 304.76-1. *License Required*. An owner shall be required to obtain a license for any dog or cat five (5) months of age or older on an annual basis.
  - (a) *License Period*. The license year shall commence on January 1<sup>st</sup> and end on December 31<sup>st</sup> of every year.
  - (b) License Eligibility. To be eligible for a license, the owner shall provide:
    - (1) the licensing fee; and
    - (2) proof of current rabies vaccination.
  - (c) *Placement of License Tag.* Upon the receipt of a license the owner shall be provided a license tag for the dog or cat. The owner shall securely attach the license tag to the animal's

2020 04 02 207 collar and shall require the animal wear the collar at all times. (1) Exception. A dog or cat shall not be required to wear the collar if the dog or cat 208 209 is: 210 (A) hunting or actively involved in herding or controlling livestock if the animal is under control of its owner: 211 (B) within the owner's residence and/or securely confined in a fenced area: 212 213 and/or 214 (C) being shown during a competition. 215 An owner shall be required to obtain a rabies 304.<del>76-</del>2. Rabies Vaccinations Required. 216 vaccination for any dog or cat five (5) months of age or older. 217 304.76-3. Limit on the Number of Dogs and Cats. An individual may keep no more than two (2) dogs or three (3) cats; and a total of no more than four (4) dogs and cats combined; in a single 218 219 residential household. 220 (a) Exception. The limit on the number of dogs and cats a person may keep or possess does 221 not apply to a person who: 222 (1) is eligible for any grandfather provisions included in this law's adopting 223 resolution; 224 (2) keeps or possesses a litter of pups or kittens, or a portion of a litter, for a period 225 not exceeding five (5) months from birth; 226 (3) resides on property zoned agricultural; and/or 227 (4) obtains a permit for the additional dog or cat. 228 (b) Permit for Additional Dogs or Cats. A person may keep more than two (2) dogs or 229 three cats (3) in a single residential household if the owner obtains a permit from the 230 Environmental, Health, Safety, and Land Division for the additional animal. The application for the permit must be signed by the owner and contain the signature of the 231 232 homeowner of the residential household if the homeowner is not the applicant. 233 (1) By seeking a permit for an additional dog or cat the owner agrees that he or she 234 shall reduce the number of licensed dogs or cats on the premises if there are two (2) 235 or more nuisance complaints against the residential household within one (1) 236 calendar year caused by, or related to, the number of dogs or cats housed on the 237 premises. 238 (2) If two (2) or more nuisance complaints are received against the residential 239 household due to the number of dogs or cats housed on the premises, the owner 240 shall reduce the number of animals within thirty (30) days. 241 304.76-4. Running at Large. An owner shall not allow a dog or cat to run at large by being any 242 place except upon the premises of the owner, unless the dog or cat is crated, penned, or on a leash 243 under the control of a person physically able to control the animal. 244 (a) A stray dog or cat running at large may be referred to the Oneida Police Department or 245 Oneida Conservation Department. 246 (b) When an Oneida Police Officer or Oneida Conservation Warden finds a dog or cat 247 running at large, the officer and/or warden shall, if possible, pick up and impound such 248 animal.

(c) Whenever any impounded animal bears an identification mark, such as a collar with

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- identification tags or license tag, the owner shall be notified as soon as reasonably possible. 304.76-5. Nuisance. An Oneida Police Officer or Oneida Conservation Warden may pick up and impound a dog or cat that has been found to be a nuisance. A dog or cat shall be found to be a nuisance if the actions of the dog or cat: (a) resulted in two (2) or more verified disturbances due to excessive barking and/or other
  - noise by the animal, or the animal running at large; and/or
  - (b) resulted in one (1) or more verified disturbance due to threatening behavior by the animal running at large.
- 304.76-6. Investigations for Suspected Animal Bites. The owner shall notify the Oneida Police Department in the event the owner's cat or dog bites a human or another domestic animal.
  - (a) The responding Oneida Police Officer or Oneida Conservation Warden shall:
    - (1) Ascertain whether the domestic animal is properly licensed and has current vaccinations.
    - (2) Ensure all information provided is correct.
    - (3) Contact the Environmental, Health, Safety, and Land Division to provide notification of the domestic animal bite.
    - (4) If the cat or dog has current rabies vaccinations, order the owner to:
      - (A) Quarantine the animal for ten (10) days; and
      - (B) Present the animal for examination by a veterinarian within twentyfour (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10<sup>th</sup>) day.
    - (5) If the cat or dog does not have current rabies vaccination, order the owner to:
      - (A) Quarantine the animal for ten (10) days or deliver the animal to an isolation facility at the owner's expense. If a home quarantine is ordered, the owner shall present the domestic animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10<sup>th</sup>) day; or
      - (B) Euthanize the animal and send the specimen for analysis at the owner's expense, if the animal has exhibited any signs of rabies.
  - (b) Upon expiration of a quarantine period, a veterinarian may extend the quarantine period. Upon expiration of all quarantine periods, if the veterinarian certifies that the animal has not exhibited any signs of rabies, the animal may be released from quarantine.
  - (c) If the veterinarian certifies that the animal has exhibited any signs of rabies the following shall occur:
    - (1) If the animal has current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis, to be paid for by the Nation.
    - (2) If the animal does not have current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis at the owner's expense.
- 304.76-7. District Quarantine. A district quarantine may be initiated by staff designated by the Environmental, Health, Safety, and Land Division, an Oneida Police Officer, an Oneida

- 293 Conservation Warden, and/or a Public Health Officer.
  - (a) If an area is subject to a district quarantine for rabies, all dogs and cats within the district shall be kept securely confined, tied, leashed or muzzled. Any dog or cat not confined, tied, leashed or muzzled is a public nuisance and may be impounded. All Oneida Police Officers and Oneida Conservation Wardens shall cooperate in the enforcement of the quarantine.
  - (b) An animal that is immunized against rabies as evidenced by a valid certificate of rabies vaccination or other evidence is exempt from the district quarantine provisions of this section.

#### **304.87.** Livestock

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- 304.87-1. An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep livestock on land zoned residential.
- 304.87-2. *Limitations on Livestock*. Livestock kept on land zoned residential are subject to the following limitations:
  - (a) One (1) large animal per one (1) acre. Examples of large animals include, but are not limited to, horses, cows, and pigs.
  - (b) One (1) small animal per one-half (½) acre. Examples of small animals include, but are not limited to, goats, and sheep.
  - (c) One (1) goat or sheep per recorded lot under one-half ( $\frac{1}{2}$ ) acre when setback requirements can be met.
- 304.87-3. *Liability for Damage Caused by Livestock at Large*. Any person whose livestock escapes from its normal confined area and becomes at large is responsible for any and all damage to persons and property caused by such livestock while it is away from its normal confined area.

#### 304.98. Hens

- 304.98-1. *Hen Permit*. An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep hens on land zoned residential.
- 304.98-2. *Prohibition of Roosters*. An owner shall not keep a rooster on land zoned residential.
- 304.98-3. *Limit on the Number of Hens Allowed*. The number of hens an owner may keep is dependent on the size of the residential lot.
  - (a) An owner may to keep up to six (6) hens on a residential lot that is smaller than two (2) acres in size.
  - (b) An owner may keep up to twelve (12) hens on a residential lot two (2) acres in size or larger.
  - 304.98-4. Standards for Keeping Hens. An owner shall keep hens in the following manner:
    - (a) No person shall keep a hen over eight (8) weeks of age in a principal structure.
    - (b) Hens shall be kept within a structure such as a coop or fenced area used exclusively to keep hens and shall provide at least four (4) square feet of space per hen.
    - (c) No accessory structure used to keep hens shall be located within twenty-five feet (25') of any principal structure which is not owned by the person permitted to keep the hens.
      - (d) No accessory structure used to keep hens shall be located in a front or side yard.
    - (e) All hens shall be kept and handled in a sanitary manner to prevent the spread of

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communicable diseases amongst birds or to humans.

304.98-5. Prohibition of Nuisance Hens. No owner may keep hens that cause any other nuisance 338 associated with unhealthy conditions, create a public health threat, or otherwise interfere with the 339 normal use of property or enjoyment of life by humans or animals.

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### 304.109. Prohibited Animals

- 304.409-1. No person shall bring into, keep, harbor, maintain, offer for sale or barter, act as a custodian, have custody or control of, or release to the wild on the Reservation a prohibited animal. 304.<del>109-2.</del> Prohibited Animals. The Oneida Business Committee shall provide through the adoption of a resolution which orders and families of animals, whether bred in the wild or in captivity, and any or all hybrids are prohibited from being on the Reservation.
- Prohibited Animals Exception. The prohibition of certain animals shall not apply 304.<del>109</del>-3. to:
  - (a) Individuals who are eligible for any grandfather provisions included in this law's adopting resolution.
  - (b) A zoological park and/or sanctuary, an educational or medical institution, and/or a specially trained entertainment organization who receives a permit from the Environmental, Health, Safety, and Land Division to own, harbor or possess the prohibited animal.
- 304.109-4. Prohibited Animal Permit. The Environmental, Health, Safety, and Land Division may issue a prohibited animal permit if:
  - (a) the animal and animal quarters are kept in a clean and sanitary condition and maintained to eliminate objectionable odors; and
  - (b) the animal is maintained in quarters so constructed as to prevent its escape.
- 304.<del>109-5.</del> Release of Prohibited Animals. The Environmental, Health, Safety, and Land Division, may approve a wildlife refuge and/or sanctuary to release prohibited animals within the Reservation without applying for and receiving a prohibited animal permit.
- 304.109-6. Seizure of Prohibited Animals. An unpermitted prohibited animal may be seized by the Oneida Police Department and/or the Oneida Conservation Department.
  - (a) A prohibited animal that is seized shall be held by the Oneida Police Department, the Oneida Conservation Department, or its designee until it can be determined if the animal is an endangered or threatened species.
  - (b) At any time after such identification, the Oneida Police Department and/or Oneida Conservation Department may seek an order from the Trial Court as to the care, custody and control of the animal.
  - (c) If the Trial Court finds the animal has been taken, employed, used or possessed in violation of this section, the owner shall be responsible for reimbursing the Oneida Police Department and/or the Oneida Conservation Department for the cost of holding the animal and any costs incurred in identifying the animal.
- Notice of Release or Escape. The owner of a prohibited animal that has been 304.<del>10</del>9-7. released or escapes shall immediately notify the Oneida Police Department and/or the Oneida Conservation Department and shall be liable for any cost of recapture of the animal.
- 304.10-8. Forfeiture of the Prohibited Animal. An owner found in violation of this section shall

forfeit or surrender the prohibited animal to the Oneida Police Department, Oneida Conservation Department, or designee. Upon such forfeiture or surrender, the Trial Court may direct destruction or transfer of the animal to a qualified zoological, educational, or scientific institution or qualified private propagator for safekeeping, with costs assessed against the owner.

## 304.4110. Dangerous Animals

- 304.410-1. *Dangerous Animals*. No person shall own, keep, possess, return to or harbor a dangerous animal. An animal shall be presumed to be dangerous if the animal:
  - (a) approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack;
  - (b) bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or domestic animal;
  - (c) is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or
  - (d) has been declared to be a dangerous animal and/or ordered to be destroyed in any other jurisdiction.
- 304.1110-2. *Dangerous Animal Determination*. An Oneida Police Officer or Oneida Conservation Warden may determine an animal to be dangerous whenever, upon investigation, the officer finds that the animal meets the definition of dangerous animal provided in section 304.1110-1.
  - (a) Upon making a determination that an animal is dangerous, the Oneida Police Officer or Oneida Conservation Warden shall issue a written order with an accompanying citation declaring the animal to be dangerous.
  - (b) The citation and order shall be personally delivered to the apparent owner or custodian of the dangerous animal.
  - (c) Upon receipt of the written order and accompanying citation the owner shall remove the dangerous animal from the Reservation within three (3) business days.
- 304.1110-3. Contesting a Dangerous Animal Determination. If the owner wishes to contest the dangerous animal determination, he or she shall file with the Trial Court a written objection to the order within three (3) business days of receipt of the order.
  - (a) The written objection shall include specific reasons for objecting to or contesting the order. An owner may argue an animal should not be deemed dangerous due to the animal biting, attacking or menacing any person and/or domestic animal because the animal was acting to:
    - (1) defend its owner or another person from an attack by a person or animal;
    - (2) protect its young or another animal;
    - (3) defend itself against any person or animal which has tormented, assaulted or abused it; and/or
    - (4) defend its owner's property against trespassers.
  - (b) Pending the outcome of the hearing, the animal shall be securely confined in a humane manner either on the premises of the owner or caretaker, or with a licensed veterinarian. If confined on the premises of the owner or caretaker, the following requirements shall apply:
    - (1) Leash and Muzzle. No owner shall permit a dangerous animal to go outside its kennel or pen unless the animal is securely restrained with a leash no longer than

four feet (4') in length by a person who is at least sixteen (16) years of age who is in physical control of the leash, competent to govern the animal and capable of physically controlling and restraining the animal. The owner shall not leash an animal to inanimate objects such as a tree, post, or building. When the animal is on a leash outside the animal's kennel, the owner shall muzzle the animal in a humane way by a commercially available muzzling device sufficient to prevent the animal from biting a person or other animal.

- (2) Confinement. Except when leashed and muzzled the owner shall ensure the dangerous animal is securely confined indoors or in a securely enclosed and locked pen or kennel that is located on the premises of the owner and constructed in a manner that does not allow the animal to exit the pen or kennel on its own volition. The owner shall not permit an animal to be kept on a porch, patio, or in any part of a house or structure on the premises of the owner that would allow the animal to exit the building on its own volition. The owner shall not permit the animal to be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.
- (3) *Signs*. The owner of a dangerous animal shall display, in prominent places on his or her premises near all entrances to the premises, signs in letters of not less than two inches (2") high warning that there is a dangerous animal on the property. A similar sign shall be posted on the kennel or pen of the animal. In addition, the owner shall conspicuously display a sign with a symbol warning children of the presence of a dangerous animal.
- (4) *Notification*. The owner of a dangerous animal shall notify the Oneida Police Department and/or the Oneida Conservation Department immediately if the animal is at large, is unconfined, has attacked another animal, or has attacked a person.
- (c) If an owner or caretaker fails to follow the requirements for harboring a dangerous animal pending a hearing, the animal may be impounded by the Oneida Police Officer or Oneida Conservation Warden issuing the dangerous animal determination.
- 304.1110-4. *Dangerous Animal Determination Hearing*. A hearing on the dangerous animal determination shall be held within fourteen (14) days of submission of the written objection with the Trial Court. At the hearing, the Trial Court shall determine whether the determination that the animal is dangerous should be substantiated.
  - (a) If the Trial Court concludes that the determination that the animal is dangerous is substantiated, then the Trial Court shall issue an order that mandates the animal be removed from the Reservation within forty-eight (48) hours of the determination.
    - (1) The order shall contain the requirement that the owner notify the Oneida Police Department within twenty-four (24) hours if the dangerous animal has been sold or been given away. If the dangerous animal has been sold or given away, the owner shall also provide the name, address and telephone number of the new owner of the dangerous animal. If the dangerous animal is sold or given away to a person residing outside the Reservation or to a person or entity that falls outside of the jurisdiction of this law, the owner shall present evidence to the Oneida Police

Department showing that he or she has notified the police department or other law enforcement agency of the animal's new residence, including the name, address and telephone number of the new owner. The Oneida Police Department shall forward all such notifications to the Environmental, Health, Safety, and Land Division within a reasonable amount of time.

- (b) The Trial Court may order a dangerous animal to be destroyed. If such an order is issued, the Trial Court shall require the owner submit proof of destruction within five (5) business days from a licensed veterinarian. If the owner does not satisfy these requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall seize the animal and enforce compliance at the cost of the owner.
- (c) The Trial Court may mandate attendance at an additional Trial Court hearing if restitution is appropriate.
- 304.410-5. Appeal of the Trial Court's Decision. An appeal of the Trial Court's decision on the dangerous animal determination may be appealed to the Nation's Court of Appeals.
  - (a) An appeal shall be submitted to the Court of Appeals within five (5) business days from the date of the Trial Court's decision.
- (b) Upon an appeal to the Court of Appeals, the order to remove the animal from the Reservation or any order to destroy an animal is stayed pending the outcome of the appeal. 604.1110-6. *Dangerous Animal Exception*. The Trial Court may provide an exception to the dangerous animal provisions of this law for a law enforcement or military animal upon presentation by the animal's owner or handler of a satisfactory arrangement for safe keeping of the animal.

#### 304.<del>1211</del>. Owner Liability

304.1211-1. An owner shall be liable for damages caused by his or her domestic animal.

- (a) First Offense. The owner is liable for the full amount of damages caused by the domestic animal.
- (b) Subsequent Offenses. The owner shall be liable for two (2) times the full amount of damages caused by the domestic animal if the owner knew or should have known that the domestic animal previously caused damages.

## 304.1312. Enforcement of Violations

304.1312-1. Citations. Citations for the violation of this law and/or orders issued pursuant to this law may include fines, penalties and conditional orders in accordance with the fine, penalty, and licensing fee schedule. A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.

304.13-2. Citation Pre Hearing. All citations shall include a pre hearing date with the Trial Court which shall be set for the next scheduled monthly pre-hearing date that is at least thirty (30) days after the citation was issued.(a) The act of contesting a dangerous animal determination shall follow the process contained in section 304.4410.

(a) Persons wishing to contest a citation shall appear at the prehearing, at which time the Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued.

- 508 (b) In addition to scheduling requested hearings, the Trial Court may also make conditional
  509 orders at the pre-hearing which are effective until the matter is resolved.
  510 304.13-3. Citation Hearing. The Trial Court shall schedule a hearing as expeditiously as possible,
  - 304.13-3. Citation Hearing. The Trial Court shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued.
  - 304.13-4. Appeals of the Trial Court's Determinations. Any person wishing to contest the determination of the Trial Court may appeal to the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure.
  - 304.13-5. *Fines*. All fines 304.12-2. *Fines*. All fines as a result of a citation shall be paid to the Judiciary. Money received from fines shall be contributed to the General Fund.
    - (a) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later. If the fine is not paid by this deadline, the Trial Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process.
      - (1) The ninety (90) day deadline for payment of fines may be extended if an alternative payment plan is approved by the Trial Court.
    - (b(a) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

End.

530 Adopted - BC-03-13-96-B
 531 Amended - BC-06-22-11-G
 532 Amended - BC-06-28-17-B
 533 Amended - BC-05-08-19-C
 534 Amended - BC-

## Title 3. Health and Public Safety - Chapter 304 K@tse>na Olihw@=ke

matters concerning the pet animals

#### **DOMESTIC ANIMALS**

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## **304.1. Purpose and Policy**

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304.1-1. *Purpose*. The purpose of this law is to:

- (a) protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) set minimum standards for the treatment of animals;
- (c) prohibit certain species of animals from being brought onto the Reservation;
- (d) regulate the keeping of livestock on lots zoned residential within the Reservation; and
- (e) establish consequences for damages caused by domestic animals.
- 304.1-2. *Policy*. It is the policy of the Nation to protect the health, safety, and welfare of the community by:
  - (a) requiring certain basic measures to prevent the spread of disease carried by domestic animals:
  - (b) establishing requirements for licensing domestic animals, and
  - (c) regulating the types of animals which may be kept as domestic animals.

#### 304.2. Adoption, Amendment, Repeal

- 304.2-1. This law was adopted by Oneida Business Committee by resolution BC-03-13-96-B and amended by resolutions BC-06-22-11-G, BC-06-28-17-B, BC-05-08-19-C, and BC-
- 19 304.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 21 304.2-3. Should a provision of this law or the application thereof to any person or circumstances
- be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.
- 304.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 26 304.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

## 304.3. Definitions

- 304.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Abandon" means leaving behind a domestic animal at a location without providing minimum care.
  - (b) "Court of Appeals" means the Nation's Judiciary's Court of Appeals, which is the court of final appeal within the Nation.
  - (bc) "District Quarantine" means a rabid or otherwise diseased domestic animal is suspected or known to be within a discernible area and all such animals reasonably suspected of being infected are subject to enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animals are tested for

diseases, including rabies.

- (ed) "Fine" means a monetary punishment issued to a person violating this law.
- (de) "Hen" means a female chicken of the order and family gallus gallus domesticus.
- (ef) "Husbandry practices" means accepted manner of managing resources, cultivating, and caring for animals including the breeding, feeding, and tending of the animals.
- (fg) "Judiciary" means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
- (gh) "Livestock" means any equine (i.e. horse, donkey, etc.), bovine (i.e. cow, steer, heifer, etc.), sheep, goat, pig.
- (hi) "Nation" means the Oneida Nation.
- (ij) "Owner" means any person who owns, harbors, keeps, controls or acts as a caretaker for an animal. Absent evidence of alternative adult ownership, this law presumes that domestic animals are owned by the adult homeowner or renter.
- (jk) "Penalty" means a punishment, other than a fine, imposed on a person violating this law and may include, but is not limited to, the confiscation of wildlife with return of the same at the discretion of the Trial Court and restitution.
- (k]) "Reservation" means all the property within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (1m) "Residential household" means a residential lot, except for those residential lots designed as multi-family lots, in which each family unit within the lot constitutes a separate household.
- (mn) "Tethering" means the act of fastening an animal to a stationary object while unattended so that the animal can only range within a set radius. Tethering does not include the use of a leash to walk an animal.
- (no) "Trial Court" means the Trial Court of the Oneida Nation Judiciary.
- (ep) "Quarantine" means the act of keeping an animal in enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animal is tested for diseases, including rabies.

## 304.4. Authority

- 304.4-1. *General*. This law governs the keeping of all domestic animals which are commonly owned as household pets. Domestic animals include, but are not limited to, dogs, cats, ferrets, rabbits, guinea pigs, turtles, birds, pigeons, hamsters, non-venomous reptiles, amphibians, and arachnids.
  - (a) Domestic animals do not include prohibited animals as identified by the prohibited animals resolution provided for in section 304.9-2.
- 304.4-2. *Authority of the Oneida Police Department and Conservation Department*. Oneida Police Officers and Conservation Wardens shall have the authority to:
  - (a) investigate complaints involving domestic animals;
  - (b) enforce the provisions of this law through appropriate means, including but not limited to:

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- (1) seizing any animal that is taken, employed, used, or possessed in violation of this law and/or mistreated, rabid or otherwise in danger or dangerous;
- (2) issuing citations consistent with the fine and penalty schedule developed in accordance with this law; and
- (3) using force, up to and including lethal force, to stop an immediate threat to public safety caused by an animal.
  - (A) Where lethal force is used, such execution shall be conducted in as humane manner as possible and, to the extent feasible, avoids damage to the animal's head for the purpose of rabies testing.
- 304.4-3. *Fine, Penalty, and Licensing Fee Schedule*. The Environmental, Health, Safety, and Land Division and the Environmental Resource Board are hereby delegated joint authority to develop a fine, penalty, and licensing fee schedule. The fine, penalty, and licensing fee schedule shall be adopted by the Oneida Business Committee through resolution.
- 304.4-4. *Disease Investigation and Quarantine*. The Environmental, Health, Safety, and Land Division, the Emergency Management Coordinator, and the Comprehensive Health Division are hereby delegated joint authority to establish standard operating procedures related to disease investigations and quarantines.
- 304.4-5. *Issuance of Licenses*. The Environmental, Health, Safety, and Land Division shall make all decisions related to the issuance of a license and/or permit in accordance with this law, unless otherwise noted.

#### **304.5.** Treatment of Animals

- 304.5-1. *Food and Water*. An owner shall provide an animal with a daily supply of food and water sufficient to maintain the animal in good health.
- 304.5-2. *Shelter*. An owner shall meet the minimum standards for indoor and outdoor shelter for an animal. All shelter shall be structurally sound and maintained in good repair to protect the animal from injury and to contain the animal.
  - (a) *Minimum indoor standards of shelter*. Minimum standards for indoor shelter include the following:
    - (1) *Temperature*. The ambient temperature of the indoor shelter shall be compatible with the health of the animal.
    - (2) *Ventilation*. Indoor shelter facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animal at all times.
  - (b) *Minimum outdoor standards of shelter*. Minimum standards for outdoor shelter include the following:
    - (1) *Shelter from Sunlight*. When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. Caged does not include farm fencing used to confine livestock.
    - (2) *Climatic Conditions*. Natural or artificial shelter appropriate to the local climatic conditions for the animal concerned shall be provided as necessary for the health of the animal.

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- (3) Adverse Weather. If an animal is tied or confined unattended outdoors under weather conditions which adversely affect the health of the animal, a weather appropriate shelter of suitable size to accommodate the animal shall be provided.
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- (c) Space Standards. Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress, or abnormal behavior patterns.

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(1) *Dog Kennels*. Dog kennels shall meet the following space requirements where, if there are multiple dogs in the same kennel, the base kennel space requirement is based on the size of the largest dog and the additional kennel space requirements are based on the size of each additional dog kept in the kennel:

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(A) Dog Size Between One and Thirty-Five Pounds. A dog that weighs between one (1) and thirty-five (35) pounds shall have a required base kennel space of sixty (60) square feet. Required additional kennel space per additional dog of this size is twelve (12) square feet.

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(B) Dog Size Between Thirty-Six and Seventy-Five Pounds. A dog that weighs between thirty-six (36) and seventy-five (75) pounds shall have a required base kennel space of eighty (80) square feet. Required additional kennel space per additional dog of this size is eighteen (18) square feet.

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(C) Dog Size Seventy-Six Pounds or Greater. A dog that weighs seventy-six (76) pounds or more shall have a required base kennel space of one hundred (100) square feet. Required additional kennel space per additional dog of this size is twenty-four (24) square feet.

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(d) Sanitation Standards. An owner shall meet the minimum standards of sanitation for both indoor and outdoor shelter. Minimum sanitation standards require waste matter from the animal to be removed within twenty-four (24) hours of its deposit.

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(e) *Shelter Exception for Livestock*. In the case of livestock kept on farms on land zoned agricultural, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices.

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304.5-3. *Tethering*. If a kennel or enclosed yard is not available, an owner may tether an unsupervised animal as long as the owner meets the following conditions:

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(a) the tether is connected to the animal with a buckle type collar or body harness made of nylon or leather not less than one inch (1") in width and at least two inches (2") greater in diameter than the animal's neck or torso;

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(1) The use of a choke collar, prong collar head harness, or other similar type of head harness or collar shall be prohibited for the use of tethering.(b) the tether is at least twelve feet (12') long and allows the animal to move in all

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directions unimpeded;

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(c) the total weight of the tether does not exceed ten percent (10%) of the animal's body weight;

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(d) the animal is tethered so as to prevent injury, strangulation, or entanglement, and allows the animal access to water and shelter;

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(e) the tethered animal is not sick, injured, or nursing;

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- (f) the animal is not tethered on any vacant property or land or with an unoccupied dwelling; and
- (g) the animal is not tethered in a manner that allows the animal to cross onto public space or property of others.
- 304.5-4. *Mistreatment of Animals*. No person shall treat any animal in a manner which causes harm, injury or death. This section does not apply to:
  - (a) normal and accepted veterinary and/or care practices; or
  - (b) teaching, research or experimentation conducted at a facility regulated under federal or applicable state law.
- 304.5-5. *Abandonment*. No person shall abandon any animal.
- <u>304.5-6.</u> *Mandatory Reporting.* An employee of the Nation shall report any animal mistreatment witnessed during the regular course of his or her employment with the Nation to the Oneida Police Department and any other appropriate entity.

## 304.7. Dogs and Cats

- 304.6-1. *License Required*. An owner shall be required to obtain a license for any dog or cat five (5) months of age or older on an annual basis.
  - (a) *License Period*. The license year shall commence on January 1<sup>st</sup> and end on December 31<sup>st</sup> of every year.
  - (b) License Eligibility. To be eligible for a license, the owner shall provide:
    - (1) the licensing fee; and
    - (2) proof of current rabies vaccination.
  - (c) *Placement of License Tag*. Upon the receipt of a license the owner shall be provided a license tag for the dog or cat. The owner shall securely attach the license tag to the animal's collar and shall require the animal wear the collar at all times.
    - (1) Exception. A dog or cat shall not be required to wear the collar if the dog or cat is:
      - (A) hunting or actively involved in herding or controlling livestock if the animal is under control of its owner;
      - (B) within the owner's residence and/or securely confined in a fenced area; and/or
      - (C) being shown during a competition.
- 304.6-2. Rabies Vaccinations Required. An owner shall be required to obtain a rabies vaccination for any dog or cat five (5) months of age or older.
- 304.6-3. Limit on the Number of Dogs and Cats. An individual may keep no more than two (2) dogs or three (3) cats; and a total of no more than four (4) dogs and cats combined; in a single residential household.
  - (a) *Exception*. The limit on the number of dogs and cats a person may keep or possess does not apply to a person who:
    - (1) is eligible for any grandfather provisions included in this law's adopting resolution;
    - (2) keeps or possesses a litter of pups or kittens, or a portion of a litter, for a period not exceeding five (5) months from birth;

- (3) resides on property zoned agricultural; and/or
- (4) obtains a permit for the additional dog or cat.
- (b) Permit for Additional Dogs or Cats. A person may keep more than two (2) dogs or three cats (3) in a single residential household if the owner obtains a permit from the Environmental, Health, Safety, and Land Division for the additional animal. The application for the permit must be signed by the owner and contain the signature of the homeowner of the residential household if the homeowner is not the applicant.
  - (1) By seeking a permit for an additional dog or cat the owner agrees that he or she shall reduce the number of licensed dogs or cats on the premises if there are two (2) or more nuisance complaints against the residential household within one (1) calendar year caused by, or related to, the number of dogs or cats housed on the premises.
  - (2) If two (2) or more nuisance complaints are received against the residential household due to the number of dogs or cats housed on the premises, the owner shall reduce the number of animals within thirty (30) days.
- 304.6-4. *Running at Large*. An owner shall not allow a dog or cat to run at large by being any place except upon the premises of the owner, unless the dog or cat is crated, penned, or on a leash under the control of a person physically able to control the animal.
  - (a) A stray dog or cat running at large may be referred to the Oneida Police Department or Oneida Conservation Department.
  - (b) When an Oneida Police Officer or Oneida Conservation Warden finds a dog or cat running at large, the officer and/or warden shall, if possible, pick up and impound such animal.
  - (c) Whenever any impounded animal bears an identification mark, such as a collar with identification tags or license tag, the owner shall be notified as soon as reasonably possible.
- 304.6-5. *Nuisance*. An Oneida Police Officer or Oneida Conservation Warden may pick up and impound a dog or cat that has been found to be a nuisance. A dog or cat shall be found to be a nuisance if the actions of the dog or cat:
  - (a) resulted in two (2) or more verified disturbances due to excessive barking and/or other noise by the animal, or the animal running at large; and/or
  - (b) resulted in one (1) or more verified disturbance due to threatening behavior by the animal running at large.
- 304.6-6. *Investigations for Suspected Animal Bites*. The owner shall notify the Oneida Police Department in the event the owner's cat or dog bites a human or another domestic animal.
  - (a) The responding Oneida Police Officer or Oneida Conservation Warden shall:
    - (1) Ascertain whether the domestic animal is properly licensed and has current vaccinations.
    - (2) Ensure all information provided is correct.
    - (3) Contact the Environmental, Health, Safety, and Land Division to provide notification of the domestic animal bite.
    - (4) If the cat or dog has current rabies vaccinations, order the owner to:
      - (A) Quarantine the animal for ten (10) days; and
      - (B) Present the animal for examination by a veterinarian within twenty-

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four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10<sup>th</sup>) day.

- (5) If the cat or dog does not have current rabies vaccination, order the owner to:
  - (A) Quarantine the animal for ten (10) days or deliver the animal to an isolation facility at the owner's expense. If a home quarantine is ordered, the owner shall present the domestic animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth  $(10^{th})$  day; or
  - (B) Euthanize the animal and send the specimen for analysis at the owner's expense, if the animal has exhibited any signs of rabies.
- (b) Upon expiration of a quarantine period, a veterinarian may extend the quarantine period. Upon expiration of all quarantine periods, if the veterinarian certifies that the animal has not exhibited any signs of rabies, the animal may be released from quarantine.
- (c) If the veterinarian certifies that the animal has exhibited any signs of rabies the following shall occur:
  - (1) If the animal has current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis, to be paid for by the Nation.
  - (2) If the animal does not have current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis at the owner's expense.
- 304.6-7. *District Quarantine*. A district quarantine may be initiated by staff designated by the Environmental, Health, Safety, and Land Division, an Oneida Police Officer, an Oneida Conservation Warden, and/or a Public Health Officer.
  - (a) If an area is subject to a district quarantine for rabies, all dogs and cats within the district shall be kept securely confined, tied, leashed or muzzled. Any dog or cat not confined, tied, leashed or muzzled is a public nuisance and may be impounded. All Oneida Police Officers and Oneida Conservation Wardens shall cooperate in the enforcement of the quarantine.
  - (b) An animal that is immunized against rabies as evidenced by a valid certificate of rabies vaccination or other evidence is exempt from the district quarantine provisions of this section.

#### 304.7. Livestock

- 304.7-1. An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep livestock on land zoned residential.
- 304.7-2. *Limitations on Livestock*. Livestock kept on land zoned residential are subject to the following limitations:
  - (a) One (1) large animal per one (1) acre. Examples of large animals include, but are not limited to, horses, cows, and pigs.
  - (b) One (1) small animal per one-half ( $\frac{1}{2}$ ) acre. Examples of small animals include, but are not limited to, goats, and sheep.

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295 (c) One (1) goat or sheep per recorded lot under one-half (½) acre when setback requirements can be met.

304.7-3. Liability for Damage Caused by Livestock at Large. Any person whose livestock escapes from its normal confined area and becomes at large is responsible for any and all damage to persons and property caused by such livestock while it is away from its normal confined area.

#### 304.8. Hens

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- 304.8-1. *Hen Permit.* An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep hens on land zoned residential.
- 304.8-2. *Prohibition of Roosters*. An owner shall not keep a rooster on land zoned residential.
  - 304.8-3. *Limit on the Number of Hens Allowed*. The number of hens an owner may keep is dependent on the size of the residential lot.
    - (a) An owner may to keep up to six (6) hens on a residential lot that is smaller than two (2) acres in size.
    - (b) An owner may keep up to twelve (12) hens on a residential lot two (2) acres in size or larger.
    - 304.8-4. Standards for Keeping Hens. An owner shall keep hens in the following manner:
      - (a) No person shall keep a hen over eight (8) weeks of age in a principal structure.
      - (b) Hens shall be kept within a structure such as a coop or fenced area used exclusively to keep hens and shall provide at least four (4) square feet of space per hen.
      - (c) No accessory structure used to keep hens shall be located within twenty-five feet (25') of any principal structure which is not owned by the person permitted to keep the hens.
      - (d) No accessory structure used to keep hens shall be located in a front or side yard.
      - (e) All hens shall be kept and handled in a sanitary manner to prevent the spread of communicable diseases amongst birds or to humans.
    - 304.8-5. *Prohibition of Nuisance Hens*. No owner may keep hens that cause any other nuisance associated with unhealthy conditions, create a public health threat, or otherwise interfere with the normal use of property or enjoyment of life by humans or animals.

#### **304.9.** Prohibited Animals

- 304.9-1. No person shall bring into, keep, harbor, maintain, offer for sale or barter, act as a custodian, have custody or control of, or release to the wild on the Reservation a prohibited animal. 304.9-2. *Prohibited Animals*. The Oneida Business Committee shall provide through the adoption of a resolution which orders and families of animals, whether bred in the wild or in captivity, and any or all hybrids are prohibited from being on the Reservation.
- 330 304.9-3. *Prohibited Animals Exception*. The prohibition of certain animals shall not apply to:
  - (a) Individuals who are eligible for any grandfather provisions included in this law's adopting resolution.
  - (b) A zoological park and/or sanctuary, an educational or medical institution, and/or a specially trained entertainment organization who receives a permit from the Environmental, Health, Safety, and Land Division to own, harbor or possess the prohibited animal.
  - 304.9-4. Prohibited Animal Permit. The Environmental, Health, Safety, and Land Division may

issue a prohibited animal permit if:

- (a) the animal and animal quarters are kept in a clean and sanitary condition and maintained to eliminate objectionable odors; and
- (b) the animal is maintained in quarters so constructed as to prevent its escape.
- 304.9-5. *Release of Prohibited Animals*. The Environmental, Health, Safety, and Land Division, may approve a wildlife refuge and/or sanctuary to release prohibited animals within the Reservation without applying for and receiving a prohibited animal permit.
- 304.9-6. *Seizure of Prohibited Animals*. An unpermitted prohibited animal may be seized by the Oneida Police Department and/or the Oneida Conservation Department.
  - (a) A prohibited animal that is seized shall be held by the Oneida Police Department, the Oneida Conservation Department, or its designee until it can be determined if the animal is an endangered or threatened species.
  - (b) At any time after such identification, the Oneida Police Department and/or Oneida Conservation Department may seek an order from the Trial Court as to the care, custody and control of the animal.
  - (c) If the Trial Court finds the animal has been taken, employed, used or possessed in violation of this section, the owner shall be responsible for reimbursing the Oneida Police Department and/or the Oneida Conservation Department for the cost of holding the animal and any costs incurred in identifying the animal.
- 304.9-7. *Notice of Release or Escape*. The owner of a prohibited animal that has been released or escapes shall immediately notify the Oneida Police Department and/or the Oneida Conservation Department and shall be liable for any cost of recapture of the animal.
- 304.10-8. Forfeiture of the Prohibited Animal. An owner found in violation of this section shall forfeit or surrender the prohibited animal to the Oneida Police Department, Oneida Conservation Department, or designee. Upon such forfeiture or surrender, the Trial Court may direct destruction or transfer of the animal to a qualified zoological, educational, or scientific institution or qualified private propagator for safekeeping, with costs assessed against the owner.

#### **304.10.** Dangerous Animals

- 304.10-1. *Dangerous Animals*. No person shall own, keep, possess, return to or harbor a dangerous animal. An animal shall be presumed to be dangerous if the animal:
  - (a) approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack;
  - (b) bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or domestic animal;
  - (c) is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or
  - (d) has been declared to be a dangerous animal and/or ordered to be destroyed in any other jurisdiction.
- 304.10-2. *Dangerous Animal Determination*. An Oneida Police Officer or Oneida Conservation Warden may determine an animal to be dangerous whenever, upon investigation, the officer finds that the animal meets the definition of dangerous animal provided in section 304.10-1.
  - (a) Upon making a determination that an animal is dangerous, the Oneida Police Officer or Oneida Conservation Warden shall issue a written order with an accompanying citation

declaring the animal to be dangerous.

- (b) The citation and order shall be personally delivered to the apparent owner or custodian of the dangerous animal.
- (c) Upon receipt of the written order and accompanying citation the owner shall remove the dangerous animal from the Reservation within three (3) business days.
- 304.10-3. Contesting a Dangerous Animal Determination. If the owner wishes to contest the dangerous animal determination, he or she shall file with the Trial Court a written objection to the order within three (3) business days of receipt of the order.
  - (a) The written objection shall include specific reasons for objecting to or contesting the order. An owner may argue an animal should not be deemed dangerous due to the animal biting, attacking or menacing any person and/or domestic animal because the animal was acting to:
    - (1) defend its owner or another person from an attack by a person or animal;
    - (2) protect its young or another animal;
    - (3) defend itself against any person or animal which has tormented, assaulted or abused it; and/or
    - (4) defend its owner's property against trespassers.
  - (b) Pending the outcome of the hearing, the animal shall be securely confined in a humane manner either on the premises of the owner or caretaker, or with a licensed veterinarian. If confined on the premises of the owner or caretaker, the following requirements shall apply:
    - (1) Leash and Muzzle. No owner shall permit a dangerous animal to go outside its kennel or pen unless the animal is securely restrained with a leash no longer than four feet (4') in length by a person who is at least sixteen (16) years of age who is in physical control of the leash, competent to govern the animal and capable of physically controlling and restraining the animal. The owner shall not leash an animal to inanimate objects such as a tree, post, or building. When the animal is on a leash outside the animal's kennel, the owner shall muzzle the animal in a humane way by a commercially available muzzling device sufficient to prevent the animal from biting a person or other animal.
    - (2) Confinement. Except when leashed and muzzled the owner shall ensure the dangerous animal is securely confined indoors or in a securely enclosed and locked pen or kennel that is located on the premises of the owner and constructed in a manner that does not allow the animal to exit the pen or kennel on its own volition. The owner shall not permit an animal to be kept on a porch, patio, or in any part of a house or structure on the premises of the owner that would allow the animal to exit the building on its own volition. The owner shall not permit the animal to be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.
    - (3) *Signs*. The owner of a dangerous animal shall display, in prominent places on his or her premises near all entrances to the premises, signs in letters of not less than two inches (2") high warning that there is a dangerous animal on the property. A similar sign shall be posted on the kennel or pen of the animal. In addition, the

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 owner shall conspicuously display a sign with a symbol warning children of the presence of a dangerous animal.

 (4) *Notification*. The owner of a dangerous animal shall notify the Oneida Police Department and/or the Oneida Conservation Department immediately if the animal is at large, is unconfined, has attacked another animal, or has attacked a person.

 (c) If an owner or caretaker fails to follow the requirements for harboring a dangerous animal pending a hearing, the animal may be impounded by the Oneida Police Officer or Oneida Conservation Warden issuing the dangerous animal determination.

304.10-4. *Dangerous Animal Determination Hearing*. A hearing on the dangerous animal determination shall be held within fourteen (14) days of submission of the written objection with the Trial Court. At the hearing, the Trial Court shall determine whether the determination that the animal is dangerous should be substantiated.

(a) If the Trial Court concludes that the determination that the animal is dangerous is substantiated, then the Trial Court shall issue an order that mandates the animal be removed from the Reservation within forty-eight (48) hours of the determination.

(1) The order shall contain the requirement that the owner notify the Oneida Police Department within twenty-four (24) hours if the dangerous animal has been sold or been given away. If the dangerous animal has been sold or given away, the owner shall also provide the name, address and telephone number of the new owner of the dangerous animal. If the dangerous animal is sold or given away to a person residing outside the Reservation or to a person or entity that falls outside of the jurisdiction of this law, the owner shall present evidence to the Oneida Police Department showing that he or she has notified the police department or other law enforcement agency of the animal's new residence, including the name, address and telephone number of the new owner. The Oneida Police Department shall forward all such notifications to the Environmental, Health, Safety, and Land Division within a reasonable amount of time.

(b) The Trial Court may order a dangerous animal to be destroyed. If such an order is issued, the Trial Court shall require the owner submit proof of destruction within five (5) business days from a licensed veterinarian. If the owner does not satisfy these requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall seize the animal and enforce compliance at the cost of the owner.

(c) The Trial Court may mandate attendance at an additional Trial Court hearing if restitution is appropriate.

304.10-5. Appeal of the Trial Court's Decision. An appeal of the Trial Court's decision on the dangerous animal determination may be appealed to the Nation's Court of Appeals.

(a) An appeal shall be submitted to the Court of Appeals within five (5) business days from the date of the Trial Court's decision.

(b) Upon an appeal to the Court of Appeals, the order to remove the animal from the Reservation or any order to destroy an animal is stayed pending the outcome of the appeal. 604.10-6. *Dangerous Animal Exception*. The Trial Court may provide an exception to the dangerous animal provisions of this law for a law enforcement or military animal upon presentation by the animal's owner or handler of a satisfactory arrangement for safe keeping of the

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## 304.11. Owner Liability

- 304.11-1. An owner shall be liable for damages caused by his or her domestic animal.
  - (a) First Offense. The owner is liable for the full amount of damages caused by the domestic animal.
  - (b) *Subsequent Offenses*. The owner shall be liable for two (2) times the full amount of damages caused by the domestic animal if the owner knew or should have known that the domestic animal previously caused damages.

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#### **304.12.** Enforcement of Violations

- 304.12-1. *Citations*. A citation for the violation of this law and/or orders issued pursuant to this law may include fines, penalties and conditional orders in accordance with the fine, penalty, and licensing fee schedule. A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.
  - (a) The act of contesting a dangerous animal determination shall follow the process contained in section 304.10.
- 304.12-2. *Fines*. All fines as a result of a citation shall be paid to the Judiciary. Money received from fines shall be contributed to the General Fund.
  - (a) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

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End.

491 Adopted - BC-03-13-96-B 492 Amended - BC-06-22-11-G 493 Amended - BC-06-28-17-B 494 Amended - BC-05-08-19-C

Amended – BC-\_ - \_ -\_

# Title 3. Health and Public Safety - Chapter 304 **DOMESTIC ANIMALS**

#### K@tse>na Olihw@=ke

# matters concerning the pet animals **DOMESTIC ANIMALS**

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## **304.1. Purpose and Policy**

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304.1-1. *Purpose*. The purpose of this law is to:

- (a) protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) set minimum standards for the treatment of animals;
- (c) prohibit certain species of animals from being brought onto the Reservation;
- (d) regulate the keeping of livestock on lots zoned residential within the Reservation; and
- (e) establish consequences for damages caused by domestic animals.
- 304.1-2. Policy. It is the policy of the Nation to protect the health, safety, and welfare of the community by:
  - (a) requiring certain basic measures to prevent the spread of disease carried by domestic animals;
  - (b) establishing requirements for licensing domestic animals, and
  - (c) regulating the types of animals which may be kept as domestic animals.

#### 304.2. Adoption, Amendment, Repeal

304.2-1. This law was adopted by Oneida Business Committee by resolution BC-03-13-96-B and amended by resolutions BC-06-22-11-G, BC-06-28-17-B, and BC-05-08-19-C<sub>-</sub>, and BC---

- 20 304.2-2. This law may be amended or repealed by the Oneida Business Committee and/or 21 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 22 304.2-3. Should a provision of this law or the application thereof to any person or circumstances 23 be held as invalid, such invalidity shall not affect other provisions of this law which are considered 24 to have legal force without the invalid portions.
- 25 304.2-4. In the event of a conflict between a provision of this law and a provision of another law, 26 the provisions of this law shall control.
- 27 304.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

#### 304.3. Definitions

- 304.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Abandon" means leaving behind a domestic animal at a location without providing minimum care.
- 34 (b) "Court of Appeals" means the Nation's Judiciary's Court of Appeals, which is the

35 court of final appeal within the Nation.

- (bc) "District Quarantine" means a rabid or otherwise diseased domestic animal is suspected or known to be within a discernible area and all such animals reasonably suspected of being infected are subject to enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animals are tested for diseases, including rabies.
- (ed) "Fine" means a monetary punishment issued to a person violating this law.
- (de) "Hen" means a female chicken of the order and family gallus gallus domesticus.
- (ef) "Husbandry practices" means accepted manner of managing resources, cultivating, and caring for animals including the breeding, feeding, and tending of the animals.
- (fg) "Judiciary" means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
- (gh) "Livestock" means any equine (i.e. horse, donkey, etc.), bovine (i.e. cow, steer, heifer, etc.), sheep, goat, pig.
- (hi) "Nation" means the Oneida Nation.
- (ij) "Owner" means any person who owns, harbors, keeps, controls or acts as a caretaker for an animal. Absent evidence of alternative adult ownership, this law presumes that domestic animals are owned by the adult homeowner or renter.
- (jk) "Penalty" means a punishment, other than a fine, imposed on a person violating this law and may include, but is not limited to, the confiscation of wildlife with return of the same at the discretion of the Trial Court and restitution.
- (k]) "Reservation" means all the property within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (1m) "Residential household" means a residential lot, except for those residential lots designed as multi-family lots, in which each family unit within the lot constitutes a separate household.
- (mn) "Tethering" means the act of fastening an animal to a stationary object while unattended so that the animal can only range within a set radius. Tethering does not include the use of a leash to walk an animal.
- (no) "Trial Court" means the Trial Court of the Oneida Nation Judiciary.
- (op) "Quarantine" means the act of keeping an animal in enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animal is tested for diseases, including rabies.

#### 304.4. Authority Jurisdiction

- 304.4-1. Personal Jurisdiction. This law applies to:
  - (a) All members of the Nation; the Nation's entities and corporations; and members of other federally-recognized tribes;
  - (b) Individuals and businesses leasing, occupying or otherwise using fee land owned by the Nation or by individual members of the Nation; and/or lands held in trust on behalf of the Nation or individual members of the Nation; and

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- (c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the jurisdiction of the Nation:
  - (1) By entering into a consensual relationship with the Nation, or with the Nation's entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or
  - (2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.

304.4-2. *Territorial Jurisdiction*. This law extends within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation.

#### 304.5. Authority

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- 304.5-1. General. This law governs the keeping of all domestic animals which are commonly owned as household pets. Domestic animals include, but are not limited to, dogs, cats, ferrets, rabbits, guinea pigs, turtles, birds, pigeons, hamsters, non-venomous reptiles, amphibians, and arachnids.
  - (a) Domestic animals do not include prohibited animals as identified by the prohibited animals resolution provided for in section 304.109-2.
- 304.54-2. Authority of the Oneida Police Department and Conservation Department. Oneida Police Officers and Conservation Wardens shall have the authority to:
  - (a) investigate complaints involving domestic animals;
  - (b) enforce the provisions of this law through appropriate means, including but not limited to:
    - (1) seizing any animal that is taken, employed, used, or possessed in violation of this law and/or mistreated, rabid or otherwise in danger or dangerous;
    - (2) issuing citations consistent with the fine and penalty schedule developed in accordance with this law; and
    - (3) using force, up to and including lethal force, to stop an immediate threat to public safety caused by an animal.
      - (A) Where lethal force is used, such execution shall be conducted in as humane manner as possible and, to the extent feasible, avoids damage to the animal's head for the purpose of rabies testing.
- 304.54-3. *Fine, Penalty, and Licensing Fee Schedule*. The Environmental, Health, Safety, and Land Division and the Environmental Resource Board are hereby delegated joint authority to develop a fine, penalty, and licensing fee schedule. The fine, penalty, and licensing fee schedule shall be adopted by the Oneida Business Committee through resolution.
- 115 304.54-4. Disease Investigation and Quarantine. The Environmental, Health, Safety, and Land
- Division, the Emergency Management Coordinator, and the Comprehensive Health Division are
- hereby delegated joint authority to establish standard operating procedures related to disease
- investigations and quarantines.
- 119 304.54-5. *Issuance of Licenses*. The Environmental, Health, Safety, and Land Division shall make
- all decisions related to the issuance of a license and/or permit in accordance with this law, unless

121 otherwise noted.

#### **304.65.** Treatment of Animals

- 304.65-1. *Food and Water*. An owner shall provide an animal with a daily supply of food and water sufficient to maintain the animal in good health.
- 304.65-2. *Shelter*. An owner shall meet the minimum standards for indoor and outdoor shelter for an animal. All shelter shall be structurally sound and maintained in good repair to protect the animal from injury and to contain the animal.
  - (a) *Minimum indoor standards of shelter*. Minimum standards for indoor shelter include the following:
    - (1) *Temperature*. The ambient temperature of the indoor shelter shall be compatible with the health of the animal.
    - (2) *Ventilation*. Indoor shelter facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animal at all times.
  - (b) *Minimum outdoor standards of shelter*. Minimum standards for outdoor shelter include the following:
    - (1) Shelter from Sunlight. When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. Caged does not include farm fencing used to confine livestock.
    - (2) *Climatic Conditions*. Natural or artificial shelter appropriate to the local climatic conditions for the animal concerned shall be provided as necessary for the health of the animal.
    - (3) Adverse Weather. If an animal is tied or confined unattended outdoors under weather conditions which adversely affect the health of the animal, a weather appropriate shelter of suitable size to accommodate the animal shall be provided.
  - (c) *Space Standards*. Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress, or abnormal behavior patterns.
    - (1) *Dog Kennels*. Dog kennels shall meet the following space requirements where, if there are multiple dogs in the same kennel, the base kennel space requirement is based on the size of the largest dog and the additional kennel space requirements are based on the size of each additional dog kept in the kennel:
      - (A) *Dog Size Between One and Thirty-Five Pounds*. A dog that weighs between one (1) and thirty-five (35) pounds shall have a required base kennel space of sixty (60) square feet. Required additional kennel space per additional dog of this size is twelve (12) square feet.
      - (B) Dog Size Between Thirty-Six and Seventy-Five Pounds. A dog that weighs between thirty-six (36) and seventy-five (75) pounds shall have a required base kennel space of eighty (80) square feet. Required additional kennel space per additional dog of this size is eighteen (18) square feet.
      - (C) Dog Size Seventy-Six Pounds or Greater. A dog that weighs seventy-six (76) pounds or more shall have a required base kennel space of one

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hundred (100) square feet. Required additional kennel space per additional dog of this size is twenty-four (24) square feet.

- (d) Sanitation Standards. An owner shall meet the minimum standards of sanitation for both indoor and outdoor shelter. Minimum sanitation standards require waste matter from the animal to be removed within twenty-four (24) hours of its deposit.
- (e) Shelter Exception for Livestock. In the case of livestock kept on farms on land zoned agricultural, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices.
- 304.65-3. *Tethering*. If a kennel or enclosed yard is not available, an owner may tether an unsupervised animal as long as the owner meets the following conditions:
  - (a) the tether is connected to the animal with a buckle type collar or body harness made of nylon or leather not less than one inch (1") in width and at least two inches (2") greater in diameter than the animal's neck or torso;
    - (1) The use of a choke collar, prong collar head harness, or other similar type of head harness or collar shall be prohibited for the use of tethering.
  - (b) the tether is at least twelve feet (12') long and allows the animal to move in all directions unimpeded;
  - (c) the total weight of the tether does not exceed ten percent (10%) of the animal's body weight;
  - (d) the animal is tethered so as to prevent injury, strangulation, or entanglement, and allows the animal access to water and shelter;
  - (e) the tethered animal is not sick, injured, or nursing;
  - (f) the animal is not tethered on any vacant property or land or with an unoccupied dwelling; and
  - (g) the animal is not tethered in a manner that allows the animal to cross onto public space or property of others.
- 304.65-4. *Mistreatment of Animals*. No person shall treat any animal in a manner which causes harm, injury or death. This section does not apply to:
  - (a) normal and accepted veterinary and/or care practices; or
  - (b) teaching, research or experimentation conducted at a facility regulated under federal or applicable state law.
- 304.5-5. *Abandonment*. No person shall abandon any animal.
- <u>304.5-</u>6-5. *Mandatory Reporting*. An employee of the Nation shall report any animal mistreatment witnessed during the regular course of his or her employment with the Nation to the Oneida Police Department and any other appropriate entity.

#### 304.7. Dogs and Cats

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- 304.76-1. *License Required*. An owner shall be required to obtain a license for any dog or cat five (5) months of age or older on an annual basis.
  - (a) *License Period*. The license year shall commence on January 1<sup>st</sup> and end on December 31<sup>st</sup> of every year.
  - (b) License Eligibility. To be eligible for a license, the owner shall provide:
    - (1) the licensing fee; and

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207 (2) proof of current rabies vaccination. (c) Placement of License Tag. Upon the receipt of a license the owner shall be provided a 208 209 license tag for the dog or cat. The owner shall securely attach the license tag to the animal's 210 collar and shall require the animal wear the collar at all times. 211 (1) Exception. A dog or cat shall not be required to wear the collar if the dog or cat 212 213 (A) hunting or actively involved in herding or controlling livestock if the 214 animal is under control of its owner; 215 (B) within the owner's residence and/or securely confined in a fenced area; 216 and/or 217 (C) being shown during a competition. 218 304.76-2. Rabies Vaccinations Required. An owner shall be required to obtain a rabies 219 vaccination for any dog or cat five (5) months of age or older. 220 304.76-3. Limit on the Number of Dogs and Cats. An individual may keep no more than two (2) dogs or three (3) cats; and a total of no more than four (4) dogs and cats combined; in a single 221 222 residential household. 223 (a) Exception. The limit on the number of dogs and cats a person may keep or possess does 224 not apply to a person who: 225 (1) is eligible for any grandfather provisions included in this law's adopting 226 resolution; 227 (2) keeps or possesses a litter of pups or kittens, or a portion of a litter, for a period 228 not exceeding five (5) months from birth; 229 (3) resides on property zoned agricultural; and/or 230 (4) obtains a permit for the additional dog or cat. 231 (b) Permit for Additional Dogs or Cats. A person may keep more than two (2) dogs or 232 three cats (3) in a single residential household if the owner obtains a permit from the 233 Environmental, Health, Safety, and Land Division for the additional animal. The application for the permit must be signed by the owner and contain the signature of the 234 235 homeowner of the residential household if the homeowner is not the applicant. 236 (1) By seeking a permit for an additional dog or cat the owner agrees that he or she shall reduce the number of licensed dogs or cats on the premises if there are two (2) 237 238 or more nuisance complaints against the residential household within one (1) 239 calendar year caused by, or related to, the number of dogs or cats housed on the 240 premises. 241 (2) If two (2) or more nuisance complaints are received against the residential 242 household due to the number of dogs or cats housed on the premises, the owner 243 shall reduce the number of animals within thirty (30) days. 244 304.76-4. Running at Large. An owner shall not allow a dog or cat to run at large by being any 245 place except upon the premises of the owner, unless the dog or cat is crated, penned, or on a leash 246 under the control of a person physically able to control the animal. 247 (a) A stray dog or cat running at large may be referred to the Oneida Police Department or Oneida Conservation Department. 248 (b) When an Oneida Police Officer or Oneida Conservation Warden finds a dog or cat 249

250 251 running at large, the officer and/or warden shall, if possible, pick up and impound such animal.

(c) Whenever any impounded animal bears an identification mark, such as a collar with

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identification tags or license tag, the owner shall be notified as soon as reasonably possible. 304.76-5. Nuisance. An Oneida Police Officer or Oneida Conservation Warden may pick up and impound a dog or cat that has been found to be a nuisance. A dog or cat shall be found to be a nuisance if the actions of the dog or cat:

257 258 (a) resulted in two (2) or more verified disturbances due to excessive barking and/or other noise by the animal, or the animal running at large; and/or (b) resulted in one (1) or more verified disturbance due to threatening behavior by the

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animal running at large.

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304.76-6. Investigations for Suspected Animal Bites. The owner shall notify the Oneida Police Department in the event the owner's cat or dog bites a human or another domestic animal.

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(a) The responding Oneida Police Officer or Oneida Conservation Warden shall:

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(1) Ascertain whether the domestic animal is properly licensed and has current vaccinations.

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(2) Ensure all information provided is correct.

267 268 (3) Contact the Environmental, Health, Safety, and Land Division to provide notification of the domestic animal bite.

269 270 (4) If the cat or dog has current rabies vaccinations, order the owner to:

271 272 (A) Quarantine the animal for ten (10) days; and (B) Present the animal for examination by a veterinarian within twentyfour (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10<sup>th</sup>) day.

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(5) If the cat or dog does not have current rabies vaccination, order the owner to:

275 276 277 (A) Quarantine the animal for ten (10) days or deliver the animal to an isolation facility at the owner's expense. If a home quarantine is ordered, the owner shall present the domestic animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10<sup>th</sup>) day; or

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(B) Euthanize the animal and send the specimen for analysis at the owner's expense, if the animal has exhibited any signs of rabies.

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(b) Upon expiration of a quarantine period, a veterinarian may extend the quarantine period. Upon expiration of all quarantine periods, if the veterinarian certifies that the animal has not exhibited any signs of rabies, the animal may be released from quarantine.

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(c) If the veterinarian certifies that the animal has exhibited any signs of rabies the following shall occur:

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(1) If the animal has current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis, to be paid for by the Nation.

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(2) If the animal does not have current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis at the owner's expense.

304.76-7. *District Quarantine*. A district quarantine may be initiated by staff designated by the Environmental, Health, Safety, and Land Division, an Oneida Police Officer, an Oneida Conservation Warden, and/or a Public Health Officer.

- (a) If an area is subject to a district quarantine for rabies, all dogs and cats within the district shall be kept securely confined, tied, leashed or muzzled. Any dog or cat not confined, tied, leashed or muzzled is a public nuisance and may be impounded. All Oneida Police Officers and Oneida Conservation Wardens shall cooperate in the enforcement of the quarantine.
- (b) An animal that is immunized against rabies as evidenced by a valid certificate of rabies vaccination or other evidence is exempt from the district quarantine provisions of this section.

#### **304.87.** Livestock

- 304.87-1. An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep livestock on land zoned residential.
- 304.87-2. *Limitations on Livestock*. Livestock kept on land zoned residential are subject to the following limitations:
  - (a) One (1) large animal per one (1) acre. Examples of large animals include, but are not limited to, horses, cows, and pigs.
  - (b) One (1) small animal per one-half ( $\frac{1}{2}$ ) acre. Examples of small animals include, but are not limited to, goats, and sheep.
  - (c) One (1) goat or sheep per recorded lot under one-half ( $\frac{1}{2}$ ) acre when setback requirements can be met.
- 304.87-3. Liability for Damage Caused by Livestock at Large. Any person whose livestock escapes from its normal confined area and becomes at large is responsible for any and all damage to persons and property caused by such livestock while it is away from its normal confined area.

## 304.98. Hens

- 304.98-1. *Hen Permit*. An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep hens on land zoned residential.
- 304.98-2. *Prohibition of Roosters*. An owner shall not keep a rooster on land zoned residential.
- 304.98-3. *Limit on the Number of Hens Allowed*. The number of hens an owner may keep is dependent on the size of the residential lot.

  (a) An owner may to keep up to six (6) hens on a residential lot that is smaller than two
  - (a) An owner may to keep up to six (6) hens on a residential lot that is smaller than two (2) acres in size.
  - (b) An owner may keep up to twelve (12) hens on a residential lot two (2) acres in size or larger.
  - 304.98-4. Standards for Keeping Hens. An owner shall keep hens in the following manner:
    - (a) No person shall keep a hen over eight (8) weeks of age in a principal structure.
    - (b) Hens shall be kept within a structure such as a coop or fenced area used exclusively to keep hens and shall provide at least four (4) square feet of space per hen.
    - (c) No accessory structure used to keep hens shall be located within twenty-five feet (25')

- of any principal structure which is not owned by the person permitted to keep the hens.
  - (d) No accessory structure used to keep hens shall be located in a front or side yard.
  - (e) All hens shall be kept and handled in a sanitary manner to prevent the spread of communicable diseases amongst birds or to humans.
  - 304.98-5. *Prohibition of Nuisance Hens*. No owner may keep hens that cause any other nuisance associated with unhealthy conditions, create a public health threat, or otherwise interfere with the normal use of property or enjoyment of life by humans or animals.

# 304.109. Prohibited Animals

- 304.109-1. No person shall bring into, keep, harbor, maintain, offer for sale or barter, act as a custodian, have custody or control of, or release to the wild on the Reservation a prohibited animal. 304.109-2. *Prohibited Animals*. The Oneida Business Committee shall provide through the adoption of a resolution which orders and families of animals, whether bred in the wild or in captivity, and any or all hybrids are prohibited from being on the Reservation.
- 304.109-3. *Prohibited Animals Exception*. The prohibition of certain animals shall not apply to:
  - (a) Individuals who are eligible for any grandfather provisions included in this law's adopting resolution.
  - (b) A zoological park and/or sanctuary, an educational or medical institution, and/or a specially trained entertainment organization who receives a permit from the Environmental, Health, Safety, and Land Division to own, harbor or possess the prohibited animal.
- 304.109-4. *Prohibited Animal Permit*. The Environmental, Health, Safety, and Land Division may issue a prohibited animal permit if:
  - (a) the animal and animal quarters are kept in a clean and sanitary condition and maintained to eliminate objectionable odors; and
  - (b) the animal is maintained in quarters so constructed as to prevent its escape.
- 304.109-5. Release of Prohibited Animals. The Environmental, Health, Safety, and Land Division, may approve a wildlife refuge and/or sanctuary to release prohibited animals within the Reservation without applying for and receiving a prohibited animal permit.
- 304.109-6. Seizure of Prohibited Animals. An unpermitted prohibited animal may be seized by the Oneida Police Department and/or the Oneida Conservation Department.
  - (a) A prohibited animal that is seized shall be held by the Oneida Police Department, the Oneida Conservation Department, or its designee until it can be determined if the animal is an endangered or threatened species.
  - (b) At any time after such identification, the Oneida Police Department and/or Oneida Conservation Department may seek an order from the Trial Court as to the care, custody and control of the animal.
  - (c) If the Trial Court finds the animal has been taken, employed, used or possessed in violation of this section, the owner shall be responsible for reimbursing the Oneida Police Department and/or the Oneida Conservation Department for the cost of holding the animal and any costs incurred in identifying the animal.
- 304.109-7. Notice of Release or Escape. The owner of a prohibited animal that has been

- released or escapes shall immediately notify the Oneida Police Department and/or the Oneida Conservation Department and shall be liable for any cost of recapture of the animal.
- 381 304.10-8. *Forfeiture of the Prohibited Animal*. An owner found in violation of this section shall forfeit or surrender the prohibited animal to the Oneida Police Department, Oneida Conservation Department, or designee. Upon such forfeiture or surrender, the Trial Court may direct destruction or transfer of the animal to a qualified zoological, educational, or scientific institution or qualified

private propagator for safekeeping, with costs assessed against the owner.

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# 304.1110. Dangerous Animals

- 304.110-1. *Dangerous Animals*. No person shall own, keep, possess, return to or harbor a dangerous animal. An animal shall be presumed to be dangerous if the animal:
  - (a) approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack;
  - (b) bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or domestic animal:
  - (c) is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or
  - (d) has been declared to be a dangerous animal and/or ordered to be destroyed in any other jurisdiction.
- 304.<u>H10</u>-2. *Dangerous Animal Determination*. An Oneida Police Officer or Oneida Conservation Warden may determine an animal to be dangerous whenever, upon investigation, the officer finds that the animal meets the definition of dangerous animal provided in section 304.<u>H10</u>-1.
  - (a) Upon making a determination that an animal is dangerous, the Oneida Police Officer or Oneida Conservation Warden shall issue a written order with an accompanying citation declaring the animal to be dangerous.
  - (b) The citation and order shall be personally delivered to the apparent owner or custodian of the dangerous animal.
  - (c) Upon receipt of the written order and accompanying citation the owner shall remove the dangerous animal from the Reservation within three (3) business days.
- 304.1110-3. Contesting a Dangerous Animal Determination. If the owner wishes to contest the dangerous animal determination, he or she shall file with the Trial Court a written objection to the order within three (3) business days of receipt of the order.
  - (a) The written objection shall include specific reasons for objecting to or contesting the order. An owner may argue an animal should not be deemed dangerous due to the animal biting, attacking or menacing any person and/or domestic animal because the animal was acting to:
    - (1) defend its owner or another person from an attack by a person or animal;
    - (2) protect its young or another animal;
    - (3) defend itself against any person or animal which has tormented, assaulted or abused it; and/or
    - (4) defend its owner's property against trespassers.
  - (b) Pending the outcome of the hearing, the animal shall be securely confined in a humane manner either on the premises of the owner or caretaker, or with a licensed veterinarian. If

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confined on the premises of the owner or caretaker, the following requirements shall apply:

- (1) Leash and Muzzle. No owner shall permit a dangerous animal to go outside its kennel or pen unless the animal is securely restrained with a leash no longer than four feet (4') in length by a person who is at least sixteen (16) years of age who is in physical control of the leash, competent to govern the animal and capable of physically controlling and restraining the animal. The owner shall not leash an animal to inanimate objects such as a tree, post, or building. When the animal is on a leash outside the animal's kennel, the owner shall muzzle the animal in a humane way by a commercially available muzzling device sufficient to prevent the animal from biting a person or other animal.
  - (2) Confinement. Except when leashed and muzzled the owner shall ensure the dangerous animal is securely confined indoors or in a securely enclosed and locked pen or kennel that is located on the premises of the owner and constructed in a manner that does not allow the animal to exit the pen or kennel on its own volition. The owner shall not permit an animal to be kept on a porch, patio, or in any part of a house or structure on the premises of the owner that would allow the animal to exit the building on its own volition. The owner shall not permit the animal to be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.
  - (3) *Signs*. The owner of a dangerous animal shall display, in prominent places on his or her premises near all entrances to the premises, signs in letters of not less than two inches (2") high warning that there is a dangerous animal on the property. A similar sign shall be posted on the kennel or pen of the animal. In addition, the owner shall conspicuously display a sign with a symbol warning children of the presence of a dangerous animal.
  - (4) *Notification*. The owner of a dangerous animal shall notify the Oneida Police Department and/or the Oneida Conservation Department immediately if the animal is at large, is unconfined, has attacked another animal, or has attacked a person.
  - (c) If an owner or caretaker fails to follow the requirements for harboring a dangerous animal pending a hearing, the animal may be impounded by the Oneida Police Officer or Oneida Conservation Warden issuing the dangerous animal determination.
  - 304.1110-4. *Dangerous Animal Determination Hearing*. A hearing on the dangerous animal determination shall be held within fourteen (14) days of submission of the written objection with the Trial Court. At the hearing, the Trial Court shall determine whether the determination that the animal is dangerous should be substantiated.
    - (a) If the Trial Court concludes that the determination that the animal is dangerous is substantiated, then the Trial Court shall issue an order that mandates the animal be removed from the Reservation within forty-eight (48) hours of the determination.
      - (1) The order shall contain the requirement that the owner notify the Oneida Police Department within twenty-four (24) hours if the dangerous animal has been sold or been given away. If the dangerous animal has been sold or given away, the owner shall also provide the name, address and telephone number of the new owner of the

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dangerous animal. If the dangerous animal is sold or given away to a person residing outside the Reservation or to a person or entity that falls outside of the jurisdiction of this law, the owner shall present evidence to the Oneida Police Department showing that he or she has notified the police department or other law enforcement agency of the animal's new residence, including the name, address and telephone number of the new owner. The Oneida Police Department shall forward all such notifications to the Environmental, Health, Safety, and Land Division within a reasonable amount of time.

- (b) The Trial Court may order a dangerous animal to be destroyed. If such an order is issued, the Trial Court shall require the owner submit proof of destruction within five (5) business days from a licensed veterinarian. If the owner does not satisfy these requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall seize the animal and enforce compliance at the cost of the owner.
- (c) The Trial Court may mandate attendance at an additional Trial Court hearing if restitution is appropriate.

304.1110-5. Appeal of the Trial Court's Decision. An appeal of the Trial Court's decision on the dangerous animal determination may be appealed to the Nation's Court of Appeals.

- (a) An appeal shall be submitted to the Court of Appeals within five (5) business days from the date of the Trial Court's decision.
- (b) Upon an appeal to the Court of Appeals, the order to remove the animal from the Reservation or any order to destroy an animal is stayed pending the outcome of the appeal. 604.1110-6. *Dangerous Animal Exception*. The Trial Court may provide an exception to the dangerous animal provisions of this law for a law enforcement or military animal upon presentation by the animal's owner or handler of a satisfactory arrangement for safe keeping of the animal.

# **304.1211**. Owner Liability

304.1211-1. An owner shall be liable for damages caused by his or her domestic animal.

- (a) First Offense. The owner is liable for the full amount of damages caused by the domestic animal.
- (b) Subsequent Offenses. The owner shall be liable for two (2) times the full amount of damages caused by the domestic animal if the owner knew or should have known that the domestic animal previously caused damages.

#### 304.1312. Enforcement of Violations

304.1312-1. Citations. Citations A citation for the violation of this law and/or orders issued pursuant to this law may include fines, penalties and conditional orders in accordance with the fine, penalty, and licensing fee schedule. A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.

304.13-2. Citation Pre-Hearing. All citations shall include a pre-hearing date with the Trial Court which shall be set for the next scheduled monthly pre-hearing date that is at least thirty (30) days after the citation was issued. (a) The act of contesting a dangerous animal determination shall follow the process contained in section 304.1110.

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- (a) Persons wishing to contest a citation shall appear at the prehearing, at which time the Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued.
  - (b) In addition to scheduling requested hearings, the Trial Court may also make conditional orders at the pre-hearing which are effective until the matter is resolved.
- 304.13-3. Citation Hearing. The Trial Court shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was
- 304.13-4. Appeals of the Trial Court's Determinations. Any person wishing to contest the determination of the Trial Court may appeal to the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure.
- 304.13-5. Fines. All fines 304.12-2. Fines. All fines as a result of a citation shall be paid to the Judiciary. Money received from fines shall be contributed to the General Fund.
  - (a) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later. If the fine is not paid by this deadline, the Trial Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process.
    - (1) The ninety (90) day deadline for payment of fines may be extended if an alternative payment plan is approved by the Trial Court.
  - (b(a) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

End.

533 Adopted - BC-03-13-96-B 534 Amended - BC-06-22-11-G 535 Amended - BC-06-28-17-B 536 Amended – BC-05-08-19-C 537

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## Title 3. Health and Public Safety - Chapter 304 K@tse>na Olihw@=ke

matters concerning the pet animals

## **DOMESTIC ANIMALS**

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## **304.1. Purpose and Policy**

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304.1-1. *Purpose*. The purpose of this law is to:

- (a) protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) set minimum standards for the treatment of animals;
- (c) prohibit certain species of animals from being brought onto the Reservation;
- (d) regulate the keeping of livestock on lots zoned residential within the Reservation; and
- (e) establish consequences for damages caused by domestic animals.
- 304.1-2. *Policy*. It is the policy of the Nation to protect the health, safety, and welfare of the community by:
  - (a) requiring certain basic measures to prevent the spread of disease carried by domestic animals:
  - (b) establishing requirements for licensing domestic animals, and
  - (c) regulating the types of animals which may be kept as domestic animals.

#### 304.2. Adoption, Amendment, Repeal

- 304.2-1. This law was adopted by Oneida Business Committee by resolution BC-03-13-96-B and amended by resolutions BC-06-22-11-G, BC-06-28-17-B, BC-05-08-19-C, and BC- - .
- 19 304.2-2. This law may be amended or repealed by the Oneida Business Committee and/or
- 20 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 21 304.2-3. Should a provision of this law or the application thereof to any person or circumstances
- be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.
- 304.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 26 304.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

#### 304.3. Definitions

- 304.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Abandon" means leaving behind a domestic animal at a location without providing minimum care.
  - (b) "Court of Appeals" means the Nation's Judiciary's Court of Appeals, which is the court of final appeal within the Nation.
  - (c) "District Quarantine" means a rabid or otherwise diseased domestic animal is suspected or known to be within a discernible area and all such animals reasonably suspected of being infected are subject to enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animals are tested for diseases, including

rabies.

- (d) "Fine" means a monetary punishment issued to a person violating this law.
  - (e) "Hen" means a female chicken of the order and family gallus gallus domesticus.
  - (f) "Husbandry practices" means accepted manner of managing resources, cultivating, and caring for animals including the breeding, feeding, and tending of the animals.
  - (g) "Judiciary" means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
  - (h) "Livestock" means any equine (i.e. horse, donkey, etc.), bovine (i.e. cow, steer, heifer, etc.), sheep, goat, pig.
  - (i) "Nation" means the Oneida Nation.
  - (j) "Owner" means any person who owns, harbors, keeps, controls or acts as a caretaker for an animal. Absent evidence of alternative adult ownership, this law presumes that domestic animals are owned by the adult homeowner or renter.
  - (k) "Penalty" means a punishment, other than a fine, imposed on a person violating this law and may include, but is not limited to, the confiscation of wildlife with return of the same at the discretion of the Trial Court and restitution.
  - (l) "Reservation" means all the property within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
  - (m) "Residential household" means a residential lot, except for those residential lots designed as multi-family lots, in which each family unit within the lot constitutes a separate household.
  - (n) "Tethering" means the act of fastening an animal to a stationary object while unattended so that the animal can only range within a set radius. Tethering does not include the use of a leash to walk an animal.
  - (o) "Trial Court" means the Trial Court of the Oneida Nation Judiciary.
  - (p) "Quarantine" means the act of keeping an animal in enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animal is tested for diseases, including rabies.

## 304.4. Authority

- 304.4-1. *General*. This law governs the keeping of all domestic animals which are commonly owned as household pets. Domestic animals include, but are not limited to, dogs, cats, ferrets, rabbits, guinea pigs, turtles, birds, pigeons, hamsters, non-venomous reptiles, amphibians, and arachnids.
  - (a) Domestic animals do not include prohibited animals as identified by the prohibited animals resolution provided for in section 304.9-2.
- 304.4-2. *Authority of the Oneida Police Department and Conservation Department*. Oneida Police Officers and Conservation Wardens shall have the authority to:
  - (a) investigate complaints involving domestic animals;
  - (b) enforce the provisions of this law through appropriate means, including but not limited to:

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- (1) seizing any animal that is taken, employed, used, or possessed in violation of this law and/or mistreated, rabid or otherwise in danger or dangerous;
- (2) issuing citations consistent with the fine and penalty schedule developed in accordance with this law; and
- (3) using force, up to and including lethal force, to stop an immediate threat to public safety caused by an animal.
  - (A) Where lethal force is used, such execution shall be conducted in as humane manner as possible and, to the extent feasible, avoids damage to the animal's head for the purpose of rabies testing.
- 304.4-3. *Fine, Penalty, and Licensing Fee Schedule*. The Environmental, Health, Safety, and Land Division and the Environmental Resource Board are hereby delegated joint authority to develop a fine, penalty, and licensing fee schedule. The fine, penalty, and licensing fee schedule shall be adopted by the Oneida Business Committee through resolution.
- 304.4-4. *Disease Investigation and Quarantine*. The Environmental, Health, Safety, and Land Division, the Emergency Management Coordinator, and the Comprehensive Health Division are hereby delegated joint authority to establish standard operating procedures related to disease investigations and quarantines.
- 304.4-5. *Issuance of Licenses*. The Environmental, Health, Safety, and Land Division shall make all decisions related to the issuance of a license and/or permit in accordance with this law, unless otherwise noted.

#### **304.5.** Treatment of Animals

- 304.5-1. *Food and Water*. An owner shall provide an animal with a daily supply of food and water sufficient to maintain the animal in good health.
- 304.5-2. *Shelter*. An owner shall meet the minimum standards for indoor and outdoor shelter for an animal. All shelter shall be structurally sound and maintained in good repair to protect the animal from injury and to contain the animal.
  - (a) *Minimum indoor standards of shelter*. Minimum standards for indoor shelter include the following:
    - (1) *Temperature*. The ambient temperature of the indoor shelter shall be compatible with the health of the animal.
    - (2) *Ventilation*. Indoor shelter facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animal at all times.
  - (b) *Minimum outdoor standards of shelter*. Minimum standards for outdoor shelter include the following:
    - (1) Shelter from Sunlight. When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. Caged does not include farm fencing used to confine livestock.
    - (2) *Climatic Conditions*. Natural or artificial shelter appropriate to the local climatic conditions for the animal concerned shall be provided as necessary for the health of the animal.

- 2020 04 20 124 (3) Adverse Weather. If an animal is tied or confined unattended outdoors under 125 weather conditions which adversely affect the health of the animal, a weather appropriate shelter of suitable size to accommodate the animal shall be provided. 126 127 (c) Space Standards. Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space 128 129 may be indicated by evidence of debility, stress, or abnormal behavior patterns. 130 (1) Dog Kennels. Dog kennels shall meet the following space requirements where, 131 if there are multiple dogs in the same kennel, the base kennel space requirement is based on the size of the largest dog and the additional kennel space requirements 132 133 are based on the size of each additional dog kept in the kennel: 134 (A) Dog Size Between One and Thirty-Five Pounds. A dog that weighs between one (1) and thirty-five (35) pounds shall have a required base 135 136 kennel space of sixty (60) square feet. Required additional kennel space per 137 additional dog of this size is twelve (12) square feet. (B) Dog Size Between Thirty-Six and Seventy-Five Pounds. A dog that 138 139 weighs between thirty-six (36) and seventy-five (75) pounds shall have a 140 required base kennel space of eighty (80) square feet. Required additional kennel space per additional dog of this size is eighteen (18) square feet. 141 (C) Dog Size Seventy-Six Pounds or Greater. A dog that weighs seventy-142 143 six (76) pounds or more shall have a required base kennel space of one
  - (d) Sanitation Standards. An owner shall meet the minimum standards of sanitation for both indoor and outdoor shelter. Minimum sanitation standards require waste matter from the animal to be removed within twenty-four (24) hours of its deposit.

hundred (100) square feet. Required additional kennel space per additional

- (e) Shelter Exception for Livestock. In the case of livestock kept on farms on land zoned agricultural, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices.
- 304.5-3. Tethering. If a kennel or enclosed yard is not available, an owner may tether an unsupervised animal as long as the owner meets the following conditions:

dog of this size is twenty-four (24) square feet.

- (a) the tether is connected to the animal with a buckle type collar or body harness made of nylon or leather not less than one inch (1") in width and at least two inches (2") greater in diameter than the animal's neck or torso:
  - (1) The use of a choke collar, prong collar head harness, or other similar type of head harness or collar shall be prohibited for the use of tethering.
- (b) the tether is at least twelve feet (12') long and allows the animal to move in all directions unimpeded;
- (c) the total weight of the tether does not exceed ten percent (10%) of the animal's body weight;
- (d) the animal is tethered so as to prevent injury, strangulation, or entanglement, and allows the animal access to water and shelter;
- (e) the tethered animal is not sick, injured, or nursing;

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- (f) the animal is not tethered on any vacant property or land or with an unoccupied dwelling; and
- (g) the animal is not tethered in a manner that allows the animal to cross onto public space or property of others.
- 304.5-4. *Mistreatment of Animals*. No person shall treat any animal in a manner which causes harm, injury or death. This section does not apply to:
  - (a) normal and accepted veterinary and/or care practices; or
  - (b) teaching, research or experimentation conducted at a facility regulated under federal or applicable state law.
- 304.5-5. *Abandonment*. No person shall abandon any animal.
- 304.5-6. *Mandatory Reporting*. An employee of the Nation shall report any animal mistreatment witnessed during the regular course of his or her employment with the Nation to the Oneida Police Department and any other appropriate entity.

#### 304.7. Dogs and Cats

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- 304.6-1. *License Required*. An owner shall be required to obtain a license for any dog or cat five (5) months of age or older on an annual basis.
  - (a) *License Period*. The license year shall commence on January 1<sup>st</sup> and end on December 31<sup>st</sup> of every year.
  - (b) License Eligibility. To be eligible for a license, the owner shall provide:
    - (1) the licensing fee; and
    - (2) proof of current rabies vaccination.
  - (c) *Placement of License Tag*. Upon the receipt of a license the owner shall be provided a license tag for the dog or cat. The owner shall securely attach the license tag to the animal's collar and shall require the animal wear the collar at all times.
    - (1) Exception. A dog or cat shall not be required to wear the collar if the dog or cat is:
      - (A) hunting or actively involved in herding or controlling livestock if the animal is under control of its owner;
      - (B) within the owner's residence and/or securely confined in a fenced area; and/or
      - (C) being shown during a competition.
- 304.6-2. Rabies Vaccinations Required. An owner shall be required to obtain a rabies vaccination for any dog or cat five (5) months of age or older.
- 304.6-3. Limit on the Number of Dogs and Cats. An individual may keep no more than two (2) dogs or three (3) cats; and a total of no more than four (4) dogs and cats combined; in a single residential household.
  - (a) *Exception*. The limit on the number of dogs and cats a person may keep or possess does not apply to a person who:
    - (1) is eligible for any grandfather provisions included in this law's adopting resolution;
    - (2) keeps or possesses a litter of pups or kittens, or a portion of a litter, for a period not exceeding five (5) months from birth;

2020 04 20 209 (3) resides on property zoned agricultural; and/or (4) obtains a permit for the additional dog or cat. 210 (b) Permit for Additional Dogs or Cats. A person may keep more than two (2) dogs or 211 three cats (3) in a single residential household if the owner obtains a permit from the 212 213 Environmental, Health, Safety, and Land Division for the additional animal. The 214 application for the permit must be signed by the owner and contain the signature of the 215 homeowner of the residential household if the homeowner is not the applicant. 216 (1) By seeking a permit for an additional dog or cat the owner agrees that he or she shall reduce the number of licensed dogs or cats on the premises if there are two (2) 217 or more nuisance complaints against the residential household within one (1) 218 219 calendar year caused by, or related to, the number of dogs or cats housed on the 220 premises. 221 (2) If two (2) or more nuisance complaints are received against the residential 222 household due to the number of dogs or cats housed on the premises, the owner 223 shall reduce the number of animals within thirty (30) days. 224 304.6-4. Running at Large. An owner shall not allow a dog or cat to run at large by being any 225 place except upon the premises of the owner, unless the dog or cat is crated, penned, or on a leash 226 under the control of a person physically able to control the animal. 227 (a) A stray dog or cat running at large may be referred to the Oneida Police Department or 228 Oneida Conservation Department. 229 (b) When an Oneida Police Officer or Oneida Conservation Warden finds a dog or cat 230 running at large, the officer and/or warden shall, if possible, pick up and impound such 231 232 (c) Whenever any impounded animal bears an identification mark, such as a collar with 233 identification tags or license tag, the owner shall be notified as soon as reasonably possible. 234 304.6-5. Nuisance. An Oneida Police Officer or Oneida Conservation Warden may pick up and 235 impound a dog or cat that has been found to be a nuisance. A dog or cat shall be found to be a 236 nuisance if the actions of the dog or cat: 237 (a) resulted in two (2) or more verified disturbances due to excessive barking and/or other 238 noise by the animal, or the animal running at large; and/or 239 (b) resulted in one (1) or more verified disturbance due to threatening behavior by the 240 animal running at large. 304.6-6. Investigations for Suspected Animal Bites. The owner shall notify the Oneida Police 241 242 Department in the event the owner's cat or dog bites a human or another domestic animal. 243 (a) The responding Oneida Police Officer or Oneida Conservation Warden shall: 244 (1) Ascertain whether the domestic animal is properly licensed and has current 245 vaccinations. 246 (2) Ensure all information provided is correct. 247 (3) Contact the Environmental, Health, Safety, and Land Division to provide 248 notification of the domestic animal bite. 249 (4) If the cat or dog has current rabies vaccinations, order the owner to: 250 (A) Quarantine the animal for ten (10) days; and 251 (B) Present the animal for examination by a veterinarian within twenty-

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#### 304.7. Livestock

- 304.7-1. An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep livestock on land zoned residential.
- 304.7-2. Limitations on Livestock. Livestock kept on land zoned residential are subject to the following limitations:
  - (a) One (1) large animal per one (1) acre. Examples of large animals include, but are not limited to, horses, cows, and pigs.
  - (b) One (1) small animal per one-half (½) acre. Examples of small animals include, but are not limited to, goats, and sheep.

four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10<sup>th</sup>) day.

- (5) If the cat or dog does not have current rabies vaccination, order the owner to:
  - (A) Quarantine the animal for ten (10) days or deliver the animal to an isolation facility at the owner's expense. If a home quarantine is ordered. the owner shall present the domestic animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10<sup>th</sup>) day; or
  - (B) Euthanize the animal and send the specimen for analysis at the owner's expense, if the animal has exhibited any signs of rabies.
- (b) Upon expiration of a quarantine period, a veterinarian may extend the quarantine period. Upon expiration of all quarantine periods, if the veterinarian certifies that the animal has not exhibited any signs of rabies, the animal may be released from quarantine.
- (c) If the veterinarian certifies that the animal has exhibited any signs of rabies the following shall occur:
  - (1) If the animal has current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis, to be paid for by the Nation.
  - (2) If the animal does not have current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis at the owner's expense.
- 304.6-7. District Quarantine. A district quarantine may be initiated by staff designated by the Environmental, Health, Safety, and Land Division, an Oneida Police Officer, an Oneida Conservation Warden, and/or a Public Health Officer.
  - (a) If an area is subject to a district quarantine for rabies, all dogs and cats within the district shall be kept securely confined, tied, leashed or muzzled. Any dog or cat not confined, tied, leashed or muzzled is a public nuisance and may be impounded. All Oneida Police Officers and Oneida Conservation Wardens shall cooperate in the enforcement of the quarantine.
  - (b) An animal that is immunized against rabies as evidenced by a valid certificate of rabies vaccination or other evidence is exempt from the district quarantine provisions of this section.

- (c) One (1) goat or sheep per recorded lot under one-half (½) acre when setback requirements can be met.
- 304.7-3. Liability for Damage Caused by Livestock at Large. Any person whose livestock escapes from its normal confined area and becomes at large is responsible for any and all damage to persons and property caused by such livestock while it is away from its normal confined area.

#### 304.8. Hens

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- 304.8-1. *Hen Permit.* An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep hens on land zoned residential.
- 304.8-2. *Prohibition of Roosters*. An owner shall not keep a rooster on land zoned residential.
- 305 304.8-3. *Limit on the Number of Hens Allowed*. The number of hens an owner may keep is dependent on the size of the residential lot.
  - (a) An owner may to keep up to six (6) hens on a residential lot that is smaller than two (2) acres in size.
  - (b) An owner may keep up to twelve (12) hens on a residential lot two (2) acres in size or larger.
  - 304.8-4. Standards for Keeping Hens. An owner shall keep hens in the following manner:
    - (a) No person shall keep a hen over eight (8) weeks of age in a principal structure.
    - (b) Hens shall be kept within a structure such as a coop or fenced area used exclusively to keep hens and shall provide at least four (4) square feet of space per hen.
    - (c) No accessory structure used to keep hens shall be located within twenty-five feet (25') of any principal structure which is not owned by the person permitted to keep the hens.
    - (d) No accessory structure used to keep hens shall be located in a front or side yard.
    - (e) All hens shall be kept and handled in a sanitary manner to prevent the spread of communicable diseases amongst birds or to humans.
  - 304.8-5. *Prohibition of Nuisance Hens*. No owner may keep hens that cause any other nuisance associated with unhealthy conditions, create a public health threat, or otherwise interfere with the normal use of property or enjoyment of life by humans or animals.

#### **304.9.** Prohibited Animals

- 304.9-1. No person shall bring into, keep, harbor, maintain, offer for sale or barter, act as a custodian, have custody or control of, or release to the wild on the Reservation a prohibited animal. 304.9-2. *Prohibited Animals*. The Oneida Business Committee shall provide through the adoption of a resolution which orders and families of animals, whether bred in the wild or in captivity, and any or all hybrids are prohibited from being on the Reservation.
- 330 304.9-3. *Prohibited Animals Exception*. The prohibition of certain animals shall not apply to: 331 (a) Individuals who are eligible for any grandfather provisions included in this law
  - (a) Individuals who are eligible for any grandfather provisions included in this law's adopting resolution.
  - (b) A zoological park and/or sanctuary, an educational or medical institution, and/or a specially trained entertainment organization who receives a permit from the Environmental, Health, Safety, and Land Division to own, harbor or possess the prohibited animal.
  - 304.9-4. Prohibited Animal Permit. The Environmental, Health, Safety, and Land Division may

issue a prohibited animal permit if:

- (a) the animal and animal quarters are kept in a clean and sanitary condition and maintained to eliminate objectionable odors; and
- (b) the animal is maintained in quarters so constructed as to prevent its escape.
- 304.9-5. *Release of Prohibited Animals*. The Environmental, Health, Safety, and Land Division, may approve a wildlife refuge and/or sanctuary to release prohibited animals within the Reservation without applying for and receiving a prohibited animal permit.
- 304.9-6. *Seizure of Prohibited Animals*. An unpermitted prohibited animal may be seized by the Oneida Police Department and/or the Oneida Conservation Department.
  - (a) A prohibited animal that is seized shall be held by the Oneida Police Department, the Oneida Conservation Department, or its designee until it can be determined if the animal is an endangered or threatened species.
  - (b) At any time after such identification, the Oneida Police Department and/or Oneida Conservation Department may seek an order from the Trial Court as to the care, custody and control of the animal.
  - (c) If the Trial Court finds the animal has been taken, employed, used or possessed in violation of this section, the owner shall be responsible for reimbursing the Oneida Police Department and/or the Oneida Conservation Department for the cost of holding the animal and any costs incurred in identifying the animal.
- 304.9-7. *Notice of Release or Escape*. The owner of a prohibited animal that has been released or escapes shall immediately notify the Oneida Police Department and/or the Oneida Conservation Department and shall be liable for any cost of recapture of the animal.
- 304.10-8. Forfeiture of the Prohibited Animal. An owner found in violation of this section shall forfeit or surrender the prohibited animal to the Oneida Police Department, Oneida Conservation Department, or designee. Upon such forfeiture or surrender, the Trial Court may direct destruction or transfer of the animal to a qualified zoological, educational, or scientific institution or qualified private propagator for safekeeping, with costs assessed against the owner.

#### **304.10.** Dangerous Animals

- 304.10-1. *Dangerous Animals*. No person shall own, keep, possess, return to or harbor a dangerous animal. An animal shall be presumed to be dangerous if the animal:
  - (a) approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack;
  - (b) bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or domestic animal;
  - (c) is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or
  - (d) has been declared to be a dangerous animal and/or ordered to be destroyed in any other jurisdiction.
- 304.10-2. *Dangerous Animal Determination*. An Oneida Police Officer or Oneida Conservation Warden may determine an animal to be dangerous whenever, upon investigation, the officer finds that the animal meets the definition of dangerous animal provided in section 304.10-1.
  - (a) Upon making a determination that an animal is dangerous, the Oneida Police Officer or Oneida Conservation Warden shall issue a written order with an accompanying citation

declaring the animal to be dangerous.

- (b) The citation and order shall be personally delivered to the apparent owner or custodian of the dangerous animal.
- (c) Upon receipt of the written order and accompanying citation the owner shall remove the dangerous animal from the Reservation within three (3) business days.
- 304.10-3. Contesting a Dangerous Animal Determination. If the owner wishes to contest the dangerous animal determination, he or she shall file with the Trial Court a written objection to the order within three (3) business days of receipt of the order.
  - (a) The written objection shall include specific reasons for objecting to or contesting the order. An owner may argue an animal should not be deemed dangerous due to the animal biting, attacking or menacing any person and/or domestic animal because the animal was acting to:
    - (1) defend its owner or another person from an attack by a person or animal;
    - (2) protect its young or another animal;
    - (3) defend itself against any person or animal which has tormented, assaulted or abused it; and/or
    - (4) defend its owner's property against trespassers.
  - (b) Pending the outcome of the hearing, the animal shall be securely confined in a humane manner either on the premises of the owner or caretaker, or with a licensed veterinarian. If confined on the premises of the owner or caretaker, the following requirements shall apply:
    - (1) Leash and Muzzle. No owner shall permit a dangerous animal to go outside its kennel or pen unless the animal is securely restrained with a leash no longer than four feet (4') in length by a person who is at least sixteen (16) years of age who is in physical control of the leash, competent to govern the animal and capable of physically controlling and restraining the animal. The owner shall not leash an animal to inanimate objects such as a tree, post, or building. When the animal is on a leash outside the animal's kennel, the owner shall muzzle the animal in a humane way by a commercially available muzzling device sufficient to prevent the animal from biting a person or other animal.
    - (2) Confinement. Except when leashed and muzzled the owner shall ensure the dangerous animal is securely confined indoors or in a securely enclosed and locked pen or kennel that is located on the premises of the owner and constructed in a manner that does not allow the animal to exit the pen or kennel on its own volition. The owner shall not permit an animal to be kept on a porch, patio, or in any part of a house or structure on the premises of the owner that would allow the animal to exit the building on its own volition. The owner shall not permit the animal to be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.
    - (3) *Signs*. The owner of a dangerous animal shall display, in prominent places on his or her premises near all entrances to the premises, signs in letters of not less than two inches (2") high warning that there is a dangerous animal on the property. A similar sign shall be posted on the kennel or pen of the animal. In addition, the

owner shall conspicuously display a sign with a symbol warning children of the presence of a dangerous animal.

 (4) *Notification*. The owner of a dangerous animal shall notify the Oneida Police Department and/or the Oneida Conservation Department immediately if the animal is at large, is unconfined, has attacked another animal, or has attacked a person.

 (c) If an owner or caretaker fails to follow the requirements for harboring a dangerous animal pending a hearing, the animal may be impounded by the Oneida Police Officer or Oneida Conservation Warden issuing the dangerous animal determination.

304.10-4. *Dangerous Animal Determination Hearing*. A hearing on the dangerous animal determination shall be held within fourteen (14) days of submission of the written objection with the Trial Court. At the hearing, the Trial Court shall determine whether the determination that the animal is dangerous should be substantiated.

(a) If the Trial Court concludes that the determination that the animal is dangerous is substantiated, then the Trial Court shall issue an order that mandates the animal be removed from the Reservation within forty-eight (48) hours of the determination.

 (1) The order shall contain the requirement that the owner notify the Oneida Police Department within twenty-four (24) hours if the dangerous animal has been sold or been given away. If the dangerous animal has been sold or given away, the owner shall also provide the name, address and telephone number of the new owner of the dangerous animal. If the dangerous animal is sold or given away to a person residing outside the Reservation or to a person or entity that falls outside of the jurisdiction of this law, the owner shall present evidence to the Oneida Police Department showing that he or she has notified the police department or other law enforcement agency of the animal's new residence, including the name, address and telephone number of the new owner. The Oneida Police Department shall forward all such notifications to the Environmental, Health, Safety, and Land Division

within a reasonable amount of time.

(b) The Trial Court may order a dangerous animal to be destroyed. If such an order is issued, the Trial Court shall require the owner submit proof of destruction within five (5) business days from a licensed veterinarian. If the owner does not satisfy these requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall seize

the animal and enforce compliance at the cost of the owner.

(c) The Trial Court may mandate attendance at an additional Trial Court hearing if restitution is appropriate.

304.10-5. Appeal of the Trial Court's Decision. An appeal of the Trial Court's decision on the dangerous animal determination may be appealed to the Nation's Court of Appeals.

(a) An appeal shall be submitted to the Court of Appeals within five (5) business days from the date of the Trial Court's decision.

(b) Upon an appeal to the Court of Appeals, the order to remove the animal from the Reservation or any order to destroy an animal is stayed pending the outcome of the appeal. 604.10-6. *Dangerous Animal Exception*. The Trial Court may provide an exception to the dangerous animal provisions of this law for a law enforcement or military animal upon presentation by the animal's owner or handler of a satisfactory arrangement for safe keeping of the

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#### 304.11. Owner Liability

- 470 304.11-1. An owner shall be liable for damages caused by his or her domestic animal.
  - (a) First Offense. The owner is liable for the full amount of damages caused by the domestic animal.
  - (b) Subsequent Offenses. The owner shall be liable for two (2) times the full amount of damages caused by the domestic animal if the owner knew or should have known that the domestic animal previously caused damages.

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#### **304.12.** Enforcement of Violations

- 304.12-1. *Citations*. A citation for the violation of this law and/or orders issued pursuant to this law may include fines, penalties and conditional orders in accordance with the fine, penalty, and licensing fee schedule. A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.
  - (a) The act of contesting a dangerous animal determination shall follow the process contained in section 304.10.
- 304.12-2. *Fines*. All fines as a result of a citation shall be paid to the Judiciary. Money received from fines shall be contributed to the General Fund.
  - (a) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

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491 Adopted - BC-03-13-96-B 492 Amended - BC-06-22-11-G

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# AMENDMENTS TO DOMESTIC ANIMALS LAW LEGISLATIVE ANALYSIS

#### **SECTION 1. EXECUTIVE SUMMARY**

SECTION 1. EXECUTIVE SUMMARY			
	Analysis by the Legislative Reference Office		
Intent of the	Remove an incorrect reference to the Nation's territorial jurisdiction as the		
Amendments	Nation's territorial jurisdiction is provided by the Constitution and Bylaws		
	of the Oneida Nation and the Nation's Judiciary law;		
	Remove a duplicative provision regarding personal jurisdiction as personal		
	jurisdiction is already provided by the Nation's Judiciary law;		
	Remove a duplicative provision regarding the citation process as the citation		
	process is provided by the Nation's Citations law; and		
	<ul> <li>Include a provision on the abandonment of an animal.</li> </ul>		
Purpose	To protect the health, safety, and welfare of the community by requiring certain		
	basic measures to prevent the spread of disease carried by domestic animals; set		
	minimum standards for treatment of animals; prohibit certain species of animals		
	from being brought onto the Reservation; regulate the keeping of livestock on		
	lots zoned residential with in the Reservation; and establish consequences for		
	damages caused by domestic animals [3 O.C. 304.1-1].		
Affected Entities	Oneida Police Department; Oneida Environmental Health, Safety and Land		
	Division; Oneida Conservation Department; Oneida Environmental Resource		
	Board; Oneida Comprehensive Health Division, Oneida Land Commission;		
	Oneida Emergency Management Coordinator, Oneida Judiciary.		
Related Legislation	Judiciary law, Citations law		
<b>Public Meeting</b>	Although the April 2, 2020, public meeting was canceled due to Nation's		
	COVID-19 Team's declaration titled, "Suspension of Public Meetings under the		
	Legislative Procedures Act" the public comment period was still held open until		
	April 9, 2020.		
Fiscal Impact	A fiscal impact statement has not yet been requested.		

#### **SECTION 2. LEGISLATIVE DEVELOPMENT**

- **A.** *Background.* The Domestic Animals law was first adopted by the Oneida Business Committee on March 13, 1996 and most recently amended on May 8, 2019 for the purpose of protecting the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals; setting minimum standards for the treatment of animals; prohibiting certain species of animals from being brought onto the Reservation; regulating the keeping of livestock on lots zoned residential within the Reservation; and establishing consequences for damages caused by domestic animals. [3 O.C. 304.1-1].
  - Domestic animals are animals commonly owned as household pets, such as cats and dogs.
- **B.** Upon a review of the Nation's Code of Laws, the Oneida Law Office and Legislative Operating Committee (LOC) identified references to the Nation's jurisdiction that were either inaccurate or duplicative. In consultation with the Oneida Law Office, the LOC proposes technical amendments to the Domestic Animals law to remove these inaccurate or unnecessary references. The intent of these changes is not to alter how the Domestic Animals law is currently being enforced, but to ensure that all references to jurisdiction in the Nation's Code of Laws are accurate.

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

- **A.** Representatives from the following departments or entities participated in the development of this law and legislative analysis:
  - Oneida Law Office; and
  - Oneida Police Department.
- **B.** The following laws were reviewed in the drafting of this analysis: Judiciary law, Curfew law, Oneida Nation Gaming Ordinance, Tribal Environmental Response law, Judiciary Rules of Evidence, and the Citations law.

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

- **A.** The amendments to this law have followed the process set forth in the Legislative Procedures Act.
  - The LOC added the amendments to the Active Files List on February 5, 2020.
  - A public meeting was scheduled for April 2, 2020.
  - On March 27, 2020, the Nation's COVID-19 Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period.
  - The public comment period for the amendments to the Domestic Animals law was held open until April 9, 2020.
- **B.** At the time this legislative analysis was developed, the following work meetings had been held regarding the development of these amendments:
  - February 19, 2020: LOC work meeting.
  - April 15, 2020: LOC work meeting.
- C. COVID-19 Pandemic's Effect on the Legislative Process. The public meeting for the proposed amendments to this Law was canceled due to the COVID-19 pandemic.
  - On March 4, 2020, the Legislative Operating Committee approved the public meeting packet and forwarded the Domestic Animals law amendments to a public meeting to be held on April 2, 2020. The public comment period was scheduled to remain open until April 9, 2020.
  - After the public meeting was scheduled, the world was hit with a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts.
  - On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a public health emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
  - On March 24, 2020, the Nation's COVID-19 Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibits all public gatherings of any number of people.
  - Then on March 27, 2020, the Nation's COVID-19 Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.
  - On March 28, 2020 the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's public health emergency declaration until May 12, 2020.

- On March 30, 2020, the Legislative Operating Committee provided additional notice that the April 2, 2020, public meeting was canceled.
- The public comment period was still held open until April 9, 2020. No written comments were received during the public comment period.

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

- **A.** *Deletion of Territorial Jurisdiction Section.* These amendments delete an incorrect reference to the Nation's territorial jurisdiction for this law. The Domestic Animals law erroneously states that the territorial jurisdiction of this law is limited to land owned by the Nation or individual trust and/or fee land of a member of the Nation.
  - *Territorial Jurisdiction*. The Nation's territorial jurisdiction is properly defined in the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law (see below).
  - *Conclusion.* Since the reference included in the Domestic Animals law is inaccurate, unnecessary, and already located in the Nation's Constitution, it has been deleted for clarity.

Table 1. Comparison: Territorial Jurisdiction in laws of the Nation.

<u>Deleted</u> Language in	Language in Oneida	Language in Judiciary law
Current Domestic Animals	Constitution	
law		
This law extends within the	The jurisdiction of the Oneida	"The territorial jurisdiction of the
Reservation to all land	Nation shall extend to the	Trial Court shall extend to the
owned by the Nation and	territory within the present	Reservation and all lands held in
individual trust and/or fee	confines of the Oneida	trust by the United States for the
land of a member of the	Reservation and to such other	benefit of the Tribe within the State
Nation [3 O.C. 304.4-2].	lands as may be hereafter added	of Wisconsin." [8 O.C. 801.5-3].
	thereto within or without said	
	boundary lines under any law	
	of the United States, except as	
	otherwise provided by law	
	[Article 1 – Territory]	

- **B.** *Deletion of Personal Jurisdiction Section.* These amendments also delete references to the Nation's personal jurisdiction from this law. The personal jurisdiction of the Nation is already provided for in the Nation's Judiciary law.
  - Personal Jurisdiction. The Judiciary law already clarifies that the Nation has personal jurisdiction over members of the Oneida Nation, members of other federally-recognized Indian tribes, and any "non-Indians" who have consented to the jurisdiction of the Nation (examples include a contract or lease agreement.)
  - *Conclusion*. Since the Nation's personal jurisdiction is already properly defined in the Judiciary law, it has been deleted from this law for clarity.

Table 2. Comparison: Personal Jurisdiction in laws of the Nation.

Deleted Language in Current Domestic Animals law	Language in Judiciary law
Personal Jurisdiction. This law applies to:	Personal Jurisdiction
(a) All members of the Nation; the	(a) Indians. The Trial Court shall have
Nation's entities and corporations; and	iurisdiction over all Indians.

members of other federally-recognized tribes;

- (b) Individuals and businesses leasing, occupying or otherwise using fee land owned by the Nation or by individual members of the Nation; and/or lands held in trust on behalf of the Nation or individual members of the Nation; and
- (c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the jurisdiction of the Nation:
  - (1) By entering into a consensual relationship with the Nation, or with the Nation's entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or
  - (2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner. [3 O.C. 304.4-1].

- (b) Non-Indians. The Trial Court shall have jurisdiction over non-Indians who have consented to the jurisdiction of the Tribe or Trial Court or as otherwise consistent with federal law.
  - (1) Consent to Jurisdiction. For purposes of subsection 801.5-4(b) above, a person shall have consented to the jurisdiction of the Trial Court by:
    - (A) entering into a consensual relationship with the Tribe, Tribal entities, Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or
    - (B) other facts which the Trial Court determines manifest an intent to consent to the authority of the Tribe or the jurisdiction of the Trial Court, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner [8 O.C. 801.5-4].
- **C.** *Updates to Enforcement and Citations Section.* The Citations section of the law has been updated to reflect the Nation's new Citations law.
  - Background. On February 12, 2020, the Oneida Business Committee adopted a Citations law to establish a consistent process for citations issued for violations of all laws of the Nation. The new Citations law includes a detailed process regarding prehearings, hearings and appeals.
  - Conclusion. Now that these details are included in the Citations law, it is unnecessary to include the same information in the Domestic Animals law. Therefore, the duplicate citation information has been deleted. Instead, a reference stating that citations will be processed in accordance with the procedures in the Citations law has been added [3 O.C. 304.12-1].
- **D.** *Inclusion of an Abandonment Provision.* These amendments add a new provision to the Law which explicitly states that no person shall abandon an animal. [3 O.C. 304.5-5]. Abandoning an animal means leaving behind a domestic animal at a location without providing minimum care. [3 O.C. 304.3-1(a)].
  - Conclusion. Although the Law already contained a provision that prohibited the mistreatment of an animal which causes harm, injury, or death to that animal [3 O.C. 304.5-4], the new abandonment provision clarifies that abandoning an animal is also prohibited under this Law.

#### **SECTION 6. EXISTING LEGISLATION**

- **A.** References to Territorial Jurisdiction in Other Oneida laws. The following laws of the Nation also include references to the Nation's territorial jurisdiction:
  - Curfew law. The Curfew law provides that "This law extends within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation." [3 O.C. 308.4-3].

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The reference to territorial jurisdiction in the Curfew law is similar to the provision that was included in this Law, and therefore is also erroneous. The LOC has added the Curfew law to its Active Files List for amendments to address this issue.

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- *Judiciary law*. The Judiciary law provides "The territorial jurisdiction of the Trial Court shall extend to the Reservation and all lands held in trust by the United States for the benefit of the Tribe within the State of Wisconsin." [8 O.C. 801.5-3].
  - The reference to territorial jurisdiction in the Judiciary law is correct and no amendments are necessary.
- Oneida Nation Gaming Ordinance. The Oneida Nation Gaming Ordinance provides "This Ordinance extends to all land within the exterior boundaries of the Reservation of the Tribe, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law." [5 O.C. 501.3-1].
  - The reference to territorial jurisdiction in the Oneida Nation Gaming Ordinance is correct and no amendments are necessary.
- *Tribal Environmental Response law*. The Tribal Environmental Response law provides "This law extends to all land within the exterior boundaries of the Reservation of the Nation, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, any lands added thereto pursuant to federal law and all lands held in trust for the Nation within the State of Wisconsin." [4 O.C. 401.4-2].
  - The reference to territorial jurisdiction in the Tribal Environmental Response law is correct and no amendments are necessary.
- Judiciary Rules of Evidence law. The Judiciary Rules of Evidence provides that "The Court may judicially notice a fact that shall not subject to reasonable dispute because it: (a) is generally known within the Court's territorial jurisdiction; or (b) may be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." [8 O.C. 804.5-2(a)].
  - The reference to territorial jurisdiction in the Judiciary Rules of Evidence is correct and no amendments are necessary.
- **B.** References to other Laws of the Nation. The following laws of the Nation are referenced in this Law:
  - Citations law. This Law provides that 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. [3 O.C. 304.12-1].
    - The Citations law is the Nation's law governing citations. The Citations law provides how a citation action is started such as who has the authority to issue a citation, the requirements of the form of the citation, and how a citation is served and filed; stipulations for the settlement of a citation; and the citation hearing procedures. [8 O.C. 807].
    - Any citations issued by the Oneida Police Department or Conversation Department for a violation of this Law must comply with the requirements and procedures of the Citations law.

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

- **A.** *Enforcement.* Oneida Police Department Officers and Conservation Wardens are delegated the authority to enforce this law through appropriate means, including but not limited to:
  - seizing any animal that is taken, employed, used, or possessed in violation of this law and/or mistreated, rabid or otherwise in danger or dangerous;
  - issuing citations consistent with the fine and penalty schedule developed in accordance with this law; and
  - using force, up to and including lethal force, to stop an immediate threat to public safety caused by an animal. [3 O.C. 304.4-2].
- **B.** *Fine and Penalty Schedule Resolution*. The Environmental, Health, Safety, and Land Division and the Environmental Resource Board are delegated joint authority to develop a fine, penalty, and licensing fee schedule that is adopted by the Oneida Business Committee through resolution. [3 O.C. 304.4-3].

■ The Oneida Business Committee adopted a Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule through resolution BC-05-08-19-D. This resolution sets forth specific fines and penalties to be used by the Nation's Trial Court for addressing violations of this Law.

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

- **A.** Revision to the Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule Resolution. In accordance with this Law, the Oneida Business Committee adopted a Domestic Animals Law Fine, Penalty, and Licensing Fee schedule through resolution BC-05-08-19-D. Due to a change in citations throughout the law, and the inclusion of an abandonment provision, the Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule Resolution will have to be updated.
  - The Legislative Operating Committee intends to bring forth an amended Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule Resolution for adoption when the proposed amendments to this Law are considered by the Oneida Business Committee.
- **B.** Fiscal Impact. A fiscal impact statement has not yet been requested.
  - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].
  - A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee [1 O.C. 109.6-1(a) and (b)].



# Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



TO: Lawrence E. Barton, Chief Financial Officer

Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer

FROM: David P. Jordan, Legislative Operating Committee Chairman 🕥

DATE: April 20, 2020

RE: Domestic Animals Law Amendments Fiscal Impact Statement

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

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

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed legislation being forwarded to the Oneida Business Committee for consideration. [1 O.C. 109.6-2]. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct the Finance Department or any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. [1 O.C. 109.6-1].

Oneida Business Committee resolution BC-09-25-19-A titled, "Interpreting 'Fiscal Impact Statement' in the Legislative Procedures Act' provides further clarification on the process for directing a fiscal impact statement be completed. This resolution provides that when developing a fiscal impact statement for proposed legislation to be used for presentation to and consideration of adoption by the Oneida Business Committee, the Finance Department shall, within ten (10) business days of final approval of draft legislation by the LOC, provide a fiscal impact statement to the LOC.

On April 20, 2020, the Legislative Operating Committee approved the final draft of the proposed amendments to the Domestic Animals law. Therefore, the LOC is directing the Finance

Department to provide a fiscal impact statement on the proposed amendments to the Domestic Animals law by May 4, 2020.

A copy of the proposed amendments to the Domestic Animals law, as well as the legislative analysis, have been attached to this memorandum for your convenience.

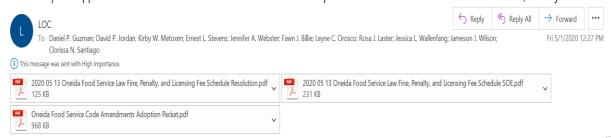
#### **Requested Action**

Provide the LOC a fiscal impact statement of the proposed amendments to the Domestic Animals law by May 4, 2020.



# May 1, 2020, Legislative Operating Committee E-Poll Approval of the Oneida Food Service Code Amendments Adoption Packet and the Oneida Food Service Law Fine, Penalty and Licensing Fee Schedule Resolution

E-Poll Request: Approve the Oneida Food Service Code Amendments Adoption Packet and Oneida Food Service Law Fine, Penalty and Lice...



#### **Good Morning Legislative Operating Committee,**

This e-mail serves as the e-poll for the approval of two (2) items: (1) the Oneida Food Service Code amendments adoption packet; and (2) the Oneida Food Service Law Fine, Penalty and Licensing Fee Schedule Resolution. Please Note: You will have to type in the word "approve" as access to the voting buttons is not available remotely.

#### **EXECUTIVE SUMMARY**

Oneida Food Service Code Amendments Adoption Packet. The adoption packet for the Oneida Food Service Code amendments ("Law") is ready for approval by the Legislative Operating Committee, so that it can be sent to the Oneida Business Committee to consider adoption. The purpose of the Law is to ensure the safety of food that is provided to consumers at retail or through an Oneida 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, regulations, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation. [3 O.C. 305.1-1].

This proposed amendments to the Oneida Food Service Code will:

- Change the name of the Law from the Oneida Food Service Code to the Oneida Food Service law to be consistent with the Oneida Code of Laws;
- Remove the Licensing Department, Risk Management and Oneida Police Department from the Law, leaving administrative and enforcement duties exclusively to the Environmental, Health and Safety Area within the Nation's Environmental, Health, Safety and Land Division ("Department") [3 O.C. 305.6-1];
- Allow applicants to satisfy the food safety training that is required to obtain a license to operate certain food service businesses either of the following ways: (1) by taking the course offered through the Department (as is currently the only option); or (2) by presenting evidence of having received training or certification from an alternative source that the Department deems satisfactory [3 O.C. 305.7-2];
- Require the Department to decide whether to issue or renew a license within thirty (30)

days of receiving an application, and, if the application is denied, further require the Department to notify the applicant in writing, supplying him or her with the basis for said denial, as well as information on how to appeal its decision [3 O.C. 305.7-1(a)];

- Add exemptions for cottage food sales and prepackaged restaurants that eliminate the need for these operations to undergo the licensing process required of food service businesses so long as applicants fulfill the requirements to qualify for the exemption specific to their operation [3 O.C. 305.8];
- Require the Department to waive the licensing fee when proof is submitted by a food service business or prepackaged restaurant of payment to an overlapping jurisdiction that covers the same term [3 O.C. 305.7-1(c)];
- Send appeals of Department decisions not issued pursuant to a citation to the Department's Area Manager, whose decision will be final unless challenged to the Trial Court of the Judiciary on grounds that it constitutes an abuse of power, is contrary to law and/or lacks any reasonable factual basis; while appeals of Department decisions issued pursuant to a citation will be processed according to the Nation's Citations law [3 O.C. 305.11]; and
- Make additional changes to revise and reorganize the Law to increase clarity, as well as comply with the Nation's Legislative Procedures Act.

Oneida Food Service Law Fine, Penalty and Licensing Fee Schedule Resolution. The Oneida Food Service Law Fine, Penalty and Licensing Fee Schedule Resolution is ready for approval by the Legislative Operating Committee, so that it can be sent to the Oneida Business Committee to consider adoption. The Oneida Food Service law delegates authority to the Department to develop a fine, penalty and licensing fee schedule. [3 O.C. 305.7-1(c)]. The fine, penalty and licensing fee schedule is required to be adopted by the Oneida Business Committee. [3 O.C. 305.7-1(c)].

This resolution sets forth a licensing fee schedule, as well as a fine and penalty schedule, to be adopted by the Oneida Business Committee. The resolution defines what constitutes a priority violation for purposes of applying the fine and penalty schedule set forth therein and provides the opportunity for additional penalties to be used by the Department when enforcing the Law. The resolution also provides that when food service businesses or prepackaged restaurants are forced to close-down or restrict operations because of a proclamation or ratification by the Oneida Business Committee of a public health state of emergency under the Nation's Emergency Management and Homeland Security law, a moratorium on the payment of all licensing fees required by the Oneida Food Service law will go into effect for a period of six (6) months, beginning on the day of the proclamation or ratification. It further provides that any food service businesses or prepackaged restaurants found in violation of an order that is duly issued in response to a public health state of emergency declaration or proclamation shall be subject to enforcement pursuant to the Nation's Emergency Management and Homeland Security law.

An e-poll is necessary for this matter because the May 6, 2020 Legislative Operating Committee meeting has been canceled due to the COVID-19 pandemic, and immediate action is required by Legislative Operating Committee to approve the Oneida Food Service Code amendments adoption packet and Oneida Food Service Law Fine, Penalty and Licensing Fee Schedule Resolution so they can be forwarded to the Oneida Business Committee for consideration during the May 13, 2020, Oneida Business Committee meeting.

#### **REQUESTED ACTIONS**

- Approve the Oneida Food Service Code amendments adoption packet and forward to the Oneida Business Committee for consideration; and
- Approve the Oneida Food Service Law Fine, Penalty and Licensing Fee Schedule Resolution and forward to the Oneida Business Committee for consideration.

## DEADLINE FOR RESPONSE May 1, 2020 at 4:00 p.m.

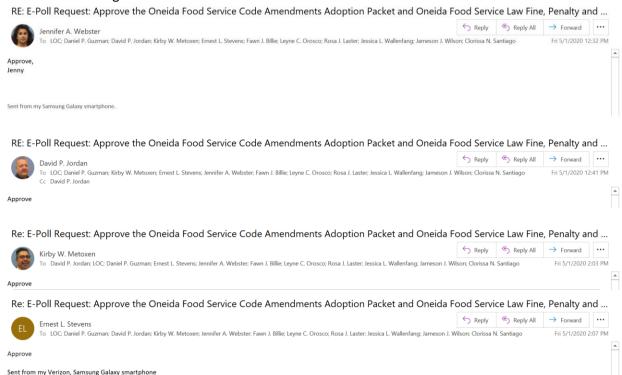
All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by Jennifer Webster, David P. Jordan, Kirby Metoxen, Ernest Stevens III, and Daniel Guzman-King.



Re: E-Poll Request: Approve the Oneida Food Service Code Amendments Adoption Packet and Oneida Food Service Law Fine, Penalty and ...





# Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-365



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson

DATE: May 13, 2020

RE: Oneida Food Service Code Amendments

Please find the following attached backup documentation for your consideration of the proposed amendments to the Oneida Food Service Code:

- 1. Resolution: Amendments to the Oneida Food Service Code
- 2. Statement of Effect: Amendments to the Oneida Food Service Code
- 3. Oneida Food Service Code Amendments Legislative Analysis
- 4. Oneida Food Service Code Amendments (Redline)
- 5. Oneida Food Service Code Amendments (Clean)
- 6. Oneida Food Service Code Amendments Fiscal Impact Statement

#### Overview

On September 19, 2018, the LOC added the Oneida Food Service Code ("Law") amendments to its Active Files List upon recommendation by the Environmental, Health, Safety and Land Division. The purpose of the Law is to ensure the safety of food that is provided to consumers at retail or through an Oneida 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, regulations, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation. [3 O.C. 305.1-1].

This resolution adopts amendments to the Oneida Food Service Code which will:

- Change the name of the Law from the Oneida Food Service Code to the Oneida Food Service law to be consistent with the Oneida Code of Laws;
- Remove the Licensing Department, Risk Management and Oneida Police Department from the Law, leaving administrative and enforcement duties exclusively to the Environmental, Health and Safety Area within the Nation's Environmental, Health, Safety and Land Division ("Department") [3 O.C. 305.6-1];
- Allow applicants to satisfy the food safety training that is required to obtain a license to operate certain food service businesses either of the following ways: (1) by taking the course offered through the Department (as is currently the only option); or (2) by presenting evidence of having received training or certification from an alternative source that the Department deems satisfactory [3 O.C. 305.7-2];

- Require the Department to decide whether to issue or renew a license within thirty (30) days of receiving an application, and, if the application is denied, further require the Department to notify the applicant in writing, supplying him or her with the basis for said denial, as well as information on how to appeal its decision [3 O.C. 305.7-1(a)];
- Add exemptions for cottage food sales and prepackaged restaurants that eliminate the need for these operations to undergo the licensing process required of food service businesses so long as applicants fulfill the requirements to qualify for the exemption specific to their operation [3 O.C. 305.8];
- Require the Department to waive the licensing fee when proof is submitted by a food service business or prepackaged restaurant of payment to an overlapping jurisdiction that covers the same term [3 O.C. 305.7-1(c)];
- Send appeals of Department decisions not issued pursuant to a citation to the Department's Area Manager, whose decision will be final unless challenged to the Trial Court of the Judiciary on grounds that it constitutes an abuse of power, is contrary to law and/or lacks any reasonable factual basis; while appeals of Department decisions issued pursuant to a citation will be processed according to the Nation's Citations law [3 O.C. 305.11]; and
- Make additional changes to revise and reorganize the Law to increase clarity, as well as comply with the Nation's Legislative Procedures Act.

The Legislative Operating Committee developed the proposed amendments to the Oneida Food Service Code through collaboration with representatives from the Environmental, Health, Safety and Land Division, the Licensing Department and the Cannery.

In accordance with the Legislative Procedures Act, a public meeting on the amendments to the Oneida Food Service Code was held on February 6, 2020. Although members of the public attended the public meeting, none of the attendees provided oral comments. The public comment period was then held open until February 13, 2020. The Legislative Operating Committee received one (1) submission of a written comment during the public comment period. The public comment received was accepted, reviewed, and considered by the Legislative Operating Committee on March 4, 2020. Any changes made based on the comment has been incorporated into this draft.

#### **Requested Action**

Approve the Resolution: Amendments to the Oneida Food Service Code.



## **Oneida Nation**

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

## BC Resolution #\_\_\_\_\_\_ Amendments to the Oneida Food Service Law

1		Amendments to the Oneida Food Service Law
2 3 4 5	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
6 7	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and
8 9 10	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
11 12 13	WHEREAS,	the Oneida Food Service law ("Law") was adopted by the Oneida Business Committee through resolution BC-06-13-01-B, and the amended by resolution BC-02-25-15-C; and
13 14 15 16 17 18 19 20 21 22	WHEREAS,	the purpose of the 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; and
23 24 25 26	WHEREAS,	the Legislative Operating Committee worked collaboratively with representatives from the Oneida Environmental, Health, Safety and Land Division, Licensing Department and Cannery to develop the amendments to this Law; and
27 28 29 30 31	WHEREAS,	the amendments to the Law remove the Licensing Department, Risk Management and the Oneida Police Department from the Law, leaving administration and enforcement duties exclusively to the Environmental, Health and Safety Area within the Nation's Environmental, Health, Safety and Land Division ("Department"); and
32 33 34 35 36 37	WHEREAS,	the amendments to the Law provide two ways for applicants to satisfy the food safety training that is required to obtain a license to operate certain food service businesses: (1) by taking the course offered through the Department (as was previously the only option); or (2) by presenting evidence of having received training or certification from an alternative source that the Department finds satisfactory; and
38 39 40 41	WHEREAS,	the amendments to the Law add an exemption for cottage food sales and prepackaged restaurants that eliminates the need for these operations to undergo the licensing process required of other food service businesses so long as applicants fulfill the requirements to qualify for the exemption specific to their operation; and

BC Resolution # \_\_\_\_\_ Amendments to the Oneida Food Service Law Page 2 of 2

43 WHEREAS. the amendments to the Law add a requirement that the Department waive the licensing 44 fee to operate a food service business or prepackaged restaurant when proof is submitted 45 by a food service business or prepackaged restaurant of payment to an overlapping 46 jurisdiction that covers the same term; and 47 48 WHEREAS, the amendments to the Law add a requirement that the Department decide whether to 49 issue or renew a license within thirty (30) days of receiving an application and, if denied, 50 the amendments further require that the Department notify the applicant in writing, 51 supplying him or her with the basis for said denial, as well as information on how to appeal 52 its decision: and 53 54 WHEREAS. the amendments to the law send appeals of all Department decisions not issued pursuant 55 to a citation to the Area Manager, whose decision will be final unless challenged to the Trial 56 Court of the Judiciary on the grounds that it constitutes an abuse of power, that it is contrary 57 to law, or that it lacks any reasonable factual basis, while decisions of the Department 58 issued pursuant to a citation would be appealed consistent with the Nation's Citations law; 59 and 60 61 WHEREAS. the amendments to the Law provide for the licensing fee, fine and penalty schedules to be 62 created by the Department, subject to approval by the Oneida Business Committee through 63 resolution: and 64 65 WHEREAS, the amendments to the Law make other minor drafting revisions for clarification and 66 consistency with the Legislative Procedures Act; and 67 68 WHEREAS, in accordance with the Legislative Procedures Act, a legislative analysis and fiscal impact 69 statement were completed for the amendments to the Law; and 70 71 WHEREAS. a public meeting on the proposed amendments to this Law was held on February 6, 2020, 72 in accordance with the Legislative Procedures Act, and the public comment period was 73 held open until February 13, 2020; and 74 75 the Legislative Operating Committee accepted, reviewed, and considered the public WHEREAS, 76 comments received on March 18, 2020. 77 78 NOW THEREFORE BE IT RESOLVED, that the amendments to the Oneida Food Service law are hereby 79 adopted and shall become effective six (6) months following the adoption of this resolution.



## Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



#### Statement of Effect

Amendments to the Oneida Food Service Code Summary

This resolution adopts amendments to the Oneida Food Service Code.

Submitted by: Kristen M. Hooker, Staff Attorney, Legislative Reference Office

Date: April 20, 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 Oneida Food Service Code 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 Oneida Food Service Code ("Law") was adopted by the Oneida Business Committee to ensure the safety of food that is provided to consumers at retail or through an Oneida 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. [3 O.C. 305.1-1].

#### The amendments to the Law will:

- Change the name of the Law from the Oneida Food Service Code to the Oneida Food Service law to be consistent with the Oneida Code of Laws;
- Remove the Licensing Department, Risk Management and Oneida Police Department from the Law, leaving administrative and enforcement duties exclusively to the Environmental, Health and Safety Area within the Nation's Environmental, Health, Safety and Land Division ("Department") [3 O.C. 305.6-1];
- Allow applicants to satisfy the food safety training that is required to obtain a license to operate certain food service businesses either of the following ways: (1) by taking the course offered through the Department (as is currently the only option); or (2) by presenting evidence of having received training or certification from an alternative source that the Department deems satisfactory [3 O.C. 305.7-2];
- Require the Department to decide whether to issue or renew a license within thirty (30) days of receiving an application, and, if the application is denied, further require the Department to notify the applicant in writing, supplying him or her with the basis for said denial, as well as information on how to appeal its decision [3 O.C. 305.7-1(a)];
- Add exemptions for cottage food sales and prepackaged restaurants that eliminates the need

for these operations to undergo the licensing process required of food service businesses so long as applicants fulfill the requirements to qualify for the exemption specific to their operation [3 O.C. 305.8];

- Require the Department to waive the licensing fee when proof is submitted by a food service business or prepackaged restaurant of payment to an overlapping jurisdiction that covers the same term [3 O.C. 305.7-1(c)];
- Send appeals of Department decisions not issued pursuant to a citation to the Department's Area Manager, whose decision will be final unless challenged to the Trial Court of the Judiciary on the grounds that it constitutes an abuse of power, is contrary to law and/or lacks any reasonable factual basis, while appeals of Department decisions issued pursuant to a citation will be processed according to the Nation's Citations law [3 O.C. 305.11]; and
- Make additional changes to revise and reorganize the Law to increase clarity, as well as comply with the Nation's Legislative Procedures Act.

In accordance with the Legislative Procedures Act, a public meeting on the amendments to the Oneida Food Service Code was held on February 6, 2020. Although members of the public attended the public meeting, none of the attendees provided oral comments. The public comment period was then held open until February 13, 2020. The Legislative Operating Committee received one (1) submission of a written comment during the public comment period. The public comment that was received was accepted, reviewed and considered by the Legislative Operating Committee on March 4, 2020. Any changes made based on the comment have been incorporated into the proposed draft.

This resolution provides that the amendments to the Oneida Food Service Code would become effective six (6) months from the date of its adoption.

#### **Conclusion**

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





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about the food

#### ONEIDA FOOD SERVICE CODE AMENDMENTS LEGISLATIVE ANALYSIS

#### **SECTION 1. EXECUTIVE SUMMARY**

REQUESTER:	SPONSOR:	DRAFTER:	ANALYST:
Environmental,	Ernest Stevens III	Kristen M. Hooker	Maureen Perkins and
Health, Safety and			Kristen Hooker
Land Division			
Intent of the	The proposed amendments to the	Oneida Food Service Code	(Law) intend to:
Amendments	<ul><li>remove the Licensing Departme</li></ul>	ent, Risk Management and O	Oneida Police Department
	from the Law, leaving admini	strative and enforcement	duties exclusively to the
	Environmental, Health and Safe	ety Area within the Nation	's Environmental, Health,
	Safety and Land Division ("Dep	oartment");	
	<ul><li>include exemptions for cottage</li></ul>	food sales and prepackaged	restaurants;
	<ul><li>include mobile food trucks in th</li></ul>		
	<ul><li>require the Department to waive</li></ul>	e the license fee for those for	od service businesses and
	prepackaged restaurants that sul	bmit proof of payment to a	n overlapping jurisdiction
	that covers the same term;		
	• include a thirty (30) day respons	se time for the Department	to decide whether to issue
	or renew a license;		
	• require the Department to provide applicants with a written notice of denial of their		
	license or license renewal request that must include the basis for said denial, as well		
	as information on how to appeal the decision;		
	• offer an additional option for applicants to satisfy the training required to qualify for		
	certain licenses by allowing the		•
	alternative source deemed satisfactory by the Department; and		
	■ allow for appeals of Department decisions not issued pursuant to a citation to be		
	appealed to the Area Manager, whose decision will be final unless challenged to the		
	Trial Court of the Judiciary on one (1) of the three (3) specific grounds set forth within		
-	the Law.		
Purpose	To ensure the safety of food that	•	•
	Nation Food Service Programs I	•	
	designed to minimize foodborne		
	knowledge, safe food handling, no		
	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		
A CC o d o d	jurisdiction of the Nation [3 O.C. 305.1-1].  Environmental, Health, Safety and Land Division, Oneida Nation Judiciary, Oneida		
Affected Entities and			
Entities and	Business Committee (OBC), Lice		•
Individuals	Management Department, Oneic		
	Programs and other non-profit programs of the Nation, Cottage Food Operators,		
	Independent Food Service Operators, Permanent Food Service Establishments, Temporary Food Service Establishments and Prepackaged Restaurants.		
Doloted			
Related	Judiciary law, Oneida Judiciary Ru	-	es of Appenate Procedure,
Legislation Public Mosting	Legislative Procedures Act, Citati		
Public Meeting	A fiscal impact statement was sub		ortmont on April 1 2020
Fiscal Impact	A fiscal impact statement was sub	ninued by the Finance Department	irunent on April 1, 2020.

#### SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Oneida Food Service Code was first adopted by Oneida Business Committee on October 3, 2001, through resolution BC-10-03-01-D, to replace the Oneida Food Dispensary and Vendor's Licensing Regulations and Procedures law. The Law regulates food that is provided to consumers at retail or through the Nation's Food Service Programs and does not apply to food that is served at charitable events, community potlucks and fundraisers.
- B. The Law was amended on February 25, 2015, by resolution BC-02-25-15-C, to remove reference to the Oneida Appeals Commission and add reference to the Oneida Judiciary as the hearing body authorized to hear appeals from decisions of the Environmental, Health, Safety and Land Division, Risk Management and/or Licensing Department.
- C. On September 18, 2018, the LOC added the Law to the Active Files List per the request of the Environmental, Health, Safety and Land Division that the Law be amended to have it updated, as well as have an exemption for cottage food sales. Since that time, a work group of representatives from the Department, the Licensing Department, the Oneida Police Department, Community Health Nursing and the Cannery have met to review the Law and suggest additional amendments thereto. Many of the proposed amendments reflect the feedback and suggestions of this work group.

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#### SECTION 3. CONSULTATION AND OUTREACH

- A. **Departments**. Representatives from the following departments participated in the development of this Law:
  - Environmental, Health, Safety and Land Division
  - Licensing Department
  - Risk Management Department
  - Community Health Nursing
  - Oneida Cannery Department
- B. **Laws of the Nation**. The drafting of this legislative analysis included a review of the following laws of the Nation: Judiciary [8 O.C. 801], Oneida Judiciary Rules of Civil Procedure [8 O.C. 803], Rules of Appellate Procedure [8 O.C. 805], Legislative Procedures Act [1 O.C. 109], Oneida Vendor Licensing [5 O.C. 506] and Citations [8 O.C. 807].
- C. **Area and Tribal Laws**. The following state and tribal laws were also reviewed in the development of this legislative analysis:
  - 2009 Wisconsin Act 101
  - University of Arkansas Model Tribal Cottage Food Law
  - Minnesota Cottage Foods Law
  - Stockbridge-Munsee Food Service Code
  - Jamestown S'Klallam Tribe Tribal Food Code
  - Montana Code 50-50-101-403

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

- A. The amendments to the Law have followed the required process contained in the Legislative Procedures Act ("LPA").
- B. The Law was added to the Active Files List on September 18, 2018.
- C. The following work meetings were held by Legislative Reference Office staff in the development of the amendments to the Law:
  - October 4, 2018, a work meeting was held with members of the Department, Cannery and Community Health Nursing Program staff.
  - November 29, 2018, a work meeting was held with members of the Department and Licensing Department.
  - January 25, 2019, a work meeting was held with members of the Department.
  - February 28, 2019, a work meeting was held with members of the Department and Licensing Department.
    - June 6, 2019, a work meeting was held with members of the Department.

- November 6, 2019, a work meeting was held with the LOC.
  - November 15, 2019, a work meeting was held with the LOC.
  - December 18, 2019, a work meeting was held with the LOC.
    - February 13, 2020, a work meeting was held with the LOC.
    - March 4, 2020, a work meeting was held with the LOC.
    - April 8, 2020, a work meeting was held with members of the Department.
    - April 15, 2020, a work meeting was held with the LOC.
    - April 23, 2020, a work meeting was held with the LOC.
  - D. A public meeting on the proposed amendments to the Law was held on February 6, 2020.
    - The public comment period closed on February 13, 2020.
    - The Legislative Operating Committee reviewed and considered the public comment received on March 4, 2020.

#### SECTION 5. CONTENTS OF THE LEGISLATION

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

- The Law was amended to meet the requirements in the Legislative Procedures Act related to consistency in format and required sections [1 O.C. 109.11-1].
- The purpose and policy sections were updated to include Oneida Nation Food Service Programs and to clearly state that the policy of the Law is to exercise the Nation's inherent sovereign authority over the Nation's resources and membership, as well as to strengthen self-governance.
- B. *Definitions* [3 O.C. 305.3]. The definition section was updated to provide clarity and consistency throughout the Law. For example:
  - The term "independent food service vendor" was changed to "independent food service operator."
    - Effect. By referring to these individuals as independent food service operators instead of independent food service vendors it avoids any misconception that this class of food service businesses is automatically subject to the Oneida Vendor Licensing law, which defines "vendor" in a manner that, absent separate circumstances, would not include an independent food service vendor operating under the current Oneida Food Service Code [3 O.C. 305.3-1(o)].
  - Oneida Nation Food Service Programs and mobile food trucks were added to the definition of what constitutes a permanent food service establishment under the Law [3 O.C. 305.3-1(t)]; and
  - The definition of food service business now clarifies that it does not include private rummage sales; community sponsored non-profit fundraising and/or charity events; or cottage food operators, as well as prepackaged restaurants, that satisfy the requirements to qualify for such distinction under the Law [3 O.C. 305.3-1].
- C. Application [3 O.C. 305.4].
  - This section was added to detail that the Law applies to food service businesses, cottage food operators and prepackaged restaurants located or operating within the Reservation. [3 O.C. 305.4-1].
  - The section also provides that the Law shall apply to the fullest extent of the sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the objectives and purposes for which the Law was enacted. [3 O.C. 305.4-2].
- D. *Compliance* [3 O.C. 305.5]. This section was updated for purposes of clarity. It reiterates that the Law continues to adopt the current Federal Food Code, but provides that any additions or deviations from the Federal Food Code are designed to be specific to the Nation and that 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 was previously titled, "Responsibilities and Duties", with administration and enforcement duties being divided between the Environmental, Health and Safety Department, the Licensing Department and Risk Management. [3 O.C. 305.4-5 of Current Law]. As amended, the Department will now be exclusively responsible for the administration and enforcement of the Law. [3 O.C. 305.6-1(a)].

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- The licensing fee, fine and penalty schedule referenced within the current Law has been removed from the Law and will be set by the Department in a resolution [3 O.C. 305.6-1(b)] to be adopted by the Oneida Business Committee prior to implementation. [3 O.C. 305.6-1(b) and 305.7-1(c)]. F. Licensing [3 O.C. 305.7].
  - The licensing and fee sections have been combined and placed under section 305.7 of the Law. [3 O.C. 305.6 and 305.5-9 of Current Law].
  - A provision was added that requires the Department to waive the licensing fee when a food service business or prepackaged restaurant provides the Department with 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 provision makes clear that an exemption from a licensing fee shall not be considered a waiver of any other compliancy requirement within the 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. [3 O.C. 305.7-1(c)(3)(C)].
    - Effect. The licensing fee waiver protects the business owner from unnecessary duplication of payments to operate but does not eliminate the need for such business owner to obtain a license before operating or remove the Department's regulatory authority over the operation.
  - A provision was added that requires the Department to make a determination to issue or deny an application for a license or license renewal within thirty (30) days following the submission of a complete application. [3 O.C. 305.7-1(a)].
    - In the event of a denial, the provision further provides that the Department must notify the applicant in writing, supplying him or her with a basis for said denial and information on how to appeal the Department's decision. [3 O.C. 305.7-1(a)(2)(B)].
    - Effect. By adding the thirty (30) day window for the Department to respond to an application for licensure, applicants are protected from any unreasonable delays that could cause harm to their business or business plans.
  - A provision was added that grants the Department discretion to use an applicant's equivalent certification or training to qualify for licensure as a temporary food service establishment [3]  $O.C.\ 305.7-2(b)(2)(B)$  or an independent food service operator. [3 O.C. 305.7-2(c)(2)(B)].
    - Effect. By affording the Department discretion to use alternate training or certification to satisfy the licensure requirements for temporary food service establishments and independent food service operators, it provides flexibility to both the Department and the applicant and eliminates the inefficiency of duplication.
      - Permanent food service establishments are not included in this added provision as they are required to undergo a more involved training that is dictated by the Federal Food Code, which was adopted by the Nation through incorporation into the Law. [3 O.C. 305.7-2(a)(3)].
  - The requirement that licensing fees be used for the operational budget of the Department (80%) and the administrative budget of the License Department (20%) was removed. [3 O.C. 305.9-9 of Current Lawl. The Law is now silent regarding where licensing fees are allocated which means these funds will be directed to the General Fund.
- G. Exemptions [3 O.C. 305.8]. This section was updated to provide exemptions for cottage food operators and prepackaged restaurants that satisfy certain requirements in the Law to qualify for the exemption.
  - Private rummage sales, community sponsored non-profit fund raising and/or charity events were moved from the exemption section and included under the definition of food service business to clarify that these activities do not qualify as a food service business, and thus, are not governed by the Law. [3 O.C. 305.11 of Current Law]. Since the Law does not apply to these activities in the first place, there is no need for them to have a specific exemption like cottage food operators and prepackaged restaurants, who, but for the exemption, would have to obtain a license to operate as a food service business.

Cottage food operators and prepackaged restaurants are defined separate from food service businesses under the Law. These entities are exempt from many of the requirements that attach to licensure of a food service business so long as they meet the requirements contained in the Law to qualify for the exemption specific to their operation. The Department maintains regulatory authority over cottage food operators and prepackaged restaurants but is afforded much more discretion in exercising such authority, provided it does not exercise it in a manner that is more burdensome than that which attaches to a food service business.

- <u>Cottage Food Sales Exemption.</u> The Law defines a cottage food operator as an individual who, exclusively within the home kitchen of his or her domestic residence, produces cottage food products for direct sale only. [3. O.C. 305.3-1(d)]. Cottage foods products are foods that are non-potentially hazardous, including non-perishable baked goods such as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit; jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or salsa, pickled vegetables and hot sauces; as well as other non-potentially hazardous foods that the Department characterizes as cottage food products for purposes of the Law. [3 O.C. 305.3-1 (e)].
  - Cottage food operators are exempt from the licensure requirements that apply to food service businesses under the Law. However, the following oversight still exists to protect the Nation from potential foodborne illness that may arise from their operation:
    - ✓ Cottage food operators must register with the Department, providing their name, address of domestic residence, any other information required by the Department per a standard operating procedure and an acknowledgement that they will adhere to the requirements to qualify for exemption from licensure [3 O.C. 305.8-1(a);
    - ✓ Cottage food operators must label their products with their name and address; the name of their cottage food product and the date on which it was prepared; and a sign that states: "this product is homemade and not subject to inspection by the Nation" [3 O.C. 305.8-1(b)];
    - ✓ Cottage food operators who intend to sell home-canned foods under the exemption must first complete the food safety training relating to canning that is approved by the Department [3 O.C. 305.8-1(c)]; and
    - ✓ Cottage food operators are subject to some of the same enforcement provisions as food service businesses for findings of non-compliance with the requirements to qualify for the exemption [3 O.C. 305.8-3].
- <u>Prepackaged Restaurants Exemption</u>. The Law defines prepackaged restaurants as establishments that serve and/or sell only prepackaged foods with preparation on-site that is limited to heating and serving. [3 O.C. 305.3-1(w)].
  - The exemption was added to the Law and includes: a reduced fee, fewer inspections and no training/certification to qualify for the exemption.
  - Prepackaged restaurants are exempt from the requirements of the Law so long as they satisfy specific requirements, which include application to the Department, limited inspections and an agreement to sell only prepackaged foods approved by the Department. [3 O.C. 305.8-2].
  - The Department may draft a standard operating procedure to govern the application process and the tracking of prepackaged restaurants under its jurisdiction. [3 O.C. 305.8-2(a)].
  - O Although food safety training or certification is not required to qualify for the exemption, the Department can order it as part of a corrective order for non-compliance. [3 O.C. 305.8-2(b)]. Training or certification is not initially required for prepackaged restaurants because these establishments are only authorized to heat precooked foods according to the directions on the package, and thus, pose a low risk to public health.

- The Department is required to provide written notice to the public of what qualifies as a prepackaged food under the exemption. [3 O.C. 305.8-2(a)(3)(A)].

  The Department may inspect prepackaged restaurants as often as deemed
  - The Department may inspect prepackaged restaurants as often as deemed necessary for cause, but no more than one (1) time per year without cause. [3 O.C. 305.8-2(c)].
  - O Violations of the requirements to qualify as a prepackaged restaurant will be handled in accordance with the section of the Law titled "Violations, Enforcement". [3 O.C. 305.10].
  - H. *Inspections* [3 O.C. 305.9]. This section of the Law was updated to make clear that, in addition to the inspections necessary to qualify for licensure, the Department may conduct two (2) more inspections at any time during reasonable hours per license term for any reason. [3 O.C. 305.9-1]. The Department may further conduct unscheduled inspections in response to a complaint, an outbreak of a foodborne illness, reasonable suspicion of a violation of this Law or an emergency. [3 O.C. 305.9-2]. Any reinspection as a result of a violation of this Law requires additional fees. [3 O.C. 305.9-3].
  - I. *Violations, Enforcement* [3 O.C. 305.10]. The amendments to this section name the Department as the sole entity to issue and enforce violations of this Law.
    - Violations of the Law may result in the Department issuing the following: a license suspension or revocation, a corrective order which may include an order to close-down, and/or a citation. [3 O.C. 305.10-1].
    - Any food service business or prepackaged restaurant ordered to close-down must comply with the corrective order issued, pass a reinspection and pay any applicable fees assessed by the Department before being eligible for operation.
    - Citations were added to the Law as an enforcement mechanism to be used by the Department in accordance with a fine and penalty schedule to be set by the Department and approved by the Oneida Business Committee through resolution. [3 O.C. 305.10-1(c)].
    - Food services businesses ordered to close-down for violation of the Law are not entitled to a reimbursement of any portion of the licensing fee or fees. [3 O.C. 305.10-2(b)].
  - J. Appeal Rights [3 O.C. 305.11].

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- This section of the Law was amended to provide that decisions of the Department that are not issued pursuant to a citation shall be appealed to the Department's Area Manager as follows:
  - The appeal must be made within ten (10) business days of receiving the Department's decision, at which point the Area Manager will have five (5) business days to make a determination unless he or she deems it necessary to extend the time-frame for purposes of investigation. [3 O.C. 305.11-1(b)(1)].
  - The Area Manager's decision on appeal shall be final unless appealed to the Trial Court of the Judiciary for being contrary to law, without any reasonable basis and/or an abuse of power. [3 O.C. 305.11-1(c)].
- This section further provides that decisions of the Department issued pursuant to a citation shall be conducted in accordance with the Nation's Citations law. [3 O.C. 305.11-2].
  - Persons wishing to contest a citation must appear in person before the Trial Court of the Judiciary. [3 O.C. 305.11-2].
- K. *Insurance* [3 O.C. 305.7 of Current Law]. This section was deleted from the Law as, after consulting with Risk Management, it is no longer applicable.

#### **SECTION 6. RELATED LEGISLATION**

- A. **Reference to Other Laws**. The following laws of the Nation are referenced in this Law and legislative analysis and are required to be followed:
  - <u>Judiciary</u> [8 O.C. 801]. The Trial Court of the Judiciary has subject matter jurisdiction where laws of the Nation specifically authorize the Trial Court to exercise jurisdiction. [8 O.C. 801.5-2]. The Oneida Food Service law authorizes the Trial Court to hear appeals of Department decisions issued pursuant to a citation, as well as appeals of the Area Manager's decision on appeal of Department decisions not issued pursuant to a citation when challenged on the

- grounds that is was contrary to law, without any reasonable basis or an abuse of power. [3 O.C. 305.11]. The Judiciary law authorizes the Court of Appeals to review final orders and judgments of the Trial Court. [8 O.C. 801.8-2(a)(1)].
  - Oneida Judiciary Rules of Civil Procedure [8 O.C. 803]. This law governs the procedure used when filing an action with the Oneida Judiciary.
  - Rules of Appellate Procedure [8 O.C. 805]. This law governs the procedure used when filing an action with the Court of Appeals and is used in conjunction with the Oneida Judiciary Rules of Civil Procedure.
  - <u>Legislative Procedures Act</u> [1 O.C. 109]. This law governs the format that will be followed for all Laws of the Nation. The format of the amended Law was updated to meet requirements in this law.
  - <u>Citations law</u> [8 O.C. 807]. This law governs the issuance of citations and the manner in which citations are contested.
- B. There are no conflicts between the proposed amendments and the Oneida Code of Laws.

#### **SECTION 7. IMPLEMENTATION**

- A. *Inspections*. Inspection authority has not changed. The Department will conduct inspections in accordance with the Law. [3 O.C. 305.9-2].
- B. **Resources and Implementation**. The 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 Department regarding any decisions not issued by citation can appeal to the Department's Area Manager. The Area Manager decisions believed to be contrary to law, without any reasonable basis or an abuse of power may be further 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 by the Department may be contested in person in accordance with the Nation's Citations law. [3 O.C. 305.11-2].

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

- A. *Fiscal Impact*. A fiscal impact statement of the proposed amendments to the Law has been developed by the Finance Department.
  - 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.

# Title 3. Health and Public Safety – Chapter 305 ONEIDA FOOD SERVICE CODE

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about the food

#### **ONEIDA FOOD SERVICE**

305.1-4. Purpose and Policy 305.2-4. Adoption, Amendment, Repeal 305.3-4. Definitions	305.7. <u>Licensing</u> 8-1 <u>Inspections</u> 305.8. <u>Exemptions</u> 9-1 <u>Fees</u> 305.9. <u>Inspections</u> 10-1 <u>Independent</u> Food
305.4-1 Responsibilities and Duties 305.11-1 Exceptions and . Jurisdiction	305.10. Exemptions
305.5-1 Compliance	305.12-1 Violations, Enforcement
305.6-1 Requirements for registering5. Compliance 305.7-1 Insurance	305. <del>13-1</del> — <u>11.</u> Appeal Rights

#### <u>6.</u> Authorit

#### 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 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.

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#### 305.2. — Adoption, Amendment, Repeal

- 58 305.2-1.—This Code islaw was adopted by the Oneida Business Committee by Resolution# 59 6resolution BC-06-13-01-B and amended by resolution BC-02-25-15-C and is effective 60 ten (10) business days after adoption.BC-\_-\_-
- 305.2-2.—This Codelaw may be amended or repealed by the Oneida Business Committee and/or
  Oneida General Tribal Council pursuant to the procedures set out in the Oneida
  Administrative Legislative Procedures Act by the Oneida Business Committee or by the Oneida
  General Tribal Council.
- 65 305.2-3.—Should a provision of this Codelaw or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which will continue considered to have legal force without the invalid portions.
- 68 305.2 4. All previously enacted or adopted Oneida laws, ordinances, policies or other regulations that are inconsistent or conflict with this Code are hereby repealed unless re enacted after adoption of this Code.

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- 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.

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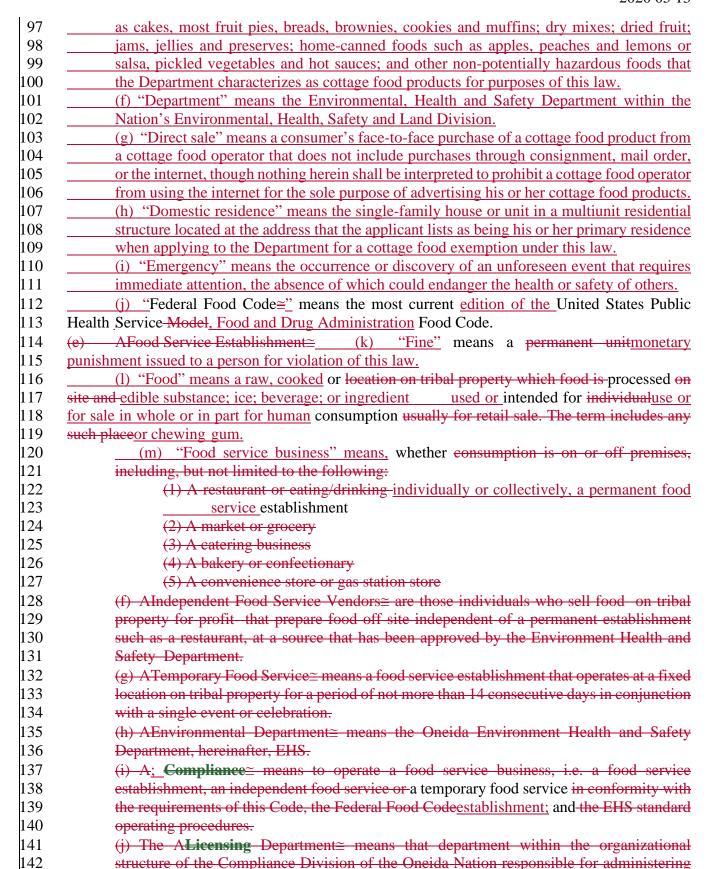
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#### 305.3. Definitions

- 305.3-1. **305.3. Definitions**
- 305.3-1. This section shall govern the definitions of words and phrases used within thethis law. All words not defined herein shall be used in their ordinary and everyday sense.—
  - \_\_\_(a)-AOneida Nation~ "Citation" means the Oneida Tribe of Indians of Wisconsin.
  - (b) ATribal Property≅ means propertya legal document that is owned by the Oneida Nationserves as a notice or summons to appear in fee or helda court of the Nation in trust for the Oneida Nation by the United Statesresponse to a charge against a person of a violation of Americalaw.
    - (c) AReservation≅ means that area in Wisconsin within the exterior boundaries as set out in the 1838 Treaty with the United States of America.
- 87 (d) A (b) "Close-down" means an order issued by the Department to discontinue
  88 operation of a food service business or exempt operation under section 305.8 of this law
  89 in order to protect the health, safety and/or welfare of the community.
- 90 (c) "Consumer" means an individual who is a member of the public; takes possession of
  91 food; is not functioning in the capacity of a food service business, a cottage food operator,
  92 a prepackaged restaurant, or a food processing plant; and does not offer the food for resale.
- 93 (d) "Cottage food operator" means an individual who, exclusively within the home kitchen 94 of his or her domestic residence, produces cottage food products for direct sale only.
- 95 (e) "Cottage food products" mean foods, produced within the home kitchen of a domestic 96 residence, that are non-potentially hazardous, including non-perishable baked goods such



- 143 and issuing licenses within the tribal jurisdiction in accordance with Oneida Laws,
  144 Ordinances and Codes.
- 145 (k) AThe Business Committee≅ means the Oneida Business Committee
- 146 (1) ARisk Management≅ means the Oneida Risk Management Department.
- 147 (m) ∧Emergency≅ means that situation /or an unforseen occurrence that requires
  148 immediate attention, the absence of which would endanger the health or safety of others
- due to the imminent nature of the circumstance.
- 150 (n) AClose down≅ means that the independent food service vendor, by order of the Compliance Division in conjunction with the Business Committee and the Oneida Police
- Department, based upon the recommendation of the EHS, will be prohibited to be open for
- business to the public for the protection of the health, safety or welfare of the community.
- 154 (o) AJudiciary≃ means the judicial system that was established by Oneida General Tribal
- 155 Council resolution GTC 01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
  - (p) Adopt all other definitions as written in the Federal Food Code.
- 158 <u>operator. The following</u>
- 159 <del>305.4. Responsibilities and Duties</del>
- 160 305.4-1. The EHS Department shall administer and regulate the requirements of this Code and
- the Federal Food Code pursuant to their updated Standard Operating Procedures, hereinafter,
- 162 ASOP=s≃, for Food Service Vendors.
- 163 305.4-2. The EHS Department shall conduct food handling classes that are required for licensing
- 164 of independent and temporary food vendors. Food not qualify as a food service establishment
- 165 vendors are exempt from this requirement but are to uphold other requirements per the Federal
- 166 Food Code.

- 167 305.4-3. The EHS Department shall have a copy of the most current Federal Food Code
- 168 available for inspection at the EHS offices by any and all food service vendors during regular
- 169 business hours.
- 170 305.4-4. The EHS Department shall have a copy of their SOP=s for Food Service Vendors
- 171 available for inspection at the EHS offices by any and all food service vendors during regular
- 172 business hours.
- 173 305.4-5. Risk Management shall make the determination to ensure that the vendor has adequate
- 174 insurance coverage.
- 175 305.4-6. The Licensing Department shall issue a Food Service License, Temporary Food Service
- 176 License, and a badge for Independent Food Vendors upon successful compliance of the
- 177 requirements of this Code and the Federal Food Code.
- 178 305.4-7. The Licensing Department, in conjunction with the EHS Department, shall
- determine the fees for the Food Service Licenses annually and post these prominently in the EHS
- 180 a Licensing Department.
- 181 305.4-8. The Licensing Department shall determine the monetary fines for noncompliance with
- this Code as approved by the Business Committee.
- 184 **305.5. Compliance**
- 185 305.5-1. Strict compliance with the specific laws found in this Code and the Federal Food Code
- 186 are required.

- 187 305.5-2. Additions or modifications to the Federal Food Code found in this Code are designed
- 188 to be Oneida specific.

189 305.5-3. Non-compliance with this Code or the Federal Food Code will be addressed by the License Department of the Compliance Division upon written complaint and or recommendation from the EHS or Risk Management Departments.

- 305.6. Requirements for Licensing
- 305.6-1. No person or person, corporation or firm shall operate a food service establishment either permanent or temporary, or sell food as an independent food service vendor on tribal property, who does not have a valid, unsuspended, unrevoked Oneida Food Vendors License issued by the License Department.
- 198 305.6-2. Only a person or persons, corporation or firm that complies with the requirements of this Code and the Federal Food Code shall be entitled to receive and retain an Oneida Food Vendors License.
  - 305.6 3. A valid license shall be posted in every food service establishment or temporary food service premises; and every independent food vendor shall prominently display the valid badge issued by the EHS Department.
  - 305.6-4. A Food Service License will be issued as follows:
    - (a) All Food Service Establishments, Independent Food Service vendors and Temporary Food Service vendors must meet the general requirements of the Federal Food Code.
    - (b) Independent Food Vendors and Temporary Food Vendors are required to satisfy the requirements of the EHS safe food handling instruction and certificate of completion of training must be presented to the Licensing Department prior to the issuance of a Food Service License.
    - Food Service Establishments must satisfy the requirements of the EHS=s pre-inspection report which will be provided to the Licensing Department prior to the issuance of a Food Service License.
    - (c) The Licensing Department shall issue a Food Service License pursuant to the recommendations by EHS regarding assurances that the applicant has met the conditions that are required for a satisfactory score pursuant to this Code, the EHS SOP=s and the Federal Food Code guidelines with the Hazard Analysis and Critical Control Point, Techniques of Quality Control.
    - (d) Food Service Licenses for permanent Food Service Establishments and Independent Food Service vendors shall be issued by the License Department for a 12 month period beginning at the fiscal year, October1 and ending September 30 of the following fiscal year.
    - (e) Those food vendors that initiate their business at a time other than October 1 of any given year shall have their fees prorated for that year.
    - (f) Renewal of a license will be for an additional 12 months per fiscal year by the License Department upon approval of the EHS Department.
    - (g) Temporary Food Service Licenses shall be issued for no more than 14 days at a time.
    - (h) Temporary Food Service Vendors must have at least one food handler that has successfully completed the EHS food handling instruction and have their certificate of completion displayed at all times during hours of operation.
- 231 (i) Food Service Licenses for Food Service Establishments and Temporary Food Service
  232 vendors shall be displayed in a conspicuous location within the permanent or temporary
  233 food service establishments.
- 234 (j) Independent Food Service Vendors must display their badges. (See 305.10, below.)

- 235 (k) No food prepared by a Food Service Vendor shall be prepared in any room used as, or 236 adjacent to, living or sleeping quarters.
- 237 305.6-5. Oneida Tribal Enterprise Units and Oneida Tribal Business Units shall be required to adhere to the requirements of this code when selling food for profit on tribal property. 238 239
  - 305.6-6. Food Service Licenses are non-transferable.

#### 241 305.7. Insurance

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- 242 305.7 1. Food Service Establishments and Independent Vendors are required to have adequate 243 insurance as determined by the Risk Management Department=s Standard Operating Procedures.
- 244 305.7-2. Upon satisfying the requirements of the EHS Department, Food Service Establishments
- 245 and Independent Food Service Vendors must provide the necessary documents of insurance to 246 Risk Management Department.
- 247 305.7-3. At any time during the term of the food service license, if the vendor loses his or her 248 insurance coverage, this must be reported immediately by the vendor to Risk Management and/or 249 the License Department.
- 250 305.7-4. Temporary Food Service vendors are exempt from the requirement for additional 251 insurance under this section.

#### 305.8. Inspections

- 255 305.8-1. Food Establishment Vendors and Temporary Food Service Vendors who apply for a 256 license must undergo a pre-inspection of the permanent or temporary establishment by the EHS 257 Department inspector that results in a satisfactory score under the Federal Food Guidelines.
- 258 Independent Food Service Vendors who apply for a license must undergo a pre-259 inspection of the kitchen or original food preparation premises by the EHS Department inspector 260 that results in a satisfactory score under the Federal Guidelines. this law:
- 261 305.8-3. Inspections of the food service premises by the EHS Department will be scheduled 262 twice a year.
- 263 305.8 4. At any time during the term of the license, either upon receipt of a complaint or upon 264 their own volition, the EHS Department may conduct an unscheduled inspection of a vendors food 265 preparation site.
- 266 305.8-5. A reinspection conducted as a result of a prior violation of this code or the Federal Food 267 Code, will be an additional fee to the vendor and must achieve a satisfactory score under the 268 Federal guidelines to cure the violation.

#### 305.9

- 271 305.9-1. The Food Service license fees shall cover a twelve (12) month period and shall be paid 272 in advance with the application for licensure.
- 273 305.9-2. The fee shall be paid annually at the beginning of each fiscal year which is October 1 274 through September 30 of the following year.
- 275 305.9-3. The license fees will be prorated for those applicants who start up their business prior 276 to the beginning of the fiscal year.
- 277 305.9-4. The fee shall be returned in full if the application is denied.
- 278 305.9-5. The licensing agent shall keep fee records.
- 279 305.9-6. Food Service vendors that have had their license suspended or their businesses closed
- 280 will not be entitled to a refund of their fees.

- 281 305.9-7. The fee for a food service license shall be pursuant to an equitable fee schedule as
- 282 established by the EHS and License Department as reviewed and approved by the Business
- 283 Committee and shall be available in the Licensing and EHS Departments for review.
- 284 305.9 8. The fee schedules may be adjusted annually.
- 285 305.9-9. Food Service vendor fees shall be used for the operational budget of the EHS (80%)
- and administrative budget of the License Department (20%).
- 287 305.9-10. Oneida Tribal Enterprise Units are required to pay the license fees under this code.
- 288 305.9-11. Oneida Tribal Business Units are exempt from the fee requirements.

#### 305.10. Independent Food Service Vendors Badge

- 305.10-1. Upon compliance with the requirements of this Code and the Federal Food Code, the Independent Food Service Vendors and their employees, if any, will be issued a badge by EHS with the vendors/employee=s photograph and license number clearly visible.
- 294 305.10-2. The badge must be worn by the licensed Independent Food Service Vendor and employees in a manner that is clearly visible to the public at all times while engaging in the sale of their food product.
- 297 305.10-3. Independent Food Service vendor badges are non-transferable and must be worn only by the individual to whom it was issued.

#### **305.11.** Exceptions and Exemptions

- 305.11-1. The following food service vendors will be exempt from the requirements of this Code:
- 303 (a (1) Private rummage sales:

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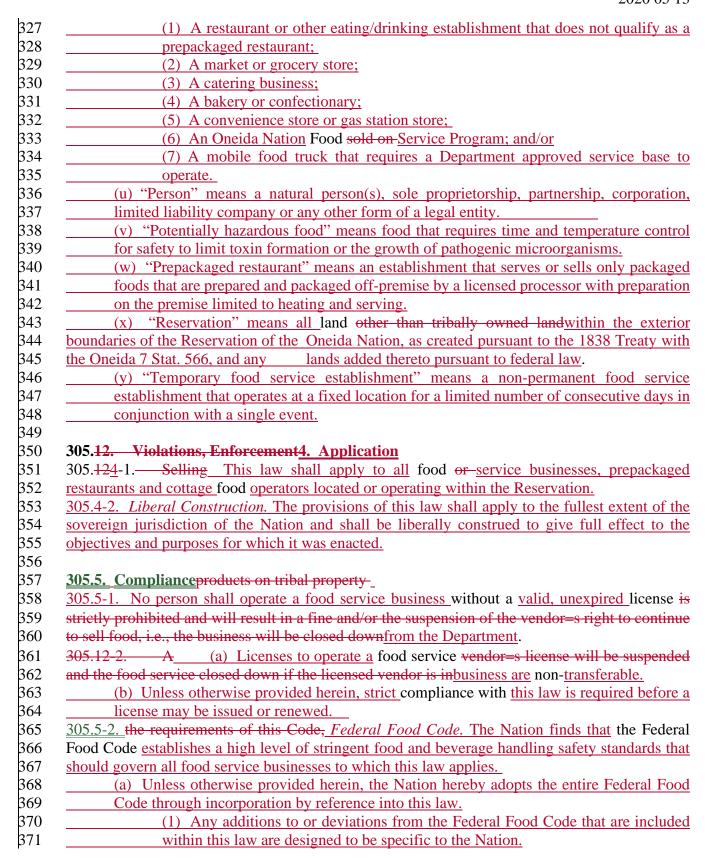
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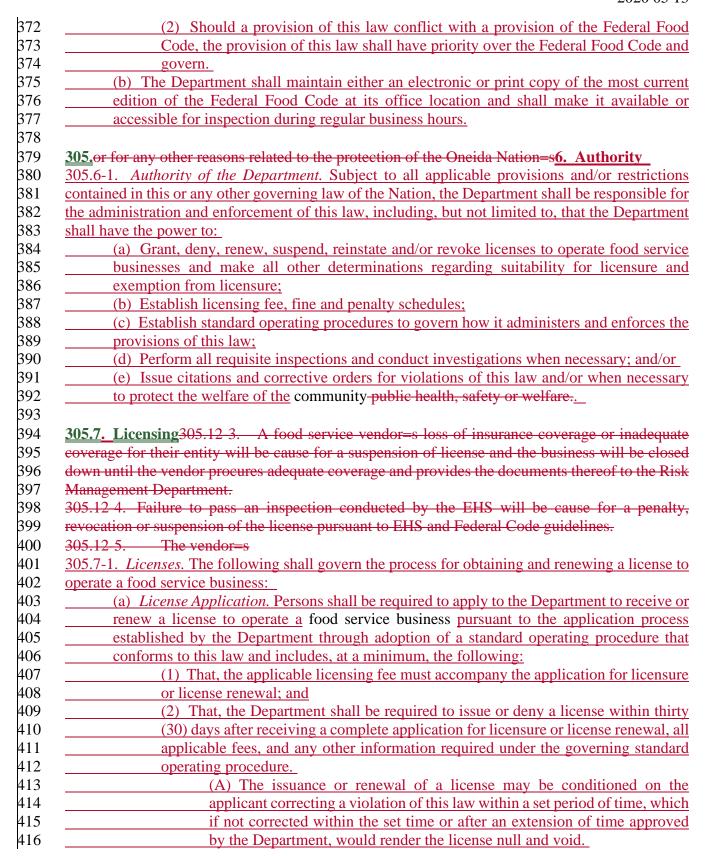
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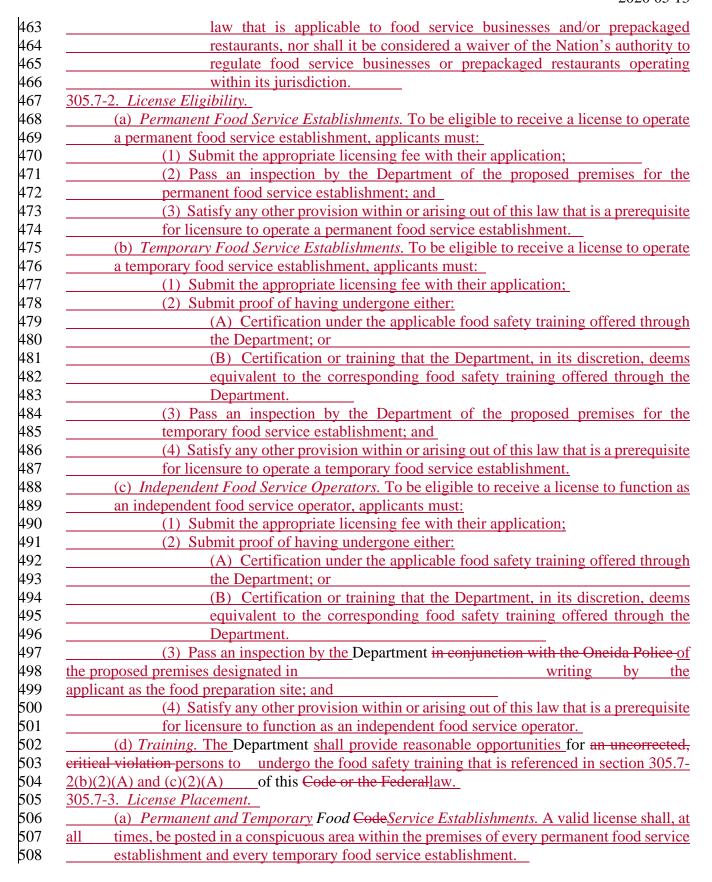
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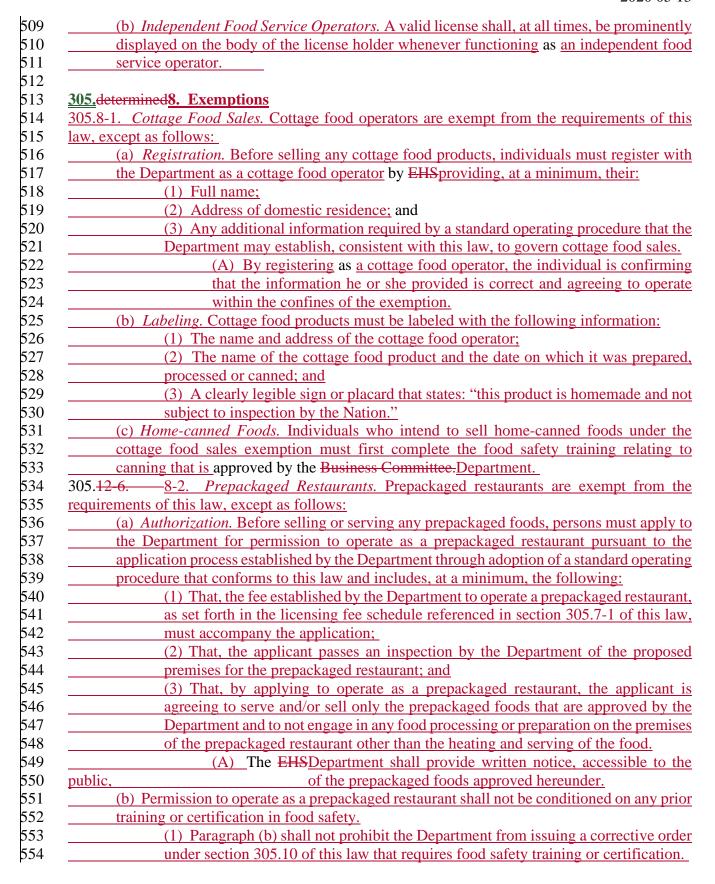
- (b) (2) Community sponsored non-profit fund raising fundraising and/or charity events-;
  - (c) Official Tribal meetings such as GTC Meetings.
- 307 (d) (3) Cottage food operators who satisfy the requirements of this law; and/or
  - (4) Prepackaged restaurants that satisfy the requirements of this law.
- 309 (n) "Home-canned foods" means home-canned fruits and vegetables that are naturally
  310 acidic or have been acidified by pickling or fermenting and have an equilibrium pH of 4.6
  311 or lower.
- (o) "Independent food service operator" means a person, other than one who qualifies as a cottage food operator, who sells, for profit, food that is prepared off-site, independent of a permanent establishment, at or within a location approved by the Department.
- (p) "Judiciary" means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
- (q) "License" means the tangible proof of authorization from the Department to operate a permanent food service establishment, operate a temporary food service establishment and/or function as an independent food service operator.
- (r) "Nation" means the Oneida Nation.
- (s) "Penalty" means a punishment, other than a fine, imposed on a person for violation of this law.
- (t) "Permanent food service establishment" means a permanent unit and/or location where food is processed on the premises, usually for retail sale, and intended for individual consumption, whether on or off the premises, including, but not limited to, the following:

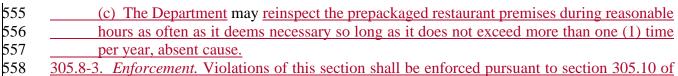




417	(B) If the Department denies an application for licensure or license renewal,
418	it shall provide the applicant, in writing, with its reason or reasons for the
419	denial and information on how to appeal its decision.
420	(b) License Period.
421	(1) Licenses for permanent food service establishments and independent food
422	service operators shall be issued and renewed by the Department for terms of one
423	(1) year, commencing October 1st and ending September 30th of every year.
424	(2) Licenses for temporary food service establishments shall be issued by the
425	Department to cover one (1) single event for a period of not more than fourteen
426	(14) consecutive days.
427	(c) License Fee. The Department shall be required to set a licensing fee schedule, subject
428	to approval by the Oneida Business Committee through adoption of a resolution, that is
429	applicable to all food service businesses.
430	(1) The fee amount shall cover the initial license term for permanent food service
431	establishments and independent food service operators and shall cover a single
432	event of not more than fourteen (14) consecutive days for temporary food service
433	establishments.
434	(A) A separate licensing fee shall be required when applying to renew a
435	license for a permanent food service establishment or independent food
436	service operator.
437	(B) The licensing fee for a permanent food service establishment license or
438	independent food service operator license that was issued after October 1st
439	shall be prorated for that term pursuant to a standard operating procedure
440	established by the Department.
441	(C) Unless otherwise provided herein, if an application for licensure or
442	license renewal is denied by the Department, the licensing fee submitted
443	with the application shall be returned to the applicant in full.
444	(2) The Department shall post the licensing fee schedule in a prominent area within
445	its offices and elsewhere as it deems appropriate.
446	(A) The licensing fee schedule shall include the fee established by the
447	Department to operate a prepackaged restaurant pursuant to section 305.8
448	of this law.
449	(B) The Department may be closed down by the License amend the
450	licensing fee schedule as it deems necessary,
451	subject to approval by the Oneida Business Committee through
452	adoption of a resolution.
453	(3) Exemptions.
454	(A) The Oneida Nation Food Service Programs and other non-profit service
455	programs of the Nation shall not be required to pay a licensing fee to obtain
456	a license under this law.
457	(B) The Department shall waive the licensing fee required hereunder upon
458	proof from a food service business or prepackaged restaurant of payment to
459	another governmental unit located within the boundaries of the Reservation
460	for a similar license or permit to operate that covers the same term.
461	(C) Exemption from a licensing fee under (A) or (B) of this section shall
462	not be considered a waiver of any other compliancy requirement within this







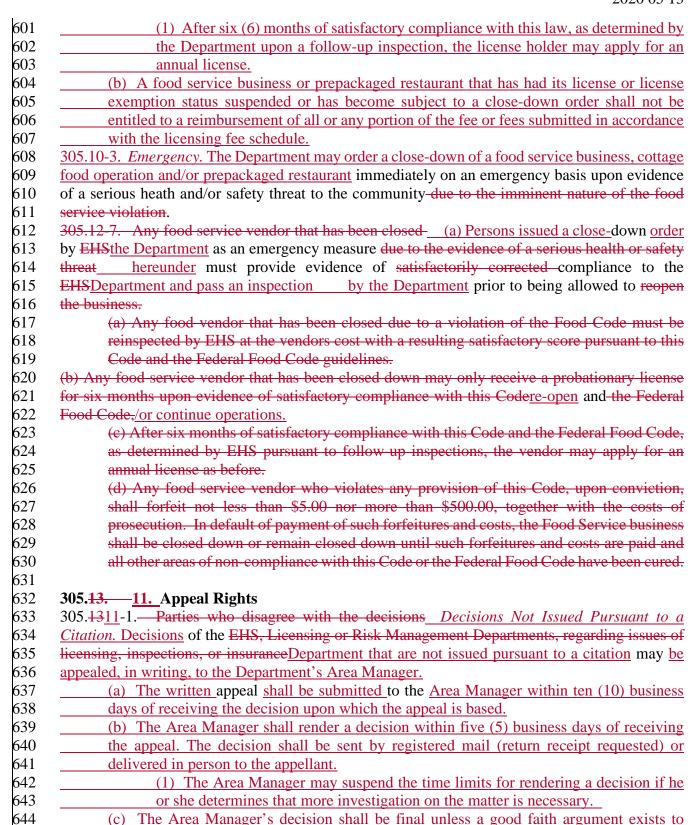
- 305.8-3. *Enforcement*. Violations of this section shall be enforced pursuant to section 305.10 of this law.
  - (a) Upon receipt of a complaint or its own reasonable suspicion of noncompliance with this section, the Department, in its discretion, may conduct an inspection of a prepackaged restaurant or a cottage food operator's domestic residence; provided, the inspection of the cottage food operator's domestic residence is limited to the subject matter of the complaint or event giving rise to the Department's reasonable suspicion.
  - (b) This section does not preempt the application of any other law of the Nation or other local governing ordinance to which individuals must comply.
  - (c) This section does not limit the liability of the owner of a prepackaged restaurant or a cottage food operator for damages that arise out of their sale or service of food hereunder.

#### 305.9. Inspections

- <u>305.9-1.elose down a In addition to the inspections required under section 305.7 of this law, no more than two (2) times per license term, the Department may, for any reason, enter a food service business to conduct an inspection, so long as at a reasonable hour.</u>
- <u>305.9-2.</u> The Department may, at any time during the term of a license, enter a food service business to conduct an unscheduled inspection based on the following:
  - (a) Receipt of a complaint;
  - (b) Outbreak of a food borne illness; and/or
  - (c) Reasonable suspicion of a violation of this law or an emergency.
- <u>305.9-3.</u> Any reinspection that must be conducted by the Department as a result of a violation of this law, will result in an additional fee as set forth in the license fee schedule.

#### 305.10. Violations, Enforcement

- <u>305.10-1.</u> *Non-compliance.* Violations of this law may result in any one or more of the following as determined by the Department:
  - (a) The suspension or revocation of a license or license exemption status;
  - (b) The issuance of a corrective order, including, but not limited to, an order to close-down; and/or
  - (c) The issuance of a citation that may include one or more of the fines, penalties and/or corrective orders set forth in the fine and penalty schedule established by the Department, subject to approval by the Oneida Business Committee through adoption of a resolution.
    - (1) Failure to pass an inspection conducted pursuant to this law may be cause for the issuance of one or more of the enforcement mechanisms set forth herein.
    - (2) Citations shall be issued and processed in accordance with the procedures contained in the Nation's laws and policies governing citations.
- 305.10-2. In addition to satisfying any other mandate issued by the Department hereunder, a food service business, cottage food operator or prepackaged restaurant that has been closed-down due to a violation of this law must further pass a reinspection by the Department before being eligible for operation.
- (a) A food service business that has been closed-down may only receive a probationary license for six (6) months upon evidence of satisfactory compliance with this law.



appeal to the Trial Court of the Judiciary. on one or more of the following grounds:

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

647	(2. Hearings by the) That, the decision is without any reasonable factual basis;
648	and/or_
649	(3) That, the decision constitutes an abuse of power.
650	(A) Appeals initiated hereunder shall be conducted in accordance with the
651	Judiciary will be pursuant to the law and any applicable rules established
652	for the Judiciary.of procedure.
653	305.11-2. Decisions Issued Pursuant to a Citation. Decisions of the Department that are issued
654	pursuant to a citation may be contested in accordance with the procedures contained in the Nation's
655	laws and policies governing citations.
656	(a) A mandatory appearance at the citation pre-hearing is required of all persons wishing
657	to contest a citation issued by the Department hereunder.
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659	End.
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662	Adopted $\underline{\ }$ BC- $\frac{10-03}{06-13}$ -01- $\frac{DB}{}$
663	Amended <u>BC-02-25-15-C</u>
664	

Attachment A.		
Food Service License Fees for 2001-2002 (To be adjusted annually)		
<del>1. F</del>	ood Service Establishment License	
	a. Restaurants and Eating/Drinking Estab	<del>lishments</del>
	1. With 0-49 seats	\$100.00
	2. With 50-100 seats	
	3. With 101 + seats	\$350.00
		4
	b. Retail Food Market, Grocery Store	<del>\$175.00</del>
	Datail Food Monket Concern Stone	
	c. Retail Food Market, Grocery Store With restaurant	¢225.00
	<del>With restaurant</del>	\$225.00
	d. Bakery/Confectionary	\$100.00
		Ψ100,00
	e. Convenience Store/Gas Station	\$100.00
	f. Catering Business	\$100.00
2. Ir	ndependent Food Service License	
	a. \$75.00 annually	
3. T	emporary Food Service License	
	a. \$25.00 for each event, not to exceed for	urteen consecutive
4 Teil	bal Schools	No Fee
<del>7. 111</del>	our senoors	- No Fee
	THIS LICENSE IS NOT TRANSI	ERABLE

#### THIS LICENSE IS NOT TRANSFERABLE

All licenses expire on September 30<sup>th</sup> annually. A penalty of \$50.00 will be applied to renewal applications postmarked after October 15<sup>th</sup>. Operation in any fiscal year requires a licence.

698 699

701 Schedule of Fines 702 For Non-Compliance with this code or the Federal Food Code 703 704 705 Any food service vendor who violates any provision of this chapter, upon conviction, shall 706 forfeit not less than \$5.00 nor more than \$500.00, together with costs of prosecution. In 707 default of payment of such forfeiture and costs, the Food Service business will be closed 708 and/or remain closed until such forfeitures and costs are paid and all areas of non-709 compliance with this Code or the Federal Food Code have been cured. Oncida Food Code 710 305.12-7(d). 711 712 1<sup>st</sup> Offense, non-critical: \$25.00 713 714 2<sup>nd</sup> Offense in Five Years, non-critical: \$100.00 715 716 3<sup>rd</sup> Offense in Five Years, non-critical: \$200.00 717 All Subsequent Non-Critical Offenses in Five Years: 718 \$250.00 719 720 721 722 1<sup>st</sup> Offense, Critical: \$100.00 723 2<sup>nd</sup> Offense in Five Years, Critical: 724 \$300.00 725 3<sup>rd</sup> Offense in Five Years: Critical: 726 \$500.00 727 728 All Subsequent Critical Offenses in Five Year: \$750.00 729 730 731 732 \*Note: Five or more critical offenses in five years will result in the suspension of the license for 733 one year, the business will be closed down and a fine will be imposed to be paid prior to 734 reinstatement. 735 736 Fees for reinspection as a result of an original finding of non-compliance by EHS is \$100.00. 737

739	ONEIDA NATION IN WISCONSIN
740	
741	-APPLICATION
742	FOR LICENSE FOR THE SALE OF FOOD ON TRIBAL PROPERTY
743	
744	-ENVIRONMENTAL HEALTH AND SAFETY DEPARTMENT-
745	-COMPLIANCE DIVISION LICENSE DEPARTMENT-
746	
747	
748	In accordance with the Oneida Food Code. I the undersigned, do hereby respectfully make
749	application to the Environmental Health and Safety Department of the Oneida Nation in
750	Wisconsin. for a license to sell food on tribal property for the year ending <u>September 30, 2002.</u>
751	
752	I hereby certify that I am familiar with the Federal laws and Oncida Food Code pertaining
753	to the conditions of said establishment on Oncida Nation tribal property, and I hereby agree,
754	if granted said license, to obey all provisions of said Federal laws and Oneida Food Code.
755	
756	ESTABLISHMENT NAME
757	ECTARIACINATIVE ADDRESS
758	ESTABLISHMENT ADDRESS
759	ECTADI ICHMENT TELEDHOME
760	ESTABLISHMENT TELEPHONE
761	A CENT/MANA CED HOME DHONE
762	AGENT/MANAGER HOME PHONE
763 764	LEGAL LICENSE (List the name of the Individual, Partnership or Corporation)
765	(Elist the hame of the individual, Farthership of Corporation)
766	LICENSEE ADDRESS
767	PROPERTY OWNER
768	TROIERT OWNER
769	DATE WHEN ONEIDA FOOD HANDLING COURSE COMPLETED
770	DITTE WHEN ONEIDITTOOD THINDEING COURSE COM EDIED
771	NAME OF INSURER
772	(Attach copy of Insurance deck sheet)
773	(2 2000) or 2000 door shoot,
774	SIGNATURE OF APPLICANT
775	
776	* MUST BE SIGNED TO OBTAIN A CURRENT LICENSE.
777	*****************************
778	**********
779	
780	APPROVED:TOTAL FEE PAID:
781	Environment Health and Safety Dept.
782	

	ONEID!	<del>A NATION</del>	
	ONEIDA FOOD V	ENDOR=S LICENS	<del>SE</del>
	October 1, 2002 throu	<del>ugh September 30, 20</del>	003
Business:		<u>L</u>	icensee:
ne and addres	ss of business)		ne of Person, partnership or
		corpo	<del>oration)</del>
TPI C		41.1	1 19 1 94 4
	firm or corporation whose name		
	the Oneida Food Code and, as	± '	
	engage in the activity as indicated		named from October 1, 2001
to September.	31, 2001. This license is non-tran	<del>Isterrable.</del>	
(Name of typ	be(s) of food service; restaurant, in	ndopondont	( License fee)
\ J1	market, bakery. caterer, etc.)	паеренает,	( License ice)
temporary,	market, bakery. caterer, etc.)		
Dotad at the at	ffice of the Oneida License Depar	rtmont this (Doto	issued)
<del>Jateu at the O</del>	Thee of the Offerda Electise Depar	timent, tins(Date	(Issued)
Oneida Licens	se Department Officer	Oneida Health and	l Safety Department Officer
Jiloida Licolis	. Department officer	Onorga Hourai and	. Saloty Department Officer
DOST_INL A	CONSPICUOUS PLACE Amend	ded RC	
1051 11171	CONSTITUTE AIRCH	ucu – DC-	

# Title 3. Health and Public Safety – Chapter 305 Kahkwa>%=ku about the food ONEIDA FOOD SERVICE

305.1. Purpose and Policy305.2. Adoption, Amendment, Repeal305.3. Definitions305.4. Jurisdiction305.5. Compliance

305.6. Authority

305.7. Licensing305.8. Exemptions305.9. Inspections305.10. Violations, Enforcement305.11. Appeal Rights

#### 305.1. Purpose and Policy

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

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

#### 305.2. Adoption, Amendment, Repeal

- 305.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-13-01-B and amended by resolutions BC-02-25-15-C and BC-\_\_-\_\_.
- 33 305.2-2. 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.
- 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, the provisions of this law shall control.
- 40 305.2-5. 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.

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- (c) "Consumer" means an individual who is a member of the public; takes possession of food; is not functioning in the capacity of a food service business, a cottage food operator, a prepackaged restaurant, or a food processing plant; and does not offer the food for resale.
- (d) "Cottage food operator" means an individual who, exclusively within the home kitchen of his or her domestic residence, produces cottage food products for direct sale only.
- (e) "Cottage food products" mean foods, produced within the home kitchen of a domestic residence, that are non-potentially hazardous, including non-perishable baked goods such as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit; jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or salsa, pickled vegetables and hot sauces; and other non-potentially hazardous foods that the Department characterizes as cottage food products for purposes of this law.
- (f) "Department" means the Environmental, Health and Safety Department within the Nation's Environmental, Health, Safety and Land Division.
- (g) "Direct sale" means a consumer's face-to-face purchase of a cottage food product from a cottage food operator that does not include purchases through consignment, mail order, or the internet, though nothing herein shall be interpreted to prohibit a cottage food operator from using the internet for the sole purpose of advertising his or her cottage food products.
- (h) "Domestic residence" means the single-family house or unit in a multiunit residential structure located at the address that the applicant lists as being his or her primary residence when applying to the Department for a cottage food exemption under this law.
- (i) "Emergency" means the occurrence or discovery of an unforeseen event that requires immediate attention, the absence of which could endanger the health or safety of others.
- (j) "Federal Food Code" means the most current edition of the United States Public Health Service, Food and Drug Administration Food Code.
- (k) "Fine" means a monetary punishment issued to a person for violation of this law.
- (1) "Food" means a raw, cooked or processed edible substance; ice; beverage; or ingredient used or intended for use or for sale in whole or in part for human consumption or chewing gum.
- (m) "Food service business" means, whether individually or collectively, a permanent food service establishment; a temporary food service establishment; and/or an independent food service operator. The following shall not qualify as a food service business under this law:
  - (1) Private rummage sales;
  - (2) Community sponsored non-profit fundraising and/or charity events;
  - (3) Cottage food operators who satisfy the requirements of this law; and/or
  - (4) Prepackaged restaurants that satisfy the requirements of this law.
- (n) "Home-canned foods" means home-canned fruits and vegetables that are naturally acidic or have been acidified by pickling or fermenting and have an equilibrium pH of 4.6 or lower.
- (o) "Independent food service operator" means a person, other than one who qualifies as a cottage food operator, who sells, for profit, food that is prepared off-site, independent of a permanent establishment, at or within a location approved by the Department.
- (p) "Judiciary" means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

- 94 (q) "License" means the tangible proof of authorization from the Department to operate a permanent food service establishment, operate a temporary food service establishment and/ or function as an independent food service operator.
  - (r) "Nation" means the Oneida Nation.
  - (s) "Penalty" means a punishment, other than a fine, imposed on a person for violation of this law.
  - (t) "Permanent food service establishment" means a permanent unit and/or location where food is processed on the premises, usually for retail sale, and intended for individual consumption, whether on or off the premises, including, but not limited to, the following:
    - (1) A restaurant or other eating/drinking establishment that does not qualify as a prepackaged restaurant;
    - (2) A market or grocery store;
    - (3) A catering business;
    - (4) A bakery or confectionary;
    - (5) A convenience store or gas station store;
    - (6) An Oneida Nation Food Service Program; and/or
    - (7) A mobile food truck that requires a Department approved service base to operate.
  - (u) "Person" means a natural person(s), sole proprietorship, partnership, corporation, limited liability company or any other form of a legal entity.
  - (v) "Potentially hazardous food" means food that requires time and temperature control for safety to limit toxin formation or the growth of pathogenic microorganisms.
  - (w) "Prepackaged restaurant" means an establishment that serves or sells only packaged foods that are prepared and packaged off-premise by a licensed processor with preparation on the premise limited to heating and serving.
  - (x) "Reservation" means all land within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
  - (y) "Temporary food service establishment" means a non-permanent food service establishment that operates at a fixed location for a limited number of consecutive days in conjunction with a single event.

#### 305.4. Application

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- 305.4-1. This law shall apply to all food service businesses, prepackaged restaurants and cottage food operators located or operating within the Reservation.
- 305.4-2. *Liberal Construction*. The provisions of this law shall apply to the fullest extent of the sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

#### 305.5. Compliance

- 305.5-1. No person shall operate a food service business without a valid, unexpired license from the Department.
  - (a) Licenses to operate a food service business are non-transferable.
  - (b) Unless otherwise provided herein, strict compliance with this law is required before a license may be issued or renewed.

- 305.5-2. Federal Food Code. The Nation finds that the Federal Food Code establishes a high level of stringent food and beverage handling safety standards that should govern all food service businesses to which this law applies.
  - (a) Unless otherwise provided herein, the Nation hereby adopts the entire Federal Food Code through incorporation by reference into this law.
    - (1) Any additions to or deviations from the Federal Food Code that are included within this law are designed to be specific to the Nation.
    - (2) Should a provision of this law conflict with a provision of the Federal Food Code, the provision of this law shall have priority over the Federal Food Code and govern.
  - (b) The Department shall maintain either an electronic or print copy of the most current edition of the Federal Food Code at its office location and shall make it available or accessible for inspection during regular business hours.

#### 305.6. Authority

- 305.6-1. Authority of the Department. Subject to all applicable provisions and/or restrictions contained in this or any other governing law of the Nation, the Department shall be responsible for the administration and enforcement of this law, including, but not limited to, that the Department shall have the power to:
  - (a) Grant, deny, renew, suspend, reinstate and/or revoke licenses to operate food service businesses and make all other determinations regarding suitability for licensure and exemption from licensure;
  - (b) Establish licensing fee, fine and penalty schedules;
  - (c) Establish standard operating procedures to govern how it administers and enforces the provisions of this law;
  - (d) Perform all requisite inspections and conduct investigations when necessary; and/or
  - (e) Issue citations and corrective orders for violations of this law and/or when necessary to protect the welfare of the community.
- 305.7-1. *Licenses*. The following shall govern the process for obtaining and renewing a license to operate a food service business:
  - (a) *License Application*. Persons shall be required to apply to the Department to receive or renew a license to operate a food service business pursuant to the application process established by the Department through adoption of a standard operating procedure that conforms to this law and includes, at a minimum, the following:
    - (1) That, the applicable licensing fee must accompany the application for licensure or license renewal; and
    - (2) That, the Department shall be required to issue or deny a license within thirty (30) days after receiving a complete application for licensure or license renewal, all applicable fees, and any other information required under the governing standard operating procedure.
      - (A) The issuance or renewal of a license may be conditioned on the applicant correcting a violation of this law within a set period of time, which if not corrected within the set time or after an extension of time approved by the Department, would render the license null and void.

185	(B) If the Department denies an applicatio
186	it shall provide the applicant, in writing,
187	denial and information on how to appeal i
188	(b) License Period.
189	(1) Licenses for permanent food service estab
190	service operators shall be issued and renewed by
191	(1) year, commencing October 1st and ending Sep
192	(2) Licenses for temporary food service establ
193	Department to cover one (1) single event for a p
194	(14) consecutive days.
195	(c) License Fee. The Department shall be required to set
196 197	to approval by the Oneida Business Committee through
197	applicable to all food service businesses.  (1) The fee amount shall cover the initial license
198	establishments and independent food service op
200	event of not more than fourteen (14) consecutive
200	establishments.
202	(A) A separate licensing fee shall be req
203	license for a permanent food service est
204	service operator.
205	(B) The licensing fee for a permanent foo
206	independent food service operator license
207	shall be prorated for that term pursuant to
208	established by the Department.
209	(C) Unless otherwise provided herein, it
210	license renewal is denied by the Departn
211	with the application shall be returned to the
212	(2) The Department shall post the licensing fee sc
213	its offices and elsewhere as it deems appropriate.
214	(A) The licensing fee schedule shall inc
215	Department to operate a prepackaged resi
216	of this law.
217	(B) The Department may amend the lice
218	necessary, subject to approval by the One
219	adoption of a resolution.
220	(3) Exemptions.
221	(A) The Oneida Nation Food Service Prog
222	programs of the Nation shall not be require
223	a license under this law.
224	(B) The Department shall waive the licen
225	proof from a food service business or prep
226	another governmental unit located within
227	for a similar license or permit to operate the
228	(C) Exemption from a licensing fee under
229	not be considered a waiver of any other co
230	law that is applicable to food service

n for licensure or license renewal. with its reason or reasons for the ts decision.

- lishments and independent food the Department for terms of one ptember 30th of every year.
- lishments shall be issued by the period of not more than fourteen
- a licensing fee schedule, subject adoption of a resolution, that is
  - term for permanent food service perators and shall cover a single days for temporary food service
    - uired when applying to renew a ablishment or independent food
    - d service establishment license or that was issued after October 1st o a standard operating procedure
    - f an application for licensure or nent, the licensing fee submitted ne applicant in full.
  - hedule in a prominent area within
    - clude the fee established by the taurant pursuant to section 305.8
    - ensing fee schedule as it deems eida Business Committee through
    - grams and other non-profit service ed to pay a licensing fee to obtain
    - sing fee required hereunder upon ackaged restaurant of payment to the boundaries of the Reservation hat covers the same term.
    - er (A) or (B) of this section shall mpliancy requirement within this 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

establishment and every temporary food service establishment.

(b) *Independent Food Service Operators*. A valid license shall, at all times, be prominently displayed on the body of the license holder whenever functioning as an independent food service operator.

#### 305.8. Exemptions

- 305.8-1. *Cottage Food Sales*. Cottage food operators are exempt from the requirements of this law, except as follows:
  - (a) *Registration*. Before selling any cottage food products, individuals must register with the Department as a cottage food operator by providing, at a minimum, their:
    - (1) Full name;
    - (2) Address of domestic residence; and
    - (3) Any additional information required by a standard operating procedure that the Department may establish, consistent with this law, to govern cottage food sales.
      - (A) By registering as a cottage food operator, the individual is confirming that the information he or she provided is correct and agreeing to operate within the confines of the exemption.
  - (b) Labeling. Cottage food products must be labeled with the following information:
    - (1) The name and address of the cottage food operator;
    - (2) The name of the cottage food product and the date on which it was prepared, processed or canned; and
    - (3) A clearly legible sign or placard that states: "this product is homemade and not subject to inspection by the Nation."
  - (c) *Home-canned Foods*. Individuals who intend to sell home-canned foods under the cottage food sales exemption must first complete the food safety training relating to canning that is approved by the Department.
- 305.8-2. *Prepackaged Restaurants*. Prepackaged restaurants are exempt from the requirements of this law, except as follows:
  - (a) *Authorization*. Before selling or serving any prepackaged foods, persons must apply to the Department for permission to operate as a prepackaged restaurant pursuant to the application process established by the Department through adoption of a standard operating procedure that conforms to this law and includes, at a minimum, the following:
    - (1) That, the fee established by the Department to operate a prepackaged restaurant, as set forth in the licensing fee schedule referenced in section 305.7-1 of this law, must accompany the application;
    - (2) That, the applicant passes an inspection by the Department of the proposed premises for the prepackaged restaurant; and
    - (3) That, by applying to operate as a prepackaged restaurant, the applicant is agreeing to serve and/or sell only the prepackaged foods that are approved by the Department and to not engage in any food processing or preparation on the premises of the prepackaged restaurant other than the heating and serving of the food.
      - (A) The Department shall provide written notice, accessible to the public, of the prepackaged foods approved hereunder.
  - (b) Permission to operate as a prepackaged restaurant shall not be conditioned on any prior training or certification in food safety.
    - (1) Paragraph (b) shall not prohibit the Department from issuing a corrective order under section 305.10 of this law that requires food safety training or certification.

- 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.
  - 305.8-3. *Enforcement*. Violations of this section shall be enforced pursuant to section 305.10 of this law.
    - (a) Upon receipt of a complaint or its own reasonable suspicion of noncompliance with this section, the Department, in its discretion, may conduct an inspection of a prepackaged restaurant or a cottage food operator's domestic residence; provided, the inspection of the cottage food operator's domestic residence is limited to the subject matter of the complaint or event giving rise to the Department's reasonable suspicion.
    - (b) This section does not preempt the application of any other law of the Nation or other local governing ordinance to which individuals must comply.
    - (c) This section does not limit the liability of the owner of a prepackaged restaurant or a cottage food operator for damages that arise out of their sale or service of food hereunder.

#### 305.9. Inspections

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- 305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two (2) times per license term, the Department may, for any reason, enter a food service business to conduct an inspection, so long as at a reasonable hour.
- 305.9-2. The Department may, at any time during the term of a license, enter a food service business to conduct an unscheduled inspection based on the following:
  - (a) Receipt of a complaint;
  - (b) Outbreak of a food borne illness; and/or
  - (c) Reasonable suspicion of a violation of this law or an emergency.
- 305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of this law, will result in an additional fee as set forth in the license fee schedule.

#### 305.10. Violations, Enforcement

- 305.10-1. *Non-compliance*. Violations of this law may result in any one or more of the following as determined by the Department:
  - (a) The suspension or revocation of a license or license exemption status;
  - (b) The issuance of a corrective order, including, but not limited to, an order to close-down; and/or
  - (c) The issuance of a citation that may include one or more of the fines, penalties and/or corrective orders set forth in the fine and penalty schedule established by the Department, subject to approval by the Oneida Business Committee through adoption of a resolution.
    - (1) Failure to pass an inspection conducted pursuant to this law may be cause for the issuance of one or more of the enforcement mechanisms set forth herein.
    - (2) Citations shall be issued and processed in accordance with the procedures contained in the Nation's laws and policies governing citations.
- 305.10-2. In addition to satisfying any other mandate issued by the Department hereunder, a food service business, cottage food operator or prepackaged restaurant that has been closed-down due to a violation of this law must further pass a reinspection by the Department before being eligible for operation.
  - (a) A food service business that has been closed-down may only receive a probationary license for six (6) months upon evidence of satisfactory compliance with this law.

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. <i>Emergency</i> . 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 heath 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	205.11 A I D' . I
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.
384 385	(a) The written appeal shall be submitted to the Area Manager within ten (10) business
386	days of receiving the decision upon which the appeal is based.  (b) The Area Manager shall render a decision within five (5) business days of receiving
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.
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404 405	End.

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Adopted – BC-06-13-01-B

Amended – BC-02-25-15-C

Amended – BC-\_\_-\_\_-\_

## 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: April 1, 2020

**RE:** Fiscal Impact of the Amendments to the Food Service Code

I. Estimated Fiscal Impact Summary

Law: Amendments to the Food Service Code Draft 4				
Implementing Agency Legislative Operating Committee				
Estimated time to comply Unable to determine				
<b>Estimated Impact</b>	Current Fiscal Year 10 Year Estimate			
<b>Total Estimated Fiscal Impact</b>	Indeterminate	Indeterminate		

#### II. Background

This Code (Law) was adopted by the Oneida Business Committee by resolution BC-06-13-01-B and was amended by Resolution BC-02-25-15-C. as the Oneida Food Service Code. A public meeting was held on February 6, 2020. The amendments to the Code are the following:

- Update the Environmental Health Safety and Land Department (EHSL) to have exclusive authority to develop license fees and penalty schedules.
- Include exemptions for cottage food sales and prepackaged restaurants.
- Include mobile food trucks in the definition of permanent food service operators.
- Include a waiver of license fees when an applicant provides proof of payment to an alternate governmental unit within the reservation boundaries for the same term.
- Includes a 30 day response time for Environmental Health Safety and Land Department to make decisions regarding eligibility
- Requires the EHSL Departmet to provide written explanation of denials and to provide denied applicants with an explanation of the appeals process.
- Allows the EHSL Department the discretion to accept alternate training options.

#### 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.

#### IV. Executive Summary of Findings

The current Code has the affected tasks shared between the Environmental Health Safety and Land Department and the Oneida Licensing Department. This Amendment to the Code has the impact of streamlining the processes under the Environmental Health Safety and Land Department. It also reserves to Environmental Health Safety and Land Department the exclusive authority to develop license fees and penalty schedules.

At present there are thirty-four food service businesses within the reservation boundary licensed by the Oneida Nation. The Amendment to the Food Service Code does include new definitions of food service delivery impacted to include mobile trucks and also provides for exemptions for cottage food sales and prepackaged restaurants.

#### V. Financial Impact

The Fiscal Impact of implementing this Oneida Food Service Code Amendment is indeterminate at this time. While including mobile trucks may bring additional revenue, there is no reason to count on additional revenue coming in, as the number of food service mobile trucks is unknown. Further, increasing exemptions could offset any new revenues. While the Amendment does allow the EHSL Department the discretion to set fees and penalties, there is no inclusion of a prescribed change in the current fees.

#### VI. 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



**BC** Resolution #

Oneida, WI 54155

Oneida Food Service Law Fine, Penalty, and Licensing Fee Schedule				
WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and			
WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and			
WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Nation Constitution by the Oneida General Tribal Council; and			
WHEREAS,	the Oneida Food Service law ("Law") was adopted by the Oneida Business Committee through resolution BC-06-13-01-B, and amended by resolutions BC-02-25-15-C and BC; and			
WHEREAS,	the Law delegates authority to the Environmental, Health and Safety Department ("Department") within the Nation's Environmental, Health, Safety and Land Division to develop a fine, penalty and licensing fee schedule; and			
WHEREAS,	the Department developed and approved the proposed fine, penalty and licensing fee schedule; and			
WHEREAS,	the Law requires that the fine, penalty and licensing fee schedule be approved by the			

**NOW THEREFORE BE IT RESOLVED,** that the Department hereby sets forth the following licensing fee schedule in accordance with the Oneida Food Service law:

Oneida Business Committee through resolution.

LICENSING FEE SCHEDULE				
Food Service Business	Reference	Fee	License Period	
Permanent Food Service Establishment –	305.7-2(a)(1)	\$120.00	October 1 –	
Restaurant with 0-49 Seats			September 30	
Permanent Food Service Establishment –	305.7-2(a)(1)	\$180.00	October 1 –	
Restaurant with 50-100 Seats			September 30	
Permanent Food Service Establishment –	305.7-2(a)(1)	\$420.00	October 1 –	
Restaurant with 101 or More Seats			September 30	
Permanent Food Service Establishment –	305.7-2(a)(1)	\$210.00	October 1 –	
Retail Food Market/Grocery Store			September 30	
Permanent Food Service Establishment –	305.7-2(a)(1)	\$270.00	October 1 –	
Retail Food Market/Grocery Store with			September 30	
Restaurant			-	
Permanent Food Service Establishment –	305.7-2(a)(1)	\$120.00	October 1 –	
Bakery/Confectionary			September 30	

#### BC Resolution # \_\_\_\_\_ Oneida Food Service Law Fine, Penalty, and Licensing Fee Schedule Page 2 of 3

Permanent Food Service Establishment –	305.7-2(a)(1)	\$120.00	October 1 –
Convenience Store/Gas Station			September 30
Permanent Food Service Establishment –	305.7-2(a)(1)	\$120.00	October 1 –
Catering Business			September 30
Permanent Food Service Establishment –	305.7-2(a)(1)	\$120.00	October 1 –
Mobile Food Trucks			September 30
Permanent Food Service Establishment –	305.7-1(c)(3)(A)	\$0.00	October 1 –
Oneida Food Service Program/Other			September 30
Nonprofit Service Program of the Nation			
Temporary Food Service Establishment	305.7-2(b)(1)	\$30.00	Not to Exceed
			Fourteen (14)
			Consecutive Days
Independent Food Service Operator	305.7-2(c)(1)	\$90.00	October 1 –
			September 30

**BE IT FURTHER RESOLVED**, that the Department sets a fee of \$120.00 to operate a Prepackaged Restaurant pursuant to section 305.8-2 of the Oneida Food Service law.

**BE IT FURTHER RESOLVED,** that for purposes of the fine and penalty schedule set forth below, the Department adopts the distinction between non-priority and priority violations as used in the most current edition of the United States Public Health Service, Food and Drug Administration's Food Code ("Federal Food Code") such that a priority violation consists of a failure to adhere to:

- (1) A "priority item", which means a provision of the Oneida Food Service law whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard, including, but not limited to, items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling and handwashing; and/or
- (2) A "priority foundation item", which means a provision of the Oneida Food Service law whose application supports, facilitates or enables one or more priority items, including, but not limited to, items that require the purposeful incorporation of specific actions, equipment or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling.

**BE IT FURTHER RESOLVED,** that the Department hereby sets forth the following fine and penalty schedule in accordance with the Oneida Food Service law:

FINE AND PENALTY SCHEDULE						
Fines						
Violation	Reference	1 <sup>st</sup> Offense (in a 5-Year Period)	2 <sup>nd</sup> Offense (in a 5-Year Period)	3 <sup>rd</sup> Offense (in a 5-Year Period)	Additional Offenses in a 5-Year Period	
Non-Priority	305.8-3 & 305.10	\$50.00	\$125.00	\$225.00	\$275.00	
Priority	305.8-3 & 305.10	\$125.00	\$325.00	\$525.00	\$775.00	
Penalties						
Violation	Reference	Penalty				
Five or More Priority Violations in a Five- Year Period	305.8-3, 305.9-3 & 305.10	Suspension of license or exemption status for a period of one (1) year and order to close-down food service business or operation,				

BC Resolution #\_\_\_\_\_
Oneida Food Service Law Fine, Penalty, and Licensing Fee Schedule
Page 3 of 3

	with reinstatement only upon full payment of corresponding fine
	and related costs.

**BE IT FURTHER RESOLVED,** that a fee of one hundred dollars (\$100.00) shall be assessed for a reinspection that is caused by a finding of non-compliance by the Department.

**BE IT FURTHER RESOLVED,** that, along with the fines and penalties listed above, additional penalties may include other orders, including corrective orders and orders to close-down; suspensions or revocations of licensure or license exemption status; and/or additional costs/fees as provided for by the Oneida Food Service law.

**BE IT FURTHER RESOLVED**, that criminal charges and referrals may be appropriate in certain cases and are not prohibited.

BE IT FURTHER RESOLVED, that, in the event food service businesses/prepackaged restaurants within the Reservation are forced to close-down or restrict operations because of a proclamation or ratification by the Oneida Business Committee of a public health state of emergency under the Nation's Emergency Management and Homeland Security law, a moratorium on the payment of all licensing fees required by the Oneida Food Service law shall go into effect for a period of six (6) months, beginning on the day of the proclamation or ratification, and any food service businesses/prepackaged restaurants found in violation of an order that is duly issued in response to a public health state of emergency declaration or proclamation shall be subject to enforcement pursuant to the Nation's Emergency Management and Homeland Security law.

**BE IT FINALLY RESOLVED,** that the Oneida Business Committee hereby adopts this resolution which shall become effective six (6) months following the date of adoption.



## Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



#### **Statement of Effect**

Oneida Food Service Law Fine, Penalty and Licensing Fee Schedule

#### Summary

This resolution adopts the fine, penalty and licensing fee schedule developed by the Environmental, Health and Safety Area within the Environmental, Health, Safety and Land Division ("Department") in accordance with the Oneida Food Service law.

Submitted by: Kristen M. Hooker, Staff Attorney, Legislative Reference Office

Date: April 30, 2020

#### Analysis by the Legislative Reference Office

The Oneida Food Service law ("the Law") was adopted 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. [3 O.C. 305.1-1].

The Law delegates authority to the Department to develop a fine, penalty and licensing fee schedule. [3 O.C. 305.7-1(c)]. This fine, penalty and licensing fee schedule is required to be adopted by the Oneida Business Committee. [3 O.C. 305.7-1(c)].

Through this resolution, the Department sets forth a licensing fee schedule, as well as a fine and penalty schedule, to be adopted by the Oneida Business Committee. The resolution defines what constitutes a priority violation for purposes of applying the fine and penalty schedule set forth therein and provides the opportunity for additional penalties to be used by the Department when enforcing the Law.

This resolution also provides that for food service businesses or prepackaged restaurants operating within the Reservation forced to close-down or restrict operations because of a proclamation or ratification by the Oneida Business Committee of a public health state of emergency under the Nation's Emergency Management and Homeland Security law, a moratorium on the payment of all licensing fees required by the Oneida Food Service law shall go into effect for a period of six (6) months, beginning on the day of the proclamation or ratification. It further provides that any food service businesses or prepackaged restaurants found in violation of an order that is duly issued in response to a public health state of emergency declaration or proclamation shall be subject to enforcement pursuant to the Nation's Emergency Management and Homeland Security law.

#### Conclusion

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

## May 4, 2020, Legislative Operating Committee E-Poll Approval of the Curfew Law Amendments Adoption Packet

E-POLL REQUEST: Approval of the Curfew Law Amendments Adoption Packet



**Good Morning Legislative Operating Committee,** 

This e-mail serves as the e-poll for the approval of the Curfew law amendments adoption packet.

#### **EXECUTIVE SUMMARY**

The adoption packet for the Curfew law amendments is ready for approval by the Legislative Operating Committee, so that it can be sent to the Oneida Business Committee to consider adoption. The purpose of the Curfew law is protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor. [3 O.C. 308.1-1].

The proposed amendments to the Curfew law will:

- Remove an incorrect reference to the Nation's territorial jurisdiction as the Nation's territorial jurisdiction is provided by the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law; and
- Remove a duplicative provision regarding personal jurisdiction as personal jurisdiction is already provided by the Nation's Judiciary law.

An e-poll is necessary for this matter because the May 6, 2020, Legislative Operating Committee meeting has been canceled due to the COVID-19 pandemic, and immediate action is required by the Legislative Operating Committee to approve the Curfew law amendments adoption packet so it may be forwarded to the Oneida Business Committee for consideration during the May 13, 2020, Oneida Business Committee meeting.

#### **REQUESTED ACTION**

Approve the Curfew law amendments adoption packet and forward to the Oneida Business Committee for consideration.

#### **DEADLINE FOR RESPONSE**

May 4, 2020 at 3:30 p.m.

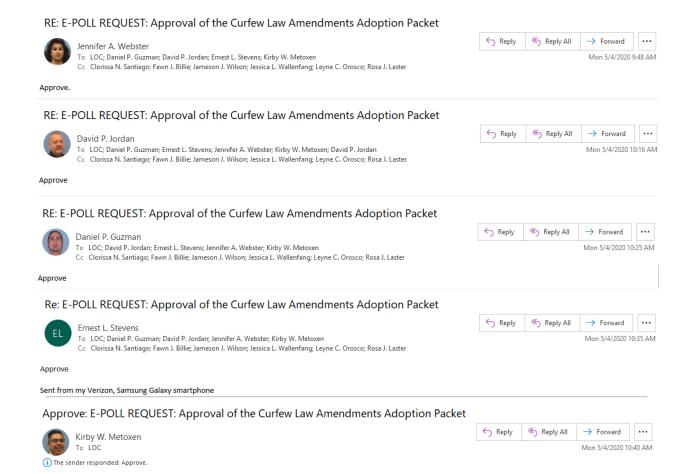
All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by Jennifer Webster, David P. Jordan, Daniel Guzman King, Ernest Stevens III, and Kirby Metoxen.





#### Oneida Nation **Oneida Business Committee** Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365

TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson

DATE: May 13, 2020

RE: **Curfew Law Amendments** 

Please find the following attached backup documentation for your consideration of the proposed amendments to the Curfew law:

1. Resolution: Amendments to the Curfew Law

- 2. Statement of Effect: Amendments to the Curfew Law
- 3. Curfew Law Amendments Legislative Analysis
- 4. Curfew Law Amendments (Redline)
- 5. Curfew Law Amendments (Clean)
- 6. Curfew Law Fiscal Impact Statement

#### Overview

On February 5, 2020, the Legislative Operating Committee (LOC) added the Curfew law amendments to its Active Files List upon recommendation by the Oneida Law Office. The purpose of the Curfew law is to protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor. [3 O.C. 308.1-1].

This resolution adopts amendments to the Curfew law which will:

- Remove an incorrect reference to the Nation's territorial jurisdiction as the Nation's territorial jurisdiction is provided by the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law; and
- Remove a duplicative provision regarding personal jurisdiction as personal jurisdiction is already provided by the Nation's Judiciary law.

The Legislative Operating Committee developed the proposed amendments to the Curfew law through collaboration with representatives from the Oneida Law Office.

In accordance with the Legislative Procedures Act, a public meeting on the proposed amendments to the Curfew law was scheduled for April 2, 2020. After the public meeting was scheduled, the world was hit with a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts. On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. This Public Health State of emergency was extended through May 12, 2020, through the adoption of resolution BC-03-28-20-A. On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibits all public gatherings of any number of people. Then on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period. On March 30, 2020, the Legislative Operating Committee provided additional notice that the April 2, 2020, public meeting was canceled.

Although the April 2, 2020, public meeting for the proposed amendments to the Curfew law was canceled, the public comment period was still held open until April 9, 2020, for the submission of written comments. No written comments were received during the public comment period.

#### **Requested Action**

Approve the Resolution: Amendments to the Curfew Law



### **Oneida Nation**

Post Office Box 365

Phone: (920)869-2214

41 42

WHEREAS,



BC Resolution # \_

Oneida, WI 54155

1		Amendments to the Curfew Law
2 3 4 5 6	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
6 7	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and
8 9 10	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
11 12 13	WHEREAS,	the Curfew law ('the Law") was adopted by the Oneida Business Committee through resolution BC-10-09-19-F; and
13 14 15 16 17 18 19 20 21 22	WHEREAS,	the purpose of the Law is to protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor; and
	WHEREAS,	the Legislative Operating Committee worked collaboratively with representatives from the Oneida Law Office to develop the amendments to this Law; and
23 24 25 26	WHEREAS,	the amendments to the Law remove an incorrect reference to the Nation's territorial jurisdiction, as the Nation's territorial jurisdiction is provided by the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law; and
27 28 29	WHEREAS,	the amendments to the Law remove a duplicative provision regarding personal jurisdiction as personal jurisdiction is already provided by the Nation's Judiciary law; and
30 31 32	WHEREAS,	in accordance with the Legislative Procedures Act a legislative analysis and fiscal impact statement were completed for the amendments to the Law; and
33 34 35 36	WHEREAS,	a public meeting on the proposed amendments to this Law was scheduled for April 2, 2020, in accordance with the Legislative Procedures Act, with the public comment period set to be held open until April 9, 2020; and
37 38 39 40	WHEREAS,	after the public meeting was scheduled, the world was hit with a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts; and
41	VALLEDEAG	March 40, 0000, Obeliano Tabasai IIII alian ba "Dadasai a GD III alian III Ordasai

on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for

**BC** Resolution # Amendments to the Curfew Law Page 2 of 2

43 the Nation until April 12, 2020, which was then extended through May 12, 2020, through 44 the adoption of resolution BC-03-28-20-A; and 45 46 WHEREAS, on March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer 47 at Home" declaration which prohibits all public gatherings of any number of people and 48 orders all individuals present within the Oneida Reservation to stay at home or at their 49 place of residence, with certain exceptions allowed; and 50 51 WHEREAS. on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a 52 "Suspension of Public Meetings under the Legislative Procedures Act" declaration which 53 suspended the Legislative Procedures Act's requirement to hold a public meeting during 54 55 the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed 56 legislation to the Legislative Operating Committee via e-mail during the public comment 57 period; and 58 59 WHEREAS, on March 30, 2020, the Legislative Operating Committee provided additional notice that 60 the April 2, 2020, public meeting was canceled; and 61 62 although the April 2, 2020, public meeting was canceled, the public comment period was WHEREAS. 63 still held open until April 9, 2020; and 64 NOW THEREFORE BE IT RESOLVED, that the amendments to the Curfew law are hereby adopted and 65 66 shall be effective on May 29, 2020.



#### Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



#### Statement of Effect

Amendments to the Curfew Law

#### **Summary**

This resolution adopts amendments to the Curfew law which remove an erroneous reference to the Nation's territorial jurisdiction and remove a duplicative reference to personal jurisdiction.

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

Date: May 4, 2020

#### Analysis by the Legislative Reference Office

The Curfew law was adopted by the Oneida Business Committee for the purpose of protecting the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor. [3 O.C. 308.1-1]

This resolution seeks amendments to the Curfew law which will:

- Remove an incorrect reference to the Nation's territorial jurisdiction, as the Nation's territorial jurisdiction is provided by the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law; and
- Remove a duplicative provision regarding personal jurisdiction as personal jurisdiction is already provided by the Nation's Judiciary law.

The Legislative Procedures Act ("the LPA") was adopted by the General Tribal Council for the purpose of providing a process for the adoption or amendment of laws of the Nation. [1 O.C. 109.1-1]. The LPA requires that for all proposed legislation both a legislative and fiscal analysis be developed. [1 O.C. 109.6 and 109.7]. The proposed amendments to the Curfew law comply with these requirements.

The LPA also requires that there be an opportunity for public review during a public meeting and public comment period. [1 O.C. 109.8]. In accordance with the LPA, a public meeting on the proposed amendments to the Curfew law was scheduled for April 2, 2020, with the public comment period set to be held open until April 9, 2020.

After the public meeting was scheduled, the world was hit with a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts. In accordance with the Emergency Management and Homeland Security law, on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. [3 O.C. 302.8-1].

On March 17, 2020, the Oneida Business Committee adopted emergency amendments to the Emergency Management and Homeland Security law to create and delegate authority to a COVID-19 Core Decision Making Team ("COVID-19 Team"). [3 O.C. 302.10]. When a public health emergency has been declared, the COVID-19 Team has the authority to declare exceptions to the Nation's laws, policies, procedures, regulations, or standard operating procedures during the emergency period which will be of immediate impact for the purposes of protecting the health safety, and general welfare of the Nation's community, members, and employees. [3 O.C. 302.10-2]. These declarations remain in effect for the duration of the Public Health State of Emergency. [3 O.C. 302.10-3].

On March 24, 2020, the Nation's COVID-19 Team made a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed.

Then on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

On March 28, 2020, the Oneida Business Committee took action to extend the Public Health State of Emergency through May 12, 2020, through the adoption of resolution BC-03-28-20-A.

On March 30, 2020, the Legislative Operating Committee provided additional notice that the April 2, 2020, public meeting was canceled. Although the April 2, 2020, public meeting for the Curfew law amendments was canceled, the public comment period was still held open until April 9, 2020.

Adoption of this resolution complies with the process and procedures of the LPA as it has been modified by the COVID-19 Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration.

This resolution provides that the amendments to the Curfew law would become effective on May 29, 2020, in accordance with the LPA. [1 O.C. 109.9-3].

#### **Conclusion**

Adoption of this resolution would not conflict with any of the Nation's laws. Adoption of this resolution complies with the Legislative Procedures Act as it has been modified by the COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration.





## AMENDMENTS TO CURFEW LAW LEGISLATIVE ANALYSIS

#### **SECTION 1. EXECUTIVE SUMMARY**

	Analysis by the Legislative Reference Office	
Intent of the Amendments	<ul> <li>Remove an incorrect reference to the Nation's territorial jurisdiction as the Nation's territorial jurisdiction is provided by the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law; and</li> <li>Remove a duplicative provision regarding personal jurisdiction as personal jurisdiction is already provided by the Nation's Judiciary law.</li> </ul>	
Purpose	To protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor [3 O.C. 308.1-1].	
Affected Entities	Oneida Police Department and Oneida Family Court	
Related Legislation	Judiciary law, Citations law	
<b>Public Meeting</b>	Although the April 2, 2020, public meeting was canceled due to the Nation's COVID-19 Core Decision Making Team's declaration titled, "Suspension of Public Meetings under the Legislative Procedures Act," the public comment period was still held open until April 9, 2020.	
Fiscal Impact	A fiscal impact statement was provided by the Finance Department on April 27, 2020.	

#### SECTION 2. LEGISLATIVE DEVELOPMENT

- **A. Background.** The Curfew law was first adopted by the Oneida Business Committee on October 9, 2019, for the purpose of protecting the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor. [3 O.C. 308.1-1].
- **B.** Upon a review of the Nation's Code of Laws, the Oneida Law Office and Legislative Operating Committee (LOC) identified references to the Nation's jurisdiction that were either inaccurate or duplicative. In consultation with the Oneida Law Office, the LOC proposes technical amendments to the Curfew law to remove these inaccurate or unnecessary references. The intent of these changes is not to alter how the Curfew law is currently being enforced, but to ensure that all references to jurisdiction in the Nation's Code of Laws are accurate.

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

- **A.** Representatives from the following departments or entities participated in the development of this law and legislative analysis: Oneida Law Office.
- **B.** The following laws were reviewed in the drafting of this analysis: Judiciary law, Domestic Animals law, Oneida Nation Gaming Ordinance, Tribal Environmental Response law, Judiciary Rules of Evidence, and Citations law.

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

- **A.** The amendments to this law have followed the process set forth in the Legislative Procedures Act.
  - The LOC added the amendments to the Active Files List on February 5, 2020.
  - A public meeting was scheduled for April 2, 2020.
  - On March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period.
  - The public comment period for the amendments to the Curfew law was held open until April 9, 2020.
  - A fiscal impact statement was provided by the Finance Department on April 27, 2020.
- **B.** At the time this legislative analysis was developed the following work meetings had been held regarding the development of these amendments:
  - February 19, 2020: LOC work meeting.
  - April 15, 2020: LOC work meeting.
  - April 23, 2020: LOC work meeting.
- C. COVID-19 Pandemic's Effect on the Legislative Process. The public meeting for the proposed amendments to this law was canceled due to the COVID-19 pandemic.
  - On March 4, 2020, the Legislative Operating Committee approved the public meeting packet and forwarded the Curfew law amendments to a public meeting to be held on April 2, 2020. The public comment period was scheduled to remain open until April 9, 2020.
  - After the public meeting was scheduled, the world was hit with a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts.
  - On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
  - On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibits all public gatherings of any number of people.
  - Then on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.
  - On March 28, 2020 the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's Public Health State of Emergency declaration until May 12, 2020.
  - On March 30, 2020, the Legislative Operating Committee provided additional notice that the April 2, 2020, public meeting was canceled.
  - The public comment period was still held open until April 9, 2020. No written comments were received during the public comment period.

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

- **A.** *Deletion of Territorial Jurisdiction Section.* These amendments delete an incorrect reference to the Nation's territorial jurisdiction for this law. The Curfew law incorrectly states that the territorial jurisdiction of this law is limited to land owned by the Nation or individual trust and/or fee land of a member of the Nation.
  - *Territorial Jurisdiction*. The Nation's territorial jurisdiction is properly defined in the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law (see below).
  - Conclusion. Since the reference included in the Curfew law is inaccurate, unnecessary and already located in the Nation's Constitution and Judiciary law, it has been deleted for clarity.

Table 1. Comparison: Territorial Jurisdiction as Referenced in Constitution and Laws of the Nation.

Table 1. Comparison. Terruoriai Jarisaicuon as Referencea in Constitution and Laws of the Na			
Deleted Language in	Language in Constitution of	Language in Judiciary law	
Current Curfew law	the Oneida Nation		
This law extends within the	The jurisdiction of the Oneida	"The territorial jurisdiction of the	
Reservation to all land	Nation shall extend to the	Trial Court shall extend to the	
owned by the Nation and	territory within the present	Reservation and all lands held in	
individual trust and/or fee	confines of the Oneida	trust by the United States for the	
land of a member of the	Reservation and to such other	benefit of the Tribe within the State	
Nation [3 O.C. 308.4-3].	lands as may be hereafter added	of Wisconsin." [8 O.C. 801.5-3].	
	thereto within or without said		
	boundary lines under any law		
	of the United States, except as		
	otherwise provided by law		
	[Article 1 – Territory]		

- **B.** *Deletion of Personal Jurisdiction Section.* These amendments also delete references to the Nation's personal jurisdiction from this law. The personal jurisdiction of the Nation is already provided for in the Nation's Judiciary law.
  - Personal Jurisdiction. The Judiciary law already clarifies that the Nation has personal jurisdiction over members of the Oneida Nation, members of other federally-recognized Indian tribes, and any "non-Indians" who have consented to the jurisdiction of the Nation (examples include a contract or lease agreement.)
  - *Conclusion.* Since the Nation's personal jurisdiction is already provided for in the Judiciary law, it has been deleted from this law for clarity.

Table 2. Comparison: Personal Jurisdiction in laws of the Nation.

<u>Deleted</u> Language in Current Curfew law	Language in Judiciary law
Personal Jurisdiction. This law applies to:	Personal Jurisdiction
(a) All members of the Nation; the	(a) Indians. The Trial Court shall have
Nation's entities and corporations; and	jurisdiction over all Indians. 8 O.C. 801 – Page
members of other federally-recognized	5 (b) Non-Indians. The Trial Court shall have
tribes;	jurisdiction over non-Indians who have
(b) Individuals and businesses leasing,	consented to the jurisdiction of the Tribe or Trial
occupying or otherwise using fee land	Court or as otherwise consistent with federal
owned by the Nation or by individual	law.
members of the Nation; and/or lands held	(1) Consent to Jurisdiction. For
in trust on behalf of the Nation or	purposes of subsection 801.5-4(b)
individual members of the Nation; and	above, a person shall have consented to
(c) Individuals who have consented to the	the jurisdiction of the Trial Court by:
jurisdiction of the Nation or as otherwise	(A) entering into a consensual
consistent with federal law. An individual	relationship with the Tribe,

shall be considered to have consented	to	
the jurisdiction of the Nation:		

- (1) By entering into a consensual relationship with the Nation, or with the Nation's entities. corporations, or members of the Nation, including but not limited to contracts or other agreements;
- (2) By other facts which manifest intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner. [3 O.C. 304.4-1].

Tribal entities. Tribal corporations, Tribal or members, including but not limited to contracts or other agreements; or

(B) other facts which the Trial Court determines manifest an intent to consent to the authority of the Tribe or the jurisdiction of the Trial Court, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner. [8 O.C. 801.5-4].

#### **SECTION 6. EXISTING LEGISLATION**

- A. References to Territorial Jurisdiction in Other Oneida laws. The following laws of the Nation also include references to the Nation's territorial jurisdiction:
  - Domestic Animals law. The Domestic Animals law provides that "This law extends within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation." [3 O.C. 304.4-2].
    - The reference to territorial jurisdiction in the Domestic Animals law is similar to the provision that was included in this Law, and therefore is also erroneous. The LOC has added the Domestic Animals law to its Active Files List for amendments to address this issue.
  - Judiciary law. The Judiciary law provides "The territorial jurisdiction of the Trial Court shall extend to the Reservation and all lands held in trust by the United States for the benefit of the Tribe within the State of Wisconsin." [8 O.C. 801.5-3].
    - The reference to territorial jurisdiction in the Judiciary law is correct and no amendments are necessary.
  - Oneida Nation Gaming Ordinance. The Oneida Nation Gaming Ordinance provides "This Ordinance extends to all land within the exterior boundaries of the Reservation of the Tribe, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law." [5 O.C. 501.3-1].
    - The reference to territorial jurisdiction in the Oneida Nation Gaming Ordinance is correct and no amendments are necessary.
  - Tribal Environmental Response law. The Tribal Environmental Response law provides "This law extends to all land within the exterior boundaries of the Reservation of the Nation, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, any lands added thereto pursuant to federal law and all lands held in trust for the Nation within the State of Wisconsin." [4 O.C. 401.4-2].
    - The reference to territorial jurisdiction in the Tribal Environmental Response law is correct and no amendments are necessary.
  - Judiciary Rules of Evidence law. The Judiciary Rules of Evidence provides that "The Court may judicially notice a fact that shall not subject to reasonable dispute because it: (a) is generally known within the Court's territorial jurisdiction; or (b) may be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." [8 O.C. 804.5-2(a)].
    - The reference to territorial jurisdiction in the Judiciary Rules of Evidence is correct and no amendments are necessary.

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- B. References to other Laws of the Nation. The following laws of the Nation are referenced in this Law:
   Citations law. This Law provides that a citation for a violation of this Law shall be processed in
  - Citations law. This Law provides that 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. [3 O.C. 308.6-3(b)].
    - The Citations law is the Nation's law governing citations. The Citations law provides how a citation action is started such as who has the authority to issue a citation, the requirements of the form of the citation, and how a citation is served and filed; stipulations for the settlement of a citation; and the citation hearing procedures. [8 O.C. 807].
    - Any citations issued by the Oneida Police Department for a violation of this Law must comply with the requirements and procedures of the Citations law.
  - Hunting, Fishing and Trapping law. This Law provide that a minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was engaged in hunting, fishing, or trapping in accordance with the laws, policies, and rules of the Nation. [3 O.C. 308.5-3(g)].
    - The Hunting, Fishing and Trapping law provides an adequate and flexible system for the protection, management, supervision, conservation, and enhancement of all wildlife and natural resources on the reservation; as well as an enforceable system of licensing and permitting which establishes clear rules pursuant to the Administrative Rulemaking law related to hunting, fishing and trapping, and associated fines and penalties for violations of this law and the said rules. [4 O.C. 406.1-1].
    - A minor must be following all provisions of the Hunting, Fishing and Trapping law and accompanying rules in order to receive the exemption for breaking curfew hours.

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

- **A.** *Enforcement*. The Oneida Police Department is delegated the authority to enforce violations of curfew. [3 O.C. 308.6-1]. The Oneida Police Department can issue warnings and citations for violations of this Law. [3 O.C. 308.6-1].
- **B.** *Accountability.* A minor and/or his or her parents, guardians, or legal custodians can be held accountable by the Family Court for violations of curfew by the issuance of the following penalties:
  - Fines;
  - Community service;
  - Participation in family counseling and/or parenting programs; and
  - Any other penalty as deemed appropriate by the Family Court. [3 O.C. 308.7-1(a)-(d)].
- C. *Fine and Penalty Schedule Resolution*. The Oneida Business Committee adopted a Curfew Law Penalty and Fine Schedule through resolution BC-10-09-19-G. This resolution sets forth specific fine amounts to be used by the Family Court if it is determined that a fine is the most appropriate penalty.

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

- A. Fiscal Impact. A fiscal impact statement was provided by the Finance Department on April 27, 2020.
  - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].
  - A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee [1 O.C. 109.6-1(a) and (b)].

## Title 3. Health and Public Safety - Chapter 308 T<yethin<tshaw^=late> Kayanl^sla>

We'll put our arms across to stop them **CURFEW** 

308.1. Purpose and Policy

308.2. Adoption, Amendment, Repeal

308.3. Definitions

308.4. Jurisdiction

308.5. Curfew

308.6. Enforcement of Curfew Violations

308.7. Penalties of Curfew Violations

#### **308.1. Purpose and Policy**

308.1-1. *Purpose*. The purpose of this law is to protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor.

308.1-2. *Policy*. It is the policy of the Nation to support all drug use prevention initiatives of the Nation by protecting the health, safety, and welfare of persons through the establishment of a

9 curfew for minors in public spaces within the Reservation during certain hours in an effort to

minimize the opportunity for harm to come to minors during those hours.

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#### 308.2. Adoption, Amendment, Repeal

- 308.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-09-19-F<sub>-2</sub> and amended by resolution BC- - .
- 308.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 308.2-3. Should a provision of this law or the application thereof to any person or circumstances
- be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.
- 308.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 22 308.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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#### 308.3. Definitions

- 308.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Court of Appeals" means the branch of the Nation's Judiciary delegated the authority of final appeal within the Nation's Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.
  - (b) "Family Court" means the branch of the Nation's Judiciary delegated the authority to administer the judicial authorities and responsibilities of the Nation related to the family and/or children, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.
  - (c) "Guardian" means the person, department, and/or agency appointed the duty and authority of guardianship of a child by a Court for the purpose of managing and caring for the child. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment

in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

- (d) "Legal custodian" means any person, department, and/or agency, other than a parent or guardian, to whom legal custody of a child has been granted by Court order and has the rights and responsibilities for the following:
  - (1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;
  - (2) To protect, educate and discipline the child so long as it is in the child's best interest; and
  - (3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.
- (e) "Member of the Nation" means an individual enrolled in the Oneida Nation.
- (f) "Minor" means a person age sixteen (16) years old or younger.
- (g) "Nation" means the Oneida Nation.
- (h) "Parent" means the biological or adoptive parent of a child.
- (j) "Public space" means any public streets, highways, roads, alleys, parks, vacant lots, or any public lands.
- (j) "Relative" means any person connected with a child by blood, marriage or adoption.
- (k) "Reservation" means all the property within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

#### 308.4. Jurisdiction

304.4-1. *Jurisdiction of the Court*. The Family Court has jurisdiction over any action brought under this law.

308.4-2. Personal Jurisdiction. This law applies to:

- (a) All members of the Nation, individuals eligible for enrollment in the Nation, and members of other federally-recognized tribes.
- (b) Individuals leasing, occupying or otherwise using fee land owned by the Nation or by individual members of the Nation; and/or lands held in trust on behalf of the Nation or individual members of the Nation.
- (c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the jurisdiction of the Nation:
  - (1) By entering into a consensual relationship with the Nation, or with the Nation's entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or
  - (2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.
- 308.4 3. *Territorial Jurisdiction*. This law extends within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation.

#### 83 **308.5.** Curfew

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- 84 308.5-1. Curfew Established. No minor shall be on any public space either on foot or in any 85 vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of 86 the Reservation, unless the minor is accompanied by a parent, guardian, or legal custodian.
- 87 308.5-2. Parental Responsibility. No parent, guardian, or legal custodian shall knowingly permit 88 or fail to take action to prevent the minor from being on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of 89 90 the Reservation.
- 308.5-3. Exemptions to Curfew. A minor shall not be in violation of the curfew, if at the time of 92 the alleged violation the minor was:
  - (a) in the performance of a duty directed by such parent, guardian, or legal custodian;
  - (b) engaged in employment or an employment related activity, or traveling to or returning home from employment;
  - (c) engaged in interstate travel;
  - (d) attending an educational, cultural, religious, or recreational activity that was supervised by adults, or traveling to or returning home from such activity;
  - (e) on the sidewalk in front of his or her home or an adjacent home;
  - (f) going to, attending, or returning home from a movie theatre;
  - (g) engaged in hunting, fishing, or trapping in accordance with the laws, policies, and rules of the Nation:
  - (h) exercising rights protected by the Nation's Constitution and the United States Constitution, such as free exercise of religion, freedom of speech, and the right of
  - (i) involved in an emergency situation; and/or
  - (j) engaged in any other activity as deemed appropriate by the Oneida Police Department officer.

#### **308.6.** Enforcement of Curfew Violations

308.6-1. Enforcement Procedure. A suspected violation of curfew shall be enforced by the Oneida Police Department in the following ways:

- (a) A minor who is suspected of violating curfew may be stopped by an Oneida Police Department officer. No person shall assault, obstruct or flee from any Oneida Police Department officer enforcing or attempting to enforce the provisions of this law.
- (b) The Oneida Police Department officer shall ask the minor's name, age, and reason for violating curfew. The minor shall provide the Oneida Police Department officer identification if available. No person shall falsely represent his or her name or age to an Oneida Police Department officer.
- (c) If the Oneida Police Department officer reasonably believes based on the totality of the circumstances that a violation of curfew has occurred and not one of the exemptions in section 308.5-3 apply, the Oneida Police Department officer may take custody of the minor for the purpose of returning such minor to the care and custody of a parent, guardian, or legal custodian.
- (d) Once the Oneida Police Department officer has taken the minor into his or her custody, the minor shall provide the Oneida Police Department officer with contact information for his or her parent, guardian, or legal custodian. The Oneida Police Department officer shall contact the minor's parent, guardian, or legal custodian to come and pick up the minor and take the minor into his or her care and custody. If the minor's parent, guardian, or legal

- custodian is unable to pick the minor up, then the Oneida Police Department officer may bring the minor home to release the minor to the custody and care of the minor's parent, guardian, or legal custodian.
- (e) If the Oneida Police Department officer is unable to contact the minor's parent, guardian, or legal custodian after reasonable efforts are made, the Oneida Police Department officer shall attempt to locate an adult relative or other responsible adult willing and able to accept the care and custody of the minor, and may release the minor into the care and custody of such person.
- 308.6-2. *Warning*. The first time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer shall provide the minor and the minor's parent, guardian, or legal custodian a warning and advise the minor and parent, guardian, or legal custodian of the provisions of this law and that any subsequent curfew violations may result in the issuance of a citation and the imposition of a penalty.
- 308.6-3. *Issuance of a Citation*. Any subsequent time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer may issue a citation to the minor and the minor's parent, guardian, or legal custodian.
  - (a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Family Court.
  - (b) A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.
  - (c) All citations for violations of this law require a mandatory appearance at the citation pre-hearing by the minor and his or her parent, guardian, or legal custodian.

#### **308.7.** Penalties of Curfew Violations

- 308.7-1. Upon a finding by the Family Court that a violation of this law has occurred, the minor and/or the minor's parent, guardian, or legal custodian may be subject to the following penalties:
  - (a) *Fines*. An individual may be ordered to pay a fine as a result of a violation of this law. The Oneida Business Committee shall hereby be delegated the authority to adopt through resolution a fine schedule which sets forth specific fine amounts for violations of this law.
    - (1) All fines shall be paid to the Judiciary.
    - (2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later.
      - (A) The ninety (90) day deadline for payment of fines may be extended if an alternative payment plan is approved by the Family Court.
    - (3) If an individual does not pay his or her fine the Family Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process or any other collection process available to the Family Court.
    - (4) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.
  - (b) *Community service*. An individual may be ordered to perform community service. Community service can be used in lieu of, or in addition to, a fine.
    - (1) All community service assignments shall be approved by the Family Court. The Family Court shall give preference to culturally relevant community service assignments and/or community service assignments that focus on the betterment of the individual's community.

175	(2) The Family Court shall provide the individual a written statement of the terms
176	of the community service order, and a statement that the community service order
177	is monitored.
178	(3) The Family Court's community service order shall specify:
179	(A) how many hours of community service the individual is required to
180	complete;
181	(B) the time frame in which the hours shall be completed;
182	(C) how the individual shall obtain approval for his or her community
183	service assignment;
184	(D) how the individual shall report his or her hours; and
185	(E) any other information the Family Court determines is relevant.
186	(c) Family counseling and/or parenting programs. An individual may be ordered to
187	participate in a family counseling and/or a parenting program.
188	(d) Any other penalty as deemed appropriate by the Family Court.
189	308.7-2. Staying a Curfew Penalty. The Family Court may stay the enforcement of a penalty
190	issued as a result of a curfew violation for a period of time to be determined by the Family Court
191	If the individual maintains compliance with the law during the time period in which the penalty is
192	stayed, then the Family Court may dismiss the citation. If the individual commits another violation
193	of the law during the time period in which the penalty is stayed, then the penalty shall go into
194	effect.
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196	End.
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198 199	Adopted – BC-10-09-19-F
μフフ	<u>Amended – BC </u>

## Title 3. Health and Public Safety - Chapter 308 T<yethin<tshaw^=late> Kayanl^sla>

We'll put our arms across to stop them **CURFEW** 

308.1. Purpose and Policy

308.2. Adoption, Amendment, Repeal

308.3. Definitions

308.4. Jurisdiction

308.5. Curfew

308.6. Enforcement of Curfew Violations

308.7. Penalties of Curfew Violations

#### 308.1. Purpose and Policy

308.1-1. *Purpose*. The purpose of this law is to protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor.

guardians, and/or legal custodians of a minor for the control and supervision of that minor.

308.1-2. *Policy*. It is the policy of the Nation to support all drug use prevention initiatives of the
Nation by protecting the health, safety, and welfare of persons through the establishment of a
curfew for minors in public spaces within the Reservation during certain hours in an effort to
minimize the opportunity for harm to come to minors during those hours.

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#### 308.2. Adoption, Amendment, Repeal

- 308.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-09-19-F, and amended by resolution BC- - .
- 308.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 17 308.2-3. Should a provision of this law or the application thereof to any person or circumstances
- be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.
- 308.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 22 308.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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#### 308.3. Definitions

- 308.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Court of Appeals" means the branch of the Nation's Judiciary delegated the authority of final appeal within the Nation's Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.
  - (b) "Family Court" means the branch of the Nation's Judiciary delegated the authority to administer the judicial authorities and responsibilities of the Nation related to the family and/or children, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.
  - (c) "Guardian" means the person, department, and/or agency appointed the duty and authority of guardianship of a child by a Court for the purpose of managing and caring for the child. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment

- in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.
  - (d) "Legal custodian" means any person, department, and/or agency, other than a parent or guardian, to whom legal custody of a child has been granted by Court order and has the rights and responsibilities for the following:
    - (1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;
    - (2) To protect, educate and discipline the child so long as it is in the child's best interest; and
    - (3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.
  - (e) "Member of the Nation" means an individual enrolled in the Oneida Nation.
  - (f) "Minor" means a person age sixteen (16) years old or younger.
  - (g) "Nation" means the Oneida Nation.
  - (h) "Parent" means the biological or adoptive parent of a child.
  - (j) "Public space" means any public streets, highways, roads, alleys, parks, vacant lots, or any public lands.
  - (j) "Relative" means any person connected with a child by blood, marriage or adoption.
  - (k) "Reservation" means all the property within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

#### 308.4. Jurisdiction

304.4-1. *Jurisdiction of the Court*. The Family Court has jurisdiction over any action brought under this law.

#### **308.5.** Curfew

- 308.5-1. *Curfew Established*. No minor shall be on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation, unless the minor is accompanied by a parent, guardian, or legal custodian.
- 308.5-2. Parental Responsibility. No parent, guardian, or legal custodian shall knowingly permit or fail to take action to prevent the minor from being on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation.
- 308.5-3. *Exemptions to Curfew*. A minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was:
  - (a) in the performance of a duty directed by such parent, guardian, or legal custodian;
  - (b) engaged in employment or an employment related activity, or traveling to or returning home from employment;
  - (c) engaged in interstate travel;
  - (d) attending an educational, cultural, religious, or recreational activity that was supervised by adults, or traveling to or returning home from such activity;
  - (e) on the sidewalk in front of his or her home or an adjacent home:
  - (f) going to, attending, or returning home from a movie theatre;

- (g) engaged in hunting, fishing, or trapping in accordance with the laws, policies, and rules of the Nation;
  - (h) exercising rights protected by the Nation's Constitution and the United States Constitution, such as free exercise of religion, freedom of speech, and the right of assembly;
  - (i) involved in an emergency situation; and/or
  - (j) engaged in any other activity as deemed appropriate by the Oneida Police Department officer.

#### 308.6. Enforcement of Curfew Violations

- 308.6-1. *Enforcement Procedure*. A suspected violation of curfew shall be enforced by the Oneida Police Department in the following ways:
  - (a) A minor who is suspected of violating curfew may be stopped by an Oneida Police Department officer. No person shall assault, obstruct or flee from any Oneida Police Department officer enforcing or attempting to enforce the provisions of this law.
  - (b) The Oneida Police Department officer shall ask the minor's name, age, and reason for violating curfew. The minor shall provide the Oneida Police Department officer identification if available. No person shall falsely represent his or her name or age to an Oneida Police Department officer.
  - (c) If the Oneida Police Department officer reasonably believes based on the totality of the circumstances that a violation of curfew has occurred and not one of the exemptions in section 308.5-3 apply, the Oneida Police Department officer may take custody of the minor for the purpose of returning such minor to the care and custody of a parent, guardian, or legal custodian.
  - (d) Once the Oneida Police Department officer has taken the minor into his or her custody, the minor shall provide the Oneida Police Department officer with contact information for his or her parent, guardian, or legal custodian. The Oneida Police Department officer shall contact the minor's parent, guardian, or legal custodian to come and pick up the minor and take the minor into his or her care and custody. If the minor's parent, guardian, or legal custodian is unable to pick the minor up, then the Oneida Police Department officer may bring the minor home to release the minor to the custody and care of the minor's parent, guardian, or legal custodian.
  - (e) If the Oneida Police Department officer is unable to contact the minor's parent, guardian, or legal custodian after reasonable efforts are made, the Oneida Police Department officer shall attempt to locate an adult relative or other responsible adult willing and able to accept the care and custody of the minor, and may release the minor into the care and custody of such person.
- 308.6-2. Warning. The first time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer shall provide the minor and the minor's parent, guardian, or legal custodian a warning and advise the minor and parent, guardian, or legal custodian of the provisions of this law and that any subsequent curfew violations may result in the issuance of a citation and the imposition of a penalty.
- 308.6-3. *Issuance of a Citation*. Any subsequent time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer may issue a citation to the minor and the minor's parent, guardian, or legal custodian.
  - (a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Family Court.

- 131 (b) A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.
  - (c) All citations for violations of this law require a mandatory appearance at the citation pre-hearing by the minor and his or her parent, guardian, or legal custodian.

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#### **308.7. Penalties of Curfew Violations**

- 308.7-1. Upon a finding by the Family Court that a violation of this law has occurred, the minor and/or the minor's parent, guardian, or legal custodian may be subject to the following penalties:
  - (a) *Fines*. An individual may be ordered to pay a fine as a result of a violation of this law. The Oneida Business Committee shall hereby be delegated the authority to adopt through resolution a fine schedule which sets forth specific fine amounts for violations of this law.
    - (1) All fines shall be paid to the Judiciary.
    - (2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later.
      - (A) The ninety (90) day deadline for payment of fines may be extended if an alternative payment plan is approved by the Family Court.
    - (3) If an individual does not pay his or her fine the Family Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process or any other collection process available to the Family Court.
    - (4) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.
  - (b) *Community service*. An individual may be ordered to perform community service. Community service can be used in lieu of, or in addition to, a fine.
    - (1) All community service assignments shall be approved by the Family Court. The Family Court shall give preference to culturally relevant community service assignments and/or community service assignments that focus on the betterment of the individual's community.
    - (2) The Family Court shall provide the individual a written statement of the terms of the community service order, and a statement that the community service order is monitored.
    - (3) The Family Court's community service order shall specify:
      - (A) how many hours of community service the individual is required to complete;
      - (B) the time frame in which the hours shall be completed;
      - (C) how the individual shall obtain approval for his or her community service assignment;
      - (D) how the individual shall report his or her hours; and
      - (E) any other information the Family Court determines is relevant.
  - (c) Family counseling and/or parenting programs. An individual may be ordered to participate in a family counseling and/or a parenting program.
  - (d) Any other penalty as deemed appropriate by the Family Court.
- 308.7-2. Staying a Curfew Penalty. The Family Court may stay the enforcement of a penalty issued as a result of a curfew violation for a period of time to be determined by the Family Court. If the individual maintains compliance with the law during the time period in which the penalty is stayed, then the Family Court may dismiss the citation. If the individual commits another violation of the law during the time period in which the penalty is stayed, then the penalty shall go into effect.

178 179	End.
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181	Adopted – BC-10-09-19-F
182	Amended – BC

## FINANCE ADMINISTRATION Fiscal Impact Statement



### **MEMORANDUM**

TO: Lawrence Barton, Chief Financial Officer

FROM: RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

DATE: April 27, 2020

**RE:** Fiscal Impact of the Curfew Law Amendment

I. Estimated Fiscal Impact Summary

Law: Curfew Law	·	
Implementing Agency	Oneida Police Department Oneida Judiciary	
<b>Estimated time to comply</b>	10 days, in compliance with the Legislative Procedures Act	
<b>Estimated Impact</b>	Current Fiscal Year	10 Year Estimate
<b>Total Estimated Fiscal Impact</b>	None	None

#### II. Background

#### A. Legislative History

This law was adopted by the Oneida Business Committee by resolution BC-10-09-19-F. The required Curfew Law Penalty and Fine Schedule was adopted by the Oneida Business Committee by resolution BC-10-09-19-G.

#### B. Summary of Content

The amendment corrects a reference to the Nation's territorial jurisdiction and deletes reference to the Nation's personal jurisdiction.

#### 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.

#### IV. Executive Summary of Findings

- The Curfew Law incorrectly states the territorial jurisdiction is limited to land owned by the Nation or individual trust and/or fee land of a member of the Nation. The Nation's jurisdiction is defined in the Constitution and By-Laws of the Nation and the Nation's Judiciary. The amendment deletes the incorrect reference.
- The amendment deletes reference to the Nation's personal jurisdiction in the Curfew Law. The Judiciary law already defines the Nation's personal jurisdiction over members of the Oneida Nation, members of other federally recognized Indian tribes, and any "non-Indians" consenting to the jurisdiction of the Nation.

#### V. Agency

There are no startup, personnel, office or documentation costs associated with this legislation. The amendments will become effective 10 days from adoption.

#### VI. Financial Impact

No impact.

#### VII. Recommendation

Finance Department does not make a recommendation in regard 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.



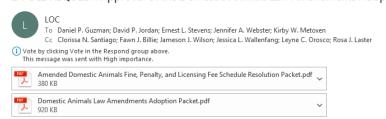
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Mon 5/4/2020 9:39 AM

### May 4, 2020, Legislative Operating Committee E-Poll Approval of the Domestic Animals Law Amendments Adoption Packet and the Amended Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule Resolution

E-POLL REQUEST: Approval of the Domestic Animals Law Amendments Adoption Packet and the Amended Domestic Anim...



**Good Morning Legislative Operating Committee,** 

This e-mail serves as the e-poll for the approval of the Domestic Animals law amendments adoption packet, and the "Amended Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule" resolution.

#### **EXECUTIVE SUMMARY**

The adoption packet for the Domestic Animals law amendments is ready for approval by the Legislative Operating Committee, so that it can be sent to the Oneida Business Committee to consider adoption. The purpose of the Domestic Animals law is to protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals; set minimum standards for treatment of animals; prohibit certain species of animals from being brought onto the Reservation; regulate the keeping of livestock on lots zoned residential with in the Reservation; and establish consequences for damages caused by domestic animals. [3 O.C. 304.1-1].

The proposed amendments to the Domestic Animals law will:

- Remove an incorrect reference to the Nation's territorial jurisdiction as the Nation's territorial jurisdiction is provided by the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law;
- Remove a duplicative provision regarding personal jurisdiction as personal jurisdiction is already provided by the Nation's Judiciary law; and
- Remove a duplicative provision regarding the citation process as the citation process is provided by the Nation's Citations law; and
- Include a new provision that prohibits the abandonment of an animal.

Additionally, the "Amended Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule" resolution which has been updated based on the proposed amendments to the Domestic Animals law is also ready for approval by the Legislative Operating Committee so it can be forwarded to the Oneida Business Committee for consideration alongside the amendments to the Domestic Animals law.

An e-poll is necessary for this matter because the May 6, 2020, Legislative Operating Committee meeting has been canceled due to the COVID-19 pandemic, and immediate action is required by the Legislative Operating Committee to approve the Domestic Animals law amendments adoption packet and the "Amended Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule" resolution so the materials

may be forwarded to the Oneida Business Committee for consideration during the May 13, 2020, Oneida Business Committee meeting.

#### **REQUESTED ACTION**

Approve the Domestic Animals law amendments adoption packet and the "Amended Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule" resolution and forward to the Oneida Business Committee for consideration.

#### **DEADLINE FOR RESPONSE**

May 4, 2020 at 3:30 p.m.

All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by Jennifer Webster, David P. Jordan, Daniel Guzman King, Ernest Stevens III, and Kirby Metoxen.





## Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson

DATE: May 13, 2020

RE: Domestic Animals Law Amendments

Please find the following attached backup documentation for your consideration of the proposed amendments to the Domestic Animals law:

- 1. Resolution: Amendments to the Domestic Animals Law
- 2. Statement of Effect: Amendments to the Domestic Animals Law
- 3. Domestic Animals Law Amendments Legislative Analysis
- 4. Domestic Animals Law Amendments (Redline)
- 5. Domestic Animals Law Amendments (Clean)
- 6. Domestic Animals Law Fiscal Impact Statement

#### Overview

On February 5, 2020, the Legislative Operating Committee (LOC) added the Domestic Animals law amendments to its Active Files List upon recommendation by the Oneida Law Office. The purpose of the Domestic Animals law is to protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals; set minimum standards for treatment of animals; prohibit certain species of animals from being brought onto the Reservation; regulate the keeping of livestock on lots zoned residential with in the Reservation; and establish consequences for damages caused by domestic animals. [3 O.C. 304.1-1].

This resolution adopts amendments to the Domestic Animals law which will:

- Remove an incorrect reference to the Nation's territorial jurisdiction as the Nation's territorial jurisdiction is provided by the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law;
- Remove a duplicative provision regarding personal jurisdiction as personal jurisdiction is already provided by the Nation's Judiciary law;
- Remove a duplicative provision regarding the citation process as the citation process is provided by the Nation's Citations law; and
- Include a new provision that prohibits the abandonment of an animal.

The Legislative Operating Committee developed the proposed amendments to the Domestic Animals law through collaboration with representatives from the Oneida Law Office, and Oneida Police Department.

In accordance with the Legislative Procedures Act, a public meeting on the proposed amendments

to the Domestic Animals law was scheduled for April 2, 2020. After the public meeting was scheduled, the world was hit with a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts. On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. This Public Health State of Emergency was extended through May 12, 2020, through the adoption of resolution BC-03-28-20-A. On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibits all public gatherings of any number of people. Then on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period. On March 30, 2020, the Legislative Operating Committee provided additional notice that the April 2, 2020, public meeting was canceled.

Although the April 2, 2020, public meeting for the proposed amendments to the Domestic Animals law was canceled, the public comment period was still held open until April 9, 2020, for the submission of written comments. No written comments were received during the public comment period.

#### **Requested Action**

Approve the Resolution: Amendments to the Domestic Animals Law



#### Oneida Nation

Post Office Box 365

Phone: (920)869-2214



BC Resolution #

Oneida, WI 54155

#### 1 2 3 4 5 6 7 8 Amendments to the Domestic Animals Law WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and WHEREAS. the Oneida Business Committee has been delegated the authority of Article IV, Section 1, 9 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and 10 11 WHEREAS, the Domestic Animals law ('the Law") was adopted by the Oneida Business Committee 12 through resolution BC-03-13-96-B, and then amended through resolutions BC-06-22-11-G, BC-06-28-17-B, and BC-05-08-19-C; and the purpose of the Law is to protect the health, safety, and welfare of the community by WHEREAS, 16 requiring certain basic measures to prevent the spread of disease carried by domestic 17 animals; set minimum standards for treatment of animals; prohibit certain species of 18 animals from being brought onto the Reservation; regulate the keeping of livestock on lots zoned residential with in the Reservation; and establish consequences for damages caused by domestic animals; and the Legislative Operating Committee worked collaboratively with representatives from the WHEREAS. Oneida Law Office and Oneida Police Department to develop the amendments to this Law; 24 and 25 26 WHEREAS, the amendments to the Law remove an incorrect reference to the Nation's territorial jurisdiction, as the Nation's territorial jurisdiction is provided by the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law; and 30 WHEREAS. the amendments to the Law remove a duplicative provision regarding personal jurisdiction 31 as personal jurisdiction is already provided by the Nation's Judiciary law; and WHEREAS. the amendments to the Law remove a duplicative provision regarding the citation process as the citation process is provided by the Nation's Citations law; and 35 36 WHEREAS, the amendments to the Law include a new provision that prohibits the abandonment of an animal; and

statement were completed for the amendments to the Law; and

in accordance with the Legislative Procedures Act a legislative analysis and fiscal impact

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WHEREAS,

BC Resolution # \_\_\_\_\_ Amendments to the Domestic Animals Law Page 2 of 2

42 WHEREAS, a public meeting on the proposed amendments to this Law was scheduled for April 2, 2020, 43 in accordance with the Legislative Procedures Act, with the public comment period set to 44 be held open until April 9, 2020; and 45 46 WHEREAS, after the public meeting was scheduled, the world was hit with a COVID-19 pandemic 47 resulting in many countries experiencing the effects of health issues and mortality related 48 to COVID-19 and vast economic impacts; and 49 50 WHEREAS. on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of 51 Emergency" regarding COVID-19 which declared a Public Health State of Emergency for 52 the Nation until April 12, 2020, which was then extended through May 12, 2020, through 53 the adoption of resolution BC-03-28-20-A; and 54 55 WHEREAS, on March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer 56 at Home" declaration which prohibits all public gatherings of any number of people and 57 orders all individuals present within the Oneida Reservation to stay at home or at their 58 place of residence, with certain exceptions allowed; and 59 60 WHEREAS. on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a 61 "Suspension of Public Meetings under the Legislative Procedures Act" declaration which 62 suspended the Legislative Procedures Act's requirement to hold a public meeting during 63 the public comment period, but allows members of the community to still participate in the 64 legislative process by submitting written comments, questions, data, or input on proposed 65 legislation to the Legislative Operating Committee via e-mail during the public comment 66 period; and 67 68 on March 30, 2020, the Legislative Operating Committee provided additional notice that WHEREAS, 69 the April 2, 2020, public meeting was canceled; and 70 71 WHEREAS. although the April 2, 2020, public meeting was canceled, the public comment period was 72 still held open until April 9, 2020; and 73 74 NOW THEREFORE BE IT RESOLVED, that the amendments to the Domestic Animals law are hereby 75 adopted and shall be effective on May 29, 2020.



#### Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



#### Statement of Effect

Amendments to the Domestic Animals Law

#### **Summary**

This resolution adopts amendments to the Domestic Animals law which remove an erroneous reference to the Nation's territorial jurisdiction, remove a duplicative reference to personal jurisdiction, remove a duplicative reference to the citations process, and add a new provision prohibiting the abandonment of animals.

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

Date: May 4, 2020

#### Analysis by the Legislative Reference Office

The Domestic Animals law was adopted by the Oneida Business Committee for the purpose of protecting the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals; setting minimum standards for treatment of animals; prohibit certain species of animals from being brought onto the Reservation; regulating the keeping of livestock on lots zoned residential with in the Reservation; and establishing consequences for damages caused by domestic animals [3 O.C. 304.1-1].

This resolution seeks amendments to the Domestic Animals law which will:

- Remove an incorrect reference to the Nation's territorial jurisdiction, as the Nation's territorial jurisdiction is provided by the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law;
- Remove a duplicative provision regarding personal jurisdiction as personal jurisdiction is already provided by the Nation's Judiciary law;
- Remove a duplicative provision regarding the citation process as the citation process is provided by the Nation's Citations law; and
- Include a new provision prohibiting the abandonment of an animal. [3 O.C. 304.5-5].

The Legislative Procedures Act ("the LPA") was adopted by the General Tribal Council for the purpose of providing a process for the adoption or amendment of laws of the Nation. [1 O.C. 109.1-1]. The LPA requires that for all proposed legislation both a legislative and fiscal analysis be developed. [1 O.C. 109.6 and 109.7]. The proposed amendments to the Domestic Animals law comply with these requirements.

The LPA also requires that there be an opportunity for public review during a public meeting and public comment period. [1 O.C. 109.8]. In accordance with the LPA, a public meeting on the proposed amendments to the Domestic Animals law was scheduled for April 2, 2020, with the public comment period set to be held open until April 9, 2020.

After the public meeting was scheduled, the world was hit with a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts. In accordance with the Emergency Management and Homeland Security law, on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. [3 O.C. 302.8-1].

On March 17, 2020, the Oneida Business Committee adopted emergency amendments to the Emergency Management and Homeland Security law to create and delegate authority to a COVID-19 Core Decision Making Team ("COVID-19 Team"). [3 O.C. 302.10]. When a public health emergency has been declared, the COVID-19 Team has the authority to declare exceptions to the Nation's laws, policies, procedures, regulations, or standard operating procedures during the emergency period which will be of immediate impact for the purposes of protecting the health safety, and general welfare of the Nation's community, members, and employees. [3 O.C. 302.10-2]. These declarations remain in effect for the duration of the Public Health State of Emergency. [3 O.C. 302.10-3].

On March 24, 2020, the Nation's COVID-19 Team made a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed.

Then on March 27, 2020, the Nation's COVID-19 Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

On March 28, 2020, the Oneida Business Committee took action to extend the Public Health State of Emergency through May 12, 2020, through the adoption of resolution BC-03-28-20-A.

On March 30, 2020, the Legislative Operating Committee provided additional notice that the April 2, 2020, public meeting was canceled. Although the April 2, 2020, public meeting for the Domestic Animals law amendments was canceled, the public comment period was still held open until April 9, 2020.

Adoption of this resolution complies with the process and procedures of the LPA as it has been modified by the COVID-19 Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration.

This resolution provides that the amendments to the Domestic Animals law would become effective on May 29, 2020, in accordance with the LPA. [1 O.C. 109.9-3].



#### **Conclusion**

Adoption of this resolution would not conflict with any of the Nation's laws. Adoption of this resolution complies with the Legislative Procedures Act as it has been modified by the COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration.





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# AMENDMENTS TO DOMESTIC ANIMALS LAW LEGISLATIVE ANALYSIS

#### **SECTION 1. EXECUTIVE SUMMARY**

	Analysis by the Legislative Reference Office
Intent of the Amendments	<ul> <li>Remove an incorrect reference to the Nation's territorial jurisdiction as the Nation's territorial jurisdiction is provided by the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law;</li> <li>Remove a duplicative provision regarding personal jurisdiction as personal jurisdiction is already provided by the Nation's Judiciary law;</li> <li>Remove a duplicative provision regarding the citation process as the citation process is provided by the Nation's Citations law; and</li> <li>Include a provision prohibiting the abandonment of an animal.</li> </ul>
Purpose	To protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals; set minimum standards for treatment of animals; prohibit certain species of animals from being brought onto the Reservation; regulate the keeping of livestock on lots zoned residential with in the Reservation; and establish consequences for damages caused by domestic animals [3 O.C. 304.1-1].
Affected Entities	Oneida Police Department; Oneida Environmental Health, Safety and Land Division; Oneida Conservation Department; Oneida Environmental Resource Board; Oneida Comprehensive Health Division, Oneida Land Commission; Oneida Emergency Management Coordinator, Oneida Judiciary.
Related Legislation Public Meeting	Judiciary law, Citations law  Although the April 2, 2020, public meeting was canceled due to the Nation's COVID-19 Core Decision Making Team's declaration titled, "Suspension of Public Meetings under the Legislative Procedures Act" the public comment period was still held open until April 9, 2020.
Fiscal Impact	A fiscal impact statement was provided by the Finance Department on May 1, 2020.

#### **SECTION 2. LEGISLATIVE DEVELOPMENT**

- **A.** *Background.* The Domestic Animals law was first adopted by the Oneida Business Committee on March 13, 1996 and most recently amended on May 8, 2019 for the purpose of protecting the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals; setting minimum standards for the treatment of animals; prohibiting certain species of animals from being brought onto the Reservation; regulating the keeping of livestock on lots zoned residential within the Reservation; and establishing consequences for damages caused by domestic animals. [3 O.C. 304.1-1].
  - Domestic animals are animals commonly owned as household pets, such as cats and dogs.
- **B.** Upon a review of the Nation's Code of Laws, the Oneida Law Office and Legislative Operating Committee (LOC) identified references to the Nation's jurisdiction that were either inaccurate or duplicative. In consultation with the Oneida Law Office, the LOC proposes technical amendments to the Domestic Animals law to remove these inaccurate or unnecessary references. The intent of these

changes is not to alter how the Domestic Animals law is currently being enforced, but to ensure that all references to jurisdiction in the Nation's Code of Laws are accurate.

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

- **A.** Representatives from the following departments or entities participated in the development of this law and legislative analysis:
  - Oneida Law Office; and
  - Oneida Police Department.
- **B.** The following laws were reviewed in the drafting of this analysis: Judiciary law, Curfew law, Oneida Nation Gaming Ordinance, Tribal Environmental Response law, Judiciary Rules of Evidence, and the Citations law.

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

- **A.** The amendments to this law have followed the process set forth in the Legislative Procedures Act.
  - The Legislative Operating Committee added the amendments to the Active Files List on February 5, 2020.
  - A public meeting was scheduled for April 2, 2020.
  - On March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period.
  - The public comment period for the amendments to the Domestic Animals law was held open until April 9, 2020.
  - A fiscal impact statement was provided by the Finance Department on May 1, 2020.
- **B.** At the time this legislative analysis was developed, the following work meetings had been held regarding the development of these amendments:
  - February 19, 2020: LOC work meeting.
  - April 15, 2020: LOC work meeting.
  - April 23, 3030: LOC work meeting.
- C. *COVID-19 Pandemic's Effect on the Legislative Process*. The public meeting for the proposed amendments to this law was canceled due to the COVID-19 pandemic.
  - On March 4, 2020, the Legislative Operating Committee approved the public meeting packet and forwarded the Domestic Animals law amendments to a public meeting to be held on April 2, 2020. The public comment period was scheduled to remain open until April 9, 2020.
  - After the public meeting was scheduled, the world was hit with a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts.
  - On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
  - On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibits all public gatherings of any number of people.
  - Then on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process

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- by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.
- On March 28, 2020 the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's Public Health State of Emergency declaration until May 12, 2020.
- On March 30, 2020, the Legislative Operating Committee provided additional notice that the April 2, 2020, public meeting was canceled.
- The public comment period was still held open until April 9, 2020. No written comments were received during the public comment period.

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

- A. Deletion of Territorial Jurisdiction Section. These amendments delete an incorrect reference to the Nation's territorial jurisdiction for this law. The Domestic Animals law erroneously states that the territorial jurisdiction of this law is limited to land owned by the Nation or individual trust and/or fee land of a member of the Nation.
  - Territorial Jurisdiction. The Nation's territorial jurisdiction is properly defined in the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law (see below).
  - Conclusion. Since the reference included in the Domestic Animals law is inaccurate, unnecessary, and already located in the Nation's Constitution, it has been deleted for clarity.

Table 1. Comparison: Territorial Jurisdiction in laws of the Nation

<u>Deleted</u> Language in Current Domestic Animals law	Language in Oneida Constitution	Language in Judiciary law
This law extends within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation [3 O.C. 304.4-2].	The jurisdiction of the Oneida Nation shall extend to the territory within the present confines of the Oneida Reservation and to such other lands as may be hereafter added thereto within or without said boundary lines under any law of the United States, except as otherwise provided by law [Article 1 – Territory]	3

- **B.** Deletion of Personal Jurisdiction Section. These amendments also delete references to the Nation's personal jurisdiction from this law. The personal jurisdiction of the Nation is already provided for in the Nation's Judiciary law.
  - Personal Jurisdiction. The Judiciary law already clarifies that the Nation has personal jurisdiction over members of the Oneida Nation, members of other federally-recognized Indian tribes, and any "non-Indians" who have consented to the jurisdiction of the Nation (examples include a contract or lease agreement.)
  - Conclusion. Since the Nation's personal jurisdiction is already properly defined in the Judiciary law, it has been deleted from this law for clarity.

Table 2. Comparison: Personal Jurisdiction in laws of the Nation.

<u>Deleted</u> Language in Current Domestic Animals	Language in Judiciary law
law	

#### Personal Jurisdiction. This law applies to:

- (a) All members of the Nation; the Nation's entities and corporations; and members of other federally-recognized tribes:
- (b) Individuals and businesses leasing, occupying or otherwise using fee land owned by the Nation or by individual members of the Nation; and/or lands held in trust on behalf of the Nation or individual members of the Nation; and
- (c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the jurisdiction of the Nation:
  - (1) By entering into a consensual relationship with the Nation, or with the Nation's entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or
  - (2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner. [3 O.C. 304.4-1].

#### Personal Jurisdiction

- (a) Indians. The Trial Court shall have jurisdiction over all Indians.
- (b) Non-Indians. The Trial Court shall have jurisdiction over non-Indians who have consented to the jurisdiction of the Tribe or Trial Court or as otherwise consistent with federal law.
  - (1) Consent to Jurisdiction. For purposes of subsection 801.5-4(b) above, a person shall have consented to the jurisdiction of the Trial Court by:
    - (A) entering into a consensual relationship with the Tribe, Tribal entities, Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or
    - (B) other facts which the Trial Court determines manifest an intent to consent to the authority of the Tribe or the jurisdiction of the Trial Court, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner [8 O.C. 801.5-4].
- **C.** *Updates to Enforcement and Citations Section.* The Citations section of the law has been updated to reflect the Nation's new Citations law.
  - Background. On February 12, 2020, the Oneida Business Committee adopted a Citations law to
    establish a consistent process for citations issued for violations of all laws of the Nation. The new
    Citations law includes a detailed process regarding prehearings, hearings and appeals.
  - Conclusion. Now that these details are included in the Citations law, it is unnecessary to include the same information in the Domestic Animals law. Therefore, the duplicate citation information has been deleted. Instead, a reference stating that citations will be processed in accordance with the procedures in the Citations law has been added [3 O.C. 304.12-1].
- **D.** *Inclusion of an Abandonment Provision.* These amendments add a new provision to the Law which explicitly states that no person shall abandon an animal. [3 O.C. 304.5-5]. Abandoning an animal means leaving behind a domestic animal at a location without providing minimum care. [3 O.C. 304.3-1(a)].
  - Conclusion. Although the Law already contained a provision that prohibited the mistreatment of an animal which causes harm, injury, or death to that animal [3 O.C. 304.5-4], the new abandonment provision clarifies that abandoning an animal is also prohibited under this Law.

#### **SECTION 6. EXISTING LEGISLATION**

A. References to Territorial Jurisdiction in Other Oneida laws. The following laws of the Nation also

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include references to the Nation's territorial jurisdiction:

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- Curfew law. The Curfew law provides that "This law extends within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation." [3 O.C. 308.4-3].
  - The reference to territorial jurisdiction in the Curfew law is similar to the provision that was included in this Law, and therefore is also erroneous. The LOC has added the Curfew law to its Active Files List for amendments to address this issue.
- Judiciary law. The Judiciary law provides "The territorial jurisdiction of the Trial Court shall extend to the Reservation and all lands held in trust by the United States for the benefit of the Tribe within the State of Wisconsin." [8 O.C. 801.5-3].
  - The reference to territorial jurisdiction in the Judiciary law is correct and no amendments are necessary.
- Oneida Nation Gaming Ordinance. The Oneida Nation Gaming Ordinance provides "This Ordinance extends to all land within the exterior boundaries of the Reservation of the Tribe, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law." [5 O.C. 501.3-1].
  - The reference to territorial jurisdiction in the Oneida Nation Gaming Ordinance is correct and no amendments are necessary.
- Tribal Environmental Response law. The Tribal Environmental Response law provides "This law extends to all land within the exterior boundaries of the Reservation of the Nation, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, any lands added thereto pursuant to federal law and all lands held in trust for the Nation within the State of Wisconsin." [4 O.C. 401.4-2].
  - The reference to territorial jurisdiction in the Tribal Environmental Response law is correct and no amendments are necessary.
- Judiciary Rules of Evidence law. The Judiciary Rules of Evidence provides that "The Court may judicially notice a fact that shall not subject to reasonable dispute because it: (a) is generally known within the Court's territorial jurisdiction; or (b) may be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." [8 O.C. 804.5-2(a)].
  - The reference to territorial jurisdiction in the Judiciary Rules of Evidence is correct and no amendments are necessary.
- B. References to other Laws of the Nation. The following laws of the Nation are referenced in this Law:
  - Citations law. This Law provides that 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. [3 O.C. 304.12-1].
    - The Citations law is the Nation's law governing citations. The Citations law provides how a citation action is started such as who has the authority to issue a citation, the requirements of the form of the citation, and how a citation is served and filed; stipulations for the settlement of a citation; and the citation hearing procedures. [8 O.C. 807].
    - Any citations issued by the Oneida Police Department or Conversation Department for a violation of this Law must comply with the requirements and procedures of the Citations law.

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

- **A.** *Enforcement.* Oneida Police Department Officers and Conservation Wardens are delegated the authority to enforce this law through appropriate means, including but not limited to:
  - seizing any animal that is taken, employed, used, or possessed in violation of this law and/or mistreated, rabid or otherwise in danger or dangerous;
  - issuing citations consistent with the fine and penalty schedule developed in accordance with this law; and
  - using force, up to and including lethal force, to stop an immediate threat to public safety caused by

an animal. [3 O.C. 304.4-2].

- **B.** *Fine and Penalty Schedule Resolution*. The Environmental, Health, Safety, and Land Division and the Environmental Resource Board are delegated joint authority to develop a fine, penalty, and licensing fee schedule that is adopted by the Oneida Business Committee through resolution. [3 O.C. 304.4-3].
  - The Oneida Business Committee adopted a Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule through resolution BC-05-08-19-D. This resolution sets forth specific fines and penalties to be used by the Nation's Trial Court for addressing violations of this Law.

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

- **A.** Revision to the Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule Resolution. In accordance with this Law, the Oneida Business Committee adopted a Domestic Animals Law Fine, Penalty, and Licensing Fee schedule through resolution BC-05-08-19-D. Due to a change in citations throughout the law, and the inclusion of an abandonment provision, the Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule Resolution will have to be updated.
  - The Legislative Operating Committee intends to bring forth an amended Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule Resolution for adoption when the proposed amendments to this Law are considered by the Oneida Business Committee.
- B. Fiscal Impact. A fiscal impact statement was provided by the Finance Department on May 1, 2020.
  - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].
  - A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee [1 O.C. 109.6-1(a) and (b)].

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#### Title 3. Health and Public Safety - Chapter 304 **DOMESTIC ANIMALS**

#### K@tse>na Olihw@=ke

#### matters concerning the pet animals **DOMESTIC ANIMALS**

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#### **304.1. Purpose and Policy**

304.11. Dangerous Animals

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304.1-1. *Purpose*. The purpose of this law is to:

- (a) protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) set minimum standards for the treatment of animals:
- (c) prohibit certain species of animals from being brought onto the Reservation;
- (d) regulate the keeping of livestock on lots zoned residential within the Reservation; and
- (e) establish consequences for damages caused by domestic animals.
- 304.1-2. Policy. It is the policy of the Nation to protect the health, safety, and welfare of the community by:
  - (a) requiring certain basic measures to prevent the spread of disease carried by domestic animals;
  - (b) establishing requirements for licensing domestic animals, and
  - (c) regulating the types of animals which may be kept as domestic animals.

#### 304.2. Adoption, Amendment, Repeal

304.2-1. This law was adopted by Oneida Business Committee by resolution BC-03-13-96-B and amended by resolutions BC-06-22-11-G, BC-06-28-17-B, and BC-05-08-19-C<sub>-</sub>, and BC---

- 20 304.2-2. This law may be amended or repealed by the Oneida Business Committee and/or 21 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 22 304.2-3. Should a provision of this law or the application thereof to any person or circumstances 23 be held as invalid, such invalidity shall not affect other provisions of this law which are considered 24 to have legal force without the invalid portions.
- 25 304.2-4. In the event of a conflict between a provision of this law and a provision of another law, 26 the provisions of this law shall control.
- 304.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation. 27

#### 304.3. Definitions

- 304.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Abandon" means leaving behind a domestic animal at a location without providing minimum care.
- 34 (b) "Court of Appeals" means the Nation's Judiciary's Court of Appeals, which is the

court of final appeal within the Nation.

(bc) "District Quarantine" means a

- (bc) "District Quarantine" means a rabid or otherwise diseased domestic animal is suspected or known to be within a discernible area and all such animals reasonably suspected of being infected are subject to enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animals are tested for diseases, including rabies.
- (ed) "Fine" means a monetary punishment issued to a person violating this law.
- (de) "Hen" means a female chicken of the order and family gallus gallus domesticus.
- (ef) "Husbandry practices" means accepted manner of managing resources, cultivating, and caring for animals including the breeding, feeding, and tending of the animals.
- (fg) "Judiciary" means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
- (gh) "Livestock" means any equine (i.e. horse, donkey, etc.), bovine (i.e. cow, steer, heifer, etc.), sheep, goat, pig.
- (hi) "Nation" means the Oneida Nation.
- (ij) "Owner" means any person who owns, harbors, keeps, controls or acts as a caretaker for an animal. Absent evidence of alternative adult ownership, this law presumes that domestic animals are owned by the adult homeowner or renter.
- (jk) "Penalty" means a punishment, other than a fine, imposed on a person violating this law and may include, but is not limited to, the confiscation of wildlife with return of the same at the discretion of the Trial Court and restitution.
- (kl) "Reservation" means all the property within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (1m) "Residential household" means a residential lot, except for those residential lots designed as multi-family lots, in which each family unit within the lot constitutes a separate household.
- (mn) "Tethering" means the act of fastening an animal to a stationary object while unattended so that the animal can only range within a set radius. Tethering does not include the use of a leash to walk an animal.
- (no) "Trial Court" means the Trial Court of the Oneida Nation Judiciary.
- (op) "Quarantine" means the act of keeping an animal in enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animal is tested for diseases, including rabies.

#### **304.4.** Authority Jurisdiction

- 304.4-1. Personal Jurisdiction. This law applies to:
  - (a) All members of the Nation; the Nation's entities and corporations; and members of other federally-recognized tribes;
  - (b) Individuals and businesses leasing, occupying or otherwise using fee land owned by the Nation or by individual members of the Nation; and/or lands held in trust on behalf of the Nation or individual members of the Nation; and

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- (c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the jurisdiction of the Nation:
  - (1) By entering into a consensual relationship with the Nation, or with the Nation's entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or
  - (2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.

304.4-2. *Territorial Jurisdiction*. This law extends within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation.

#### 304.5. Authority

- 304.5-1. General. This law governs the keeping of all domestic animals which are commonly owned as household pets. Domestic animals include, but are not limited to, dogs, cats, ferrets, rabbits, guinea pigs, turtles, birds, pigeons, hamsters, non-venomous reptiles, amphibians, and arachnids.
  - (a) Domestic animals do not include prohibited animals as identified by the prohibited animals resolution provided for in section 304.109-2.
- 304.54-2. Authority of the Oneida Police Department and Conservation Department. Oneida Police Officers and Conservation Wardens shall have the authority to:
  - (a) investigate complaints involving domestic animals;
  - (b) enforce the provisions of this law through appropriate means, including but not limited to:
    - (1) seizing any animal that is taken, employed, used, or possessed in violation of this law and/or mistreated, rabid or otherwise in danger or dangerous;
    - (2) issuing citations consistent with the fine and penalty schedule developed in accordance with this law; and
    - (3) using force, up to and including lethal force, to stop an immediate threat to public safety caused by an animal.
      - (A) Where lethal force is used, such execution shall be conducted in as humane manner as possible and, to the extent feasible, avoids damage to the animal's head for the purpose of rabies testing.
- 304.54-3. *Fine, Penalty, and Licensing Fee Schedule*. The Environmental, Health, Safety, and Land Division and the Environmental Resource Board are hereby delegated joint authority to develop a fine, penalty, and licensing fee schedule. The fine, penalty, and licensing fee schedule shall be adopted by the Oneida Business Committee through resolution.
- 115 304.54-4. Disease Investigation and Quarantine. The Environmental, Health, Safety, and Land
- Division, the Emergency Management Coordinator, and the Comprehensive Health Division are
- hereby delegated joint authority to establish standard operating procedures related to disease
- investigations and quarantines.
- 119 304.54-5. *Issuance of Licenses*. The Environmental, Health, Safety, and Land Division shall make
- all decisions related to the issuance of a license and/or permit in accordance with this law, unless

121 otherwise noted.

#### 304.65. Treatment of Animals

- 304.65-1. *Food and Water*. An owner shall provide an animal with a daily supply of food and water sufficient to maintain the animal in good health.
- 304.65-2. *Shelter*. An owner shall meet the minimum standards for indoor and outdoor shelter for an animal. All shelter shall be structurally sound and maintained in good repair to protect the animal from injury and to contain the animal.
  - (a) *Minimum indoor standards of shelter*. Minimum standards for indoor shelter include the following:
    - (1) *Temperature*. The ambient temperature of the indoor shelter shall be compatible with the health of the animal.
    - (2) *Ventilation*. Indoor shelter facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animal at all times.
  - (b) *Minimum outdoor standards of shelter*. Minimum standards for outdoor shelter include the following:
    - (1) Shelter from Sunlight. When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. Caged does not include farm fencing used to confine livestock.
    - (2) *Climatic Conditions*. Natural or artificial shelter appropriate to the local climatic conditions for the animal concerned shall be provided as necessary for the health of the animal.
    - (3) Adverse Weather. If an animal is tied or confined unattended outdoors under weather conditions which adversely affect the health of the animal, a weather appropriate shelter of suitable size to accommodate the animal shall be provided.
  - (c) *Space Standards*. Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress, or abnormal behavior patterns.
    - (1) *Dog Kennels*. Dog kennels shall meet the following space requirements where, if there are multiple dogs in the same kennel, the base kennel space requirement is based on the size of the largest dog and the additional kennel space requirements are based on the size of each additional dog kept in the kennel:
      - (A) *Dog Size Between One and Thirty-Five Pounds*. A dog that weighs between one (1) and thirty-five (35) pounds shall have a required base kennel space of sixty (60) square feet. Required additional kennel space per additional dog of this size is twelve (12) square feet.
      - (B) Dog Size Between Thirty-Six and Seventy-Five Pounds. A dog that weighs between thirty-six (36) and seventy-five (75) pounds shall have a required base kennel space of eighty (80) square feet. Required additional kennel space per additional dog of this size is eighteen (18) square feet.
      - (C) Dog Size Seventy-Six Pounds or Greater. A dog that weighs seventy-six (76) pounds or more shall have a required base kennel space of one

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hundred (100) square feet. Required additional kennel space per additional dog of this size is twenty-four (24) square feet.

- (d) Sanitation Standards. An owner shall meet the minimum standards of sanitation for both indoor and outdoor shelter. Minimum sanitation standards require waste matter from the animal to be removed within twenty-four (24) hours of its deposit.
- (e) Shelter Exception for Livestock. In the case of livestock kept on farms on land zoned agricultural, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices.
- 304.65-3. *Tethering*. If a kennel or enclosed yard is not available, an owner may tether an unsupervised animal as long as the owner meets the following conditions:
  - (a) the tether is connected to the animal with a buckle type collar or body harness made of nylon or leather not less than one inch (1") in width and at least two inches (2") greater in diameter than the animal's neck or torso;
    - (1) The use of a choke collar, prong collar head harness, or other similar type of head harness or collar shall be prohibited for the use of tethering.
  - (b) the tether is at least twelve feet (12') long and allows the animal to move in all directions unimpeded;
  - (c) the total weight of the tether does not exceed ten percent (10%) of the animal's body weight;
  - (d) the animal is tethered so as to prevent injury, strangulation, or entanglement, and allows the animal access to water and shelter;
  - (e) the tethered animal is not sick, injured, or nursing;
  - (f) the animal is not tethered on any vacant property or land or with an unoccupied dwelling; and
  - (g) the animal is not tethered in a manner that allows the animal to cross onto public space or property of others.
- 304.65-4. *Mistreatment of Animals*. No person shall treat any animal in a manner which causes harm, injury or death. This section does not apply to:
  - (a) normal and accepted veterinary and/or care practices; or
  - (b) teaching, research or experimentation conducted at a facility regulated under federal or applicable state law.
- 304.5-5. Abandonment. No person shall abandon any animal.
- <u>304.5-</u>6-5. *Mandatory Reporting*. An employee of the Nation shall report any animal mistreatment witnessed during the regular course of his or her employment with the Nation to the Oneida Police Department and any other appropriate entity.

#### **304.76. Dogs and Cats**

- 304.76-1. *License Required*. An owner shall be required to obtain a license for any dog or cat five (5) months of age or older on an annual basis.
  - (a) *License Period*. The license year shall commence on January 1<sup>st</sup> and end on December 31<sup>st</sup> of every year.
  - (b) License Eligibility. To be eligible for a license, the owner shall provide:
    - (1) the licensing fee; and

207 (2) proof of current rabies vaccination. (c) Placement of License Tag. Upon the receipt of a license the owner shall be provided a 208 209 license tag for the dog or cat. The owner shall securely attach the license tag to the animal's 210 collar and shall require the animal wear the collar at all times. 211 (1) Exception. A dog or cat shall not be required to wear the collar if the dog or cat 212 213 (A) hunting or actively involved in herding or controlling livestock if the 214 animal is under control of its owner; 215 (B) within the owner's residence and/or securely confined in a fenced area; 216 and/or 217 (C) being shown during a competition. 218 304.76-2. Rabies Vaccinations Required. An owner shall be required to obtain a rabies 219 vaccination for any dog or cat five (5) months of age or older. 220 304.76-3. Limit on the Number of Dogs and Cats. An individual may keep no more than two (2) dogs or three (3) cats; and a total of no more than four (4) dogs and cats combined; in a single 221 222 residential household. 223 (a) Exception. The limit on the number of dogs and cats a person may keep or possess does 224 not apply to a person who: 225 (1) is eligible for any grandfather provisions included in this law's adopting 226 resolution; 227 (2) keeps or possesses a litter of pups or kittens, or a portion of a litter, for a period 228 not exceeding five (5) months from birth; 229 (3) resides on property zoned agricultural; and/or 230 (4) obtains a permit for the additional dog or cat. 231 (b) Permit for Additional Dogs or Cats. A person may keep more than two (2) dogs or 232 three cats (3) in a single residential household if the owner obtains a permit from the 233 Environmental, Health, Safety, and Land Division for the additional animal. The application for the permit must be signed by the owner and contain the signature of the 234 235 homeowner of the residential household if the homeowner is not the applicant. 236 (1) By seeking a permit for an additional dog or cat the owner agrees that he or she shall reduce the number of licensed dogs or cats on the premises if there are two (2) 237 238 or more nuisance complaints against the residential household within one (1) 239 calendar year caused by, or related to, the number of dogs or cats housed on the 240 premises. 241 (2) If two (2) or more nuisance complaints are received against the residential 242 household due to the number of dogs or cats housed on the premises, the owner 243 shall reduce the number of animals within thirty (30) days. 244 304.76-4. Running at Large. An owner shall not allow a dog or cat to run at large by being any 245 place except upon the premises of the owner, unless the dog or cat is crated, penned, or on a leash 246 under the control of a person physically able to control the animal. 247 (a) A stray dog or cat running at large may be referred to the Oneida Police Department or 248

- Oneida Conservation Department.
- (b) When an Oneida Police Officer or Oneida Conservation Warden finds a dog or cat

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running at large, the officer and/or warden shall, if possible, pick up and impound such animal.

- (c) Whenever any impounded animal bears an identification mark, such as a collar with identification tags or license tag, the owner shall be notified as soon as reasonably possible.
- 304.76-5. *Nuisance*. An Oneida Police Officer or Oneida Conservation Warden may pick up and impound a dog or cat that has been found to be a nuisance. A dog or cat shall be found to be a nuisance if the actions of the dog or cat:
  - (a) resulted in two (2) or more verified disturbances due to excessive barking and/or other noise by the animal, or the animal running at large; and/or
  - (b) resulted in one (1) or more verified disturbance due to threatening behavior by the animal running at large.
- 304.76-6. *Investigations for Suspected Animal Bites*. The owner shall notify the Oneida Police Department in the event the owner's cat or dog bites a human or another domestic animal.
  - (a) The responding Oneida Police Officer or Oneida Conservation Warden shall:
    - (1) Ascertain whether the domestic animal is properly licensed and has current vaccinations.
    - (2) Ensure all information provided is correct.
    - (3) Contact the Environmental, Health, Safety, and Land Division to provide notification of the domestic animal bite.
    - (4) If the cat or dog has current rabies vaccinations, order the owner to:
      - (A) Quarantine the animal for ten (10) days; and
      - (B) Present the animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10<sup>th</sup>) day.
    - (5) If the cat or dog does not have current rabies vaccination, order the owner to:
      - (A) Quarantine the animal for ten (10) days or deliver the animal to an isolation facility at the owner's expense. If a home quarantine is ordered, the owner shall present the domestic animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10<sup>th</sup>) day; or
      - (B) Euthanize the animal and send the specimen for analysis at the owner's expense, if the animal has exhibited any signs of rabies.
  - (b) Upon expiration of a quarantine period, a veterinarian may extend the quarantine period. Upon expiration of all quarantine periods, if the veterinarian certifies that the animal has not exhibited any signs of rabies, the animal may be released from quarantine.
  - (c) If the veterinarian certifies that the animal has exhibited any signs of rabies the following shall occur:
    - (1) If the animal has current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis, to be paid for by the Nation.
    - (2) If the animal does not have current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and

send the specimen for analysis at the owner's expense. 294 304.76-7. *District Quarantine*. A district quarantine may be initiated

- 304.76-7. *District Quarantine*. A district quarantine may be initiated by staff designated by the Environmental, Health, Safety, and Land Division, an Oneida Police Officer, an Oneida Conservation Warden, and/or a Public Health Officer.
  - (a) If an area is subject to a district quarantine for rabies, all dogs and cats within the district shall be kept securely confined, tied, leashed or muzzled. Any dog or cat not confined, tied, leashed or muzzled is a public nuisance and may be impounded. All Oneida Police Officers and Oneida Conservation Wardens shall cooperate in the enforcement of the quarantine.
  - (b) An animal that is immunized against rabies as evidenced by a valid certificate of rabies vaccination or other evidence is exempt from the district quarantine provisions of this section.

#### **304.87.** Livestock

- 304.87-1. An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep livestock on land zoned residential.
- 304.87-2. *Limitations on Livestock*. Livestock kept on land zoned residential are subject to the following limitations:
  - (a) One (1) large animal per one (1) acre. Examples of large animals include, but are not limited to, horses, cows, and pigs.
  - (b) One (1) small animal per one-half ( $\frac{1}{2}$ ) acre. Examples of small animals include, but are not limited to, goats, and sheep.
  - (c) One (1) goat or sheep per recorded lot under one-half ( $\frac{1}{2}$ ) acre when setback requirements can be met.
- 304.87-3. Liability for Damage Caused by Livestock at Large. Any person whose livestock escapes from its normal confined area and becomes at large is responsible for any and all damage to persons and property caused by such livestock while it is away from its normal confined area.

#### 304.98. Hens

- 304.98-1. *Hen Permit*. An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep hens on land zoned residential.
- 304.98-2. *Prohibition of Roosters*. An owner shall not keep a rooster on land zoned residential.
- 304.98-3. *Limit on the Number of Hens Allowed*. The number of hens an owner may keep is dependent on the size of the residential lot.
  - (a) An owner may to keep up to six (6) hens on a residential lot that is smaller than two (2) acres in size.
  - (b) An owner may keep up to twelve (12) hens on a residential lot two (2) acres in size or larger.
  - 304.98-4. Standards for Keeping Hens. An owner shall keep hens in the following manner:
    - (a) No person shall keep a hen over eight (8) weeks of age in a principal structure.
    - (b) Hens shall be kept within a structure such as a coop or fenced area used exclusively to keep hens and shall provide at least four (4) square feet of space per hen.
    - (c) No accessory structure used to keep hens shall be located within twenty-five feet (25')

- of any principal structure which is not owned by the person permitted to keep the hens.
- (d) No accessory structure used to keep hens shall be located in a front or side yard.
- (e) All hens shall be kept and handled in a sanitary manner to prevent the spread of communicable diseases amongst birds or to humans.
- 304.98-5. Prohibition of Nuisance Hens. No owner may keep hens that cause any other nuisance associated with unhealthy conditions, create a public health threat, or otherwise interfere with the normal use of property or enjoyment of life by humans or animals.

#### 304.109. Prohibited Animals

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- 304.<del>109</del>-1. No person shall bring into, keep, harbor, maintain, offer for sale or barter, act as a custodian, have custody or control of, or release to the wild on the Reservation a prohibited animal. 304.409-2. Prohibited Animals. The Oneida Business Committee shall provide through the adoption of a resolution which orders and families of animals, whether bred in the wild or in captivity, and any or all hybrids are prohibited from being on the Reservation.
- 304.<del>109</del>-3. Prohibited Animals Exception. The prohibition of certain animals shall not apply to:
  - (a) Individuals who are eligible for any grandfather provisions included in this law's adopting resolution.
  - (b) A zoological park and/or sanctuary, an educational or medical institution, and/or a specially trained entertainment organization who receives a permit from the Environmental, Health, Safety, and Land Division to own, harbor or possess the prohibited animal.
- 304.109-4. Prohibited Animal Permit. The Environmental, Health, Safety, and Land Division may issue a prohibited animal permit if:
  - (a) the animal and animal quarters are kept in a clean and sanitary condition and maintained to eliminate objectionable odors; and
  - (b) the animal is maintained in quarters so constructed as to prevent its escape.
- 304.109-5. Release of Prohibited Animals. The Environmental, Health, Safety, and Land Division, may approve a wildlife refuge and/or sanctuary to release prohibited animals within the Reservation without applying for and receiving a prohibited animal permit.
- 304.<del>109-</del>6. Seizure of Prohibited Animals. An unpermitted prohibited animal may be seized by the Oneida Police Department and/or the Oneida Conservation Department.
  - (a) A prohibited animal that is seized shall be held by the Oneida Police Department, the Oneida Conservation Department, or its designee until it can be determined if the animal is an endangered or threatened species.
  - (b) At any time after such identification, the Oneida Police Department and/or Oneida Conservation Department may seek an order from the Trial Court as to the care, custody and control of the animal.
  - (c) If the Trial Court finds the animal has been taken, employed, used or possessed in violation of this section, the owner shall be responsible for reimbursing the Oneida Police Department and/or the Oneida Conservation Department for the cost of holding the animal and any costs incurred in identifying the animal.
- 304.<del>10</del>9-7. Notice of Release or Escape. The owner of a prohibited animal that has been

- 379 released or escapes shall immediately notify the Oneida Police Department and/or the Oneida 380 Conservation Department and shall be liable for any cost of recapture of the animal.
- 381 304.10-8. Forfeiture of the Prohibited Animal. An owner found in violation of this section shall 382 forfeit or surrender the prohibited animal to the Oneida Police Department, Oneida Conservation 383 Department, or designee. Upon such forfeiture or surrender, the Trial Court may direct destruction 384
- or transfer of the animal to a qualified zoological, educational, or scientific institution or qualified 385 private propagator for safekeeping, with costs assessed against the owner.

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#### **304.1110. Dangerous Animals**

- 304.<del>11</del>10-1. Dangerous Animals. No person shall own, keep, possess, return to or harbor a dangerous animal. An animal shall be presumed to be dangerous if the animal:
  - (a) approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack:
  - (b) bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or domestic animal:
  - (c) is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or
  - (d) has been declared to be a dangerous animal and/or ordered to be destroyed in any other jurisdiction.
- 304.<del>11</del>10-2. An Oneida Police Officer or Oneida Dangerous Animal Determination. Conservation Warden may determine an animal to be dangerous whenever, upon investigation, the officer finds that the animal meets the definition of dangerous animal provided in section 304.<del>11</del>10-1.
  - (a) Upon making a determination that an animal is dangerous, the Oneida Police Officer or Oneida Conservation Warden shall issue a written order with an accompanying citation declaring the animal to be dangerous.
  - (b) The citation and order shall be personally delivered to the apparent owner or custodian of the dangerous animal.
  - (c) Upon receipt of the written order and accompanying citation the owner shall remove the dangerous animal from the Reservation within three (3) business days.
- dangerous animal determination, he or she shall file with the Trial Court a written objection to the order within three (3) business days of receipt of the order.
  - (a) The written objection shall include specific reasons for objecting to or contesting the order. An owner may argue an animal should not be deemed dangerous due to the animal biting, attacking or menacing any person and/or domestic animal because the animal was acting to:
    - (1) defend its owner or another person from an attack by a person or animal;
    - (2) protect its young or another animal;
    - (3) defend itself against any person or animal which has tormented, assaulted or abused it: and/or
    - (4) defend its owner's property against trespassers.
  - (b) Pending the outcome of the hearing, the animal shall be securely confined in a humane manner either on the premises of the owner or caretaker, or with a licensed veterinarian. If

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confined on the premises of the owner or caretaker, the following requirements shall apply:

- (1) Leash and Muzzle. No owner shall permit a dangerous animal to go outside its kennel or pen unless the animal is securely restrained with a leash no longer than four feet (4') in length by a person who is at least sixteen (16) years of age who is in physical control of the leash, competent to govern the animal and capable of physically controlling and restraining the animal. The owner shall not leash an animal to inanimate objects such as a tree, post, or building. When the animal is on a leash outside the animal's kennel, the owner shall muzzle the animal in a humane way by a commercially available muzzling device sufficient to prevent the animal from biting a person or other animal.
- (2) Confinement. Except when leashed and muzzled the owner shall ensure the dangerous animal is securely confined indoors or in a securely enclosed and locked pen or kennel that is located on the premises of the owner and constructed in a manner that does not allow the animal to exit the pen or kennel on its own volition. The owner shall not permit an animal to be kept on a porch, patio, or in any part of a house or structure on the premises of the owner that would allow the animal to exit the building on its own volition. The owner shall not permit the animal to be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.
- (3) *Signs*. The owner of a dangerous animal shall display, in prominent places on his or her premises near all entrances to the premises, signs in letters of not less than two inches (2") high warning that there is a dangerous animal on the property. A similar sign shall be posted on the kennel or pen of the animal. In addition, the owner shall conspicuously display a sign with a symbol warning children of the presence of a dangerous animal.
- (4) *Notification*. The owner of a dangerous animal shall notify the Oneida Police Department and/or the Oneida Conservation Department immediately if the animal is at large, is unconfined, has attacked another animal, or has attacked a person.
- (c) If an owner or caretaker fails to follow the requirements for harboring a dangerous animal pending a hearing, the animal may be impounded by the Oneida Police Officer or Oneida Conservation Warden issuing the dangerous animal determination.
- 304.1110-4. *Dangerous Animal Determination Hearing*. A hearing on the dangerous animal determination shall be held within fourteen (14) days of submission of the written objection with the Trial Court. At the hearing, the Trial Court shall determine whether the determination that the animal is dangerous should be substantiated.
  - (a) If the Trial Court concludes that the determination that the animal is dangerous is substantiated, then the Trial Court shall issue an order that mandates the animal be removed from the Reservation within forty-eight (48) hours of the determination.
    - (1) The order shall contain the requirement that the owner notify the Oneida Police Department within twenty-four (24) hours if the dangerous animal has been sold or been given away. If the dangerous animal has been sold or given away, the owner shall also provide the name, address and telephone number of the new owner of the

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dangerous animal. If the dangerous animal is sold or given away to a person residing outside the Reservation or to a person or entity that falls outside of the jurisdiction of this law, the owner shall present evidence to the Oneida Police Department showing that he or she has notified the police department or other law enforcement agency of the animal's new residence, including the name, address and telephone number of the new owner. The Oneida Police Department shall forward all such notifications to the Environmental, Health, Safety, and Land Division within a reasonable amount of time.

- (b) The Trial Court may order a dangerous animal to be destroyed. If such an order is issued, the Trial Court shall require the owner submit proof of destruction within five (5) business days from a licensed veterinarian. If the owner does not satisfy these requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall seize the animal and enforce compliance at the cost of the owner.
- (c) The Trial Court may mandate attendance at an additional Trial Court hearing if restitution is appropriate.

304.1110-5. Appeal of the Trial Court's Decision. An appeal of the Trial Court's decision on the dangerous animal determination may be appealed to the Nation's Court of Appeals.

- (a) An appeal shall be submitted to the Court of Appeals within five (5) business days from the date of the Trial Court's decision.
- (b) Upon an appeal to the Court of Appeals, the order to remove the animal from the Reservation or any order to destroy an animal is stayed pending the outcome of the appeal. 604.1110-6. *Dangerous Animal Exception*. The Trial Court may provide an exception to the dangerous animal provisions of this law for a law enforcement or military animal upon presentation by the animal's owner or handler of a satisfactory arrangement for safe keeping of the animal.

#### **304.1211**. Owner Liability

304.<del>1211</del>-1. An owner shall be liable for damages caused by his or her domestic animal.

- (a) First Offense. The owner is liable for the full amount of damages caused by the domestic animal.
- (b) Subsequent Offenses. The owner shall be liable for two (2) times the full amount of damages caused by the domestic animal if the owner knew or should have known that the domestic animal previously caused damages.

#### 304.1312. Enforcement of Violations

304.1312-1. Citations. Citations A citation for the violation of this law and/or orders issued pursuant to this law may include fines, penalties and conditional orders in accordance with the fine, penalty, and licensing fee schedule. A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.

304.13-2. Citation Pre-Hearing. All citations shall include a pre-hearing date with the Trial Court which shall be set for the next scheduled monthly pre-hearing date that is at least thirty (30) days after the citation was issued. (a) The act of contesting a dangerous animal determination shall follow the process contained in section 304.1110.

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- (a) Persons wishing to contest a citation shall appear at the prehearing, at which time the Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued.
- (b) In addition to scheduling requested hearings, the Trial Court may also make conditional orders at the pre-hearing which are effective until the matter is resolved.
- 304.13-3. Citation Hearing. The Trial Court shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued.
- 304.13-4. Appeals of the Trial Court's Determinations. Any person wishing to contest the determination of the Trial Court may appeal to the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure.
- 304.13-5. *Fines*. All fines 304.12-2. *Fines*. All fines as a result of a citation shall be paid to the Judiciary. Money received from fines shall be contributed to the General Fund.
  - (a) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later. If the fine is not paid by this deadline, the Trial Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process.
    - (1) The ninety (90) day deadline for payment of fines may be extended if an alternative payment plan is approved by the Trial Court.
  - (b(a) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

End.

533 Adopted - BC-03-13-96-B
 534 Amended - BC-06-22-11-G
 535 Amended - BC-06-28-17-B
 536 Amended - BC-05-08-19-C

537 <u>Amended – BC- - - -</u>

#### Title 3. Health and Public Safety - Chapter 304 K@tse>na Olihw@=ke

matters concerning the pet animals

#### **DOMESTIC ANIMALS**

304.1.	Purpose and Policy	304.8. Hens
	Adoption, Amendment, Conflicts	304.9. Prohibited Animals
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#### **304.1. Purpose and Policy**

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304.1-1. *Purpose*. The purpose of this law is to:

- (a) protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) set minimum standards for the treatment of animals;
- (c) prohibit certain species of animals from being brought onto the Reservation;
- (d) regulate the keeping of livestock on lots zoned residential within the Reservation; and
- (e) establish consequences for damages caused by domestic animals.
- 304.1-2. *Policy*. It is the policy of the Nation to protect the health, safety, and welfare of the community by:
  - (a) requiring certain basic measures to prevent the spread of disease carried by domestic animals:
  - (b) establishing requirements for licensing domestic animals, and
  - (c) regulating the types of animals which may be kept as domestic animals.

#### 304.2. Adoption, Amendment, Repeal

- 304.2-1. This law was adopted by Oneida Business Committee by resolution BC-03-13-96-B and amended by resolutions BC-06-22-11-G, BC-06-28-17-B, BC-05-08-19-C, and BC------
- 19 304.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 20 General Trout Country pursuant to the procedures set out in the Degistative Procedures Field
- 304.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered
- 23 to have legal force without the invalid portions.
- 304.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 26 304.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

#### 304.3. Definitions

- 304.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Abandon" means leaving behind a domestic animal at a location without providing minimum care.
  - (b) "Court of Appeals" means the Nation's Judiciary's Court of Appeals, which is the court of final appeal within the Nation.
  - (c) "District Quarantine" means a rabid or otherwise diseased domestic animal is suspected or known to be within a discernible area and all such animals reasonably suspected of being infected are subject to enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animals are tested for diseases, including

39 rabies.

- (d) "Fine" means a monetary punishment issued to a person violating this law.
  - (e) "Hen" means a female chicken of the order and family gallus gallus domesticus.
  - (f) "Husbandry practices" means accepted manner of managing resources, cultivating, and caring for animals including the breeding, feeding, and tending of the animals.
  - (g) "Judiciary" means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
  - (h) "Livestock" means any equine (i.e. horse, donkey, etc.), bovine (i.e. cow, steer, heifer, etc.), sheep, goat, pig.
  - (i) "Nation" means the Oneida Nation.
  - (j) "Owner" means any person who owns, harbors, keeps, controls or acts as a caretaker for an animal. Absent evidence of alternative adult ownership, this law presumes that domestic animals are owned by the adult homeowner or renter.
  - (k) "Penalty" means a punishment, other than a fine, imposed on a person violating this law and may include, but is not limited to, the confiscation of wildlife with return of the same at the discretion of the Trial Court and restitution.
  - (l) "Reservation" means all the property within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
  - (m) "Residential household" means a residential lot, except for those residential lots designed as multi-family lots, in which each family unit within the lot constitutes a separate household.
  - (n) "Tethering" means the act of fastening an animal to a stationary object while unattended so that the animal can only range within a set radius. Tethering does not include the use of a leash to walk an animal.
  - (o) "Trial Court" means the Trial Court of the Oneida Nation Judiciary.
  - (p) "Quarantine" means the act of keeping an animal in enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animal is tested for diseases, including rabies.

#### 304.4. Authority

- 304.4-1. *General*. This law governs the keeping of all domestic animals which are commonly owned as household pets. Domestic animals include, but are not limited to, dogs, cats, ferrets, rabbits, guinea pigs, turtles, birds, pigeons, hamsters, non-venomous reptiles, amphibians, and arachnids.
  - (a) Domestic animals do not include prohibited animals as identified by the prohibited animals resolution provided for in section 304.9-2.
- 304.4-2. *Authority of the Oneida Police Department and Conservation Department*. Oneida Police Officers and Conservation Wardens shall have the authority to:
  - (a) investigate complaints involving domestic animals;
  - (b) enforce the provisions of this law through appropriate means, including but not limited to:

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- (1) seizing any animal that is taken, employed, used, or possessed in violation of this law and/or mistreated, rabid or otherwise in danger or dangerous;
- (2) issuing citations consistent with the fine and penalty schedule developed in accordance with this law; and
- (3) using force, up to and including lethal force, to stop an immediate threat to public safety caused by an animal.
  - (A) Where lethal force is used, such execution shall be conducted in as humane manner as possible and, to the extent feasible, avoids damage to the animal's head for the purpose of rabies testing.
- 304.4-3. *Fine, Penalty, and Licensing Fee Schedule.* The Environmental, Health, Safety, and Land Division and the Environmental Resource Board are hereby delegated joint authority to develop a fine, penalty, and licensing fee schedule. The fine, penalty, and licensing fee schedule shall be adopted by the Oneida Business Committee through resolution.
- 304.4-4. *Disease Investigation and Quarantine*. The Environmental, Health, Safety, and Land Division, the Emergency Management Coordinator, and the Comprehensive Health Division are hereby delegated joint authority to establish standard operating procedures related to disease investigations and quarantines.
- 304.4-5. *Issuance of Licenses*. The Environmental, Health, Safety, and Land Division shall make all decisions related to the issuance of a license and/or permit in accordance with this law, unless otherwise noted.

#### **304.5.** Treatment of Animals

- 304.5-1. *Food and Water*. An owner shall provide an animal with a daily supply of food and water sufficient to maintain the animal in good health.
- 304.5-2. *Shelter*. An owner shall meet the minimum standards for indoor and outdoor shelter for an animal. All shelter shall be structurally sound and maintained in good repair to protect the animal from injury and to contain the animal.
  - (a) *Minimum indoor standards of shelter*. Minimum standards for indoor shelter include the following:
    - (1) *Temperature*. The ambient temperature of the indoor shelter shall be compatible with the health of the animal.
    - (2) *Ventilation*. Indoor shelter facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animal at all times.
  - (b) *Minimum outdoor standards of shelter*. Minimum standards for outdoor shelter include the following:
    - (1) Shelter from Sunlight. When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. Caged does not include farm fencing used to confine livestock.
    - (2) Climatic Conditions. Natural or artificial shelter appropriate to the local climatic conditions for the animal concerned shall be provided as necessary for the health of the animal.

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(3) Adverse Weather. If an animal is tied or confined unattended outdoors under weather conditions which adversely affect the health of the animal, a weather appropriate shelter of suitable size to accommodate the animal shall be provided.

(c) Space Standards. Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress, or abnormal behavior patterns.

(1) Dog Kennels. Dog kennels shall meet the following space requirements where,

- (1) Dog Kennels. Dog kennels shall meet the following space requirements where, if there are multiple dogs in the same kennel, the base kennel space requirement is based on the size of the largest dog and the additional kennel space requirements are based on the size of each additional dog kept in the kennel:
  - (A) Dog Size Between One and Thirty-Five Pounds. A dog that weighs between one (1) and thirty-five (35) pounds shall have a required base kennel space of sixty (60) square feet. Required additional kennel space per additional dog of this size is twelve (12) square feet.
  - (B) Dog Size Between Thirty-Six and Seventy-Five Pounds. A dog that weighs between thirty-six (36) and seventy-five (75) pounds shall have a required base kennel space of eighty (80) square feet. Required additional kennel space per additional dog of this size is eighteen (18) square feet.
  - (C) Dog Size Seventy-Six Pounds or Greater. A dog that weighs seventy-six (76) pounds or more shall have a required base kennel space of one hundred (100) square feet. Required additional kennel space per additional dog of this size is twenty-four (24) square feet.
- (d) Sanitation Standards. An owner shall meet the minimum standards of sanitation for both indoor and outdoor shelter. Minimum sanitation standards require waste matter from the animal to be removed within twenty-four (24) hours of its deposit.
- (e) *Shelter Exception for Livestock*. In the case of livestock kept on farms on land zoned agricultural, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices.
- 304.5-3. *Tethering*. If a kennel or enclosed yard is not available, an owner may tether an unsupervised animal as long as the owner meets the following conditions:
  - (a) the tether is connected to the animal with a buckle type collar or body harness made of nylon or leather not less than one inch (1") in width and at least two inches (2") greater in diameter than the animal's neck or torso;
    - (1) The use of a choke collar, prong collar head harness, or other similar type of head harness or collar shall be prohibited for the use of tethering.
  - (b) the tether is at least twelve feet (12') long and allows the animal to move in all directions unimpeded;
  - (c) the total weight of the tether does not exceed ten percent (10%) of the animal's body weight;
  - (d) the animal is tethered so as to prevent injury, strangulation, or entanglement, and allows the animal access to water and shelter;
  - (e) the tethered animal is not sick, injured, or nursing;

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- (f) the animal is not tethered on any vacant property or land or with an unoccupied dwelling; and
- (g) the animal is not tethered in a manner that allows the animal to cross onto public space or property of others.
- 304.5-4. *Mistreatment of Animals*. No person shall treat any animal in a manner which causes harm, injury or death. This section does not apply to:
  - (a) normal and accepted veterinary and/or care practices; or
  - (b) teaching, research or experimentation conducted at a facility regulated under federal or applicable state law.
- 304.5-5. *Abandonment*. No person shall abandon any animal.
- 304.5-6. *Mandatory Reporting*. An employee of the Nation shall report any animal mistreatment witnessed during the regular course of his or her employment with the Nation to the Oneida Police Department and any other appropriate entity.

#### 304.6. Dogs and Cats

- 304.6-1. *License Required*. An owner shall be required to obtain a license for any dog or cat five (5) months of age or older on an annual basis.
  - (a) *License Period*. The license year shall commence on January 1<sup>st</sup> and end on December 31<sup>st</sup> of every year.
  - (b) License Eligibility. To be eligible for a license, the owner shall provide:
    - (1) the licensing fee; and
    - (2) proof of current rabies vaccination.
  - (c) *Placement of License Tag*. Upon the receipt of a license the owner shall be provided a license tag for the dog or cat. The owner shall securely attach the license tag to the animal's collar and shall require the animal wear the collar at all times.
    - (1) Exception. A dog or cat shall not be required to wear the collar if the dog or cat is:
      - (A) hunting or actively involved in herding or controlling livestock if the animal is under control of its owner;
      - (B) within the owner's residence and/or securely confined in a fenced area; and/or
      - (C) being shown during a competition.
- 304.6-2. Rabies Vaccinations Required. An owner shall be required to obtain a rabies vaccination for any dog or cat five (5) months of age or older.
- 304.6-3. Limit on the Number of Dogs and Cats. An individual may keep no more than two (2) dogs or three (3) cats; and a total of no more than four (4) dogs and cats combined; in a single residential household.
  - (a) *Exception*. The limit on the number of dogs and cats a person may keep or possess does not apply to a person who:
    - (1) is eligible for any grandfather provisions included in this law's adopting resolution;
    - (2) keeps or possesses a litter of pups or kittens, or a portion of a litter, for a period not exceeding five (5) months from birth;

209 (3) resides on property zoned agricultural; and/or (4) obtains a permit for the additional dog or cat. 210 (b) Permit for Additional Dogs or Cats. A person may keep more than two (2) dogs or 211 three cats (3) in a single residential household if the owner obtains a permit from the 212 Environmental, Health, Safety, and Land Division for the additional animal. The 213 application for the permit must be signed by the owner and contain the signature of the 214 215 homeowner of the residential household if the homeowner is not the applicant. 216 (1) By seeking a permit for an additional dog or cat the owner agrees that he or she shall reduce the number of licensed dogs or cats on the premises if there are two (2) 217 or more nuisance complaints against the residential household within one (1) 218 219 calendar year caused by, or related to, the number of dogs or cats housed on the 220 premises. 221 (2) If two (2) or more nuisance complaints are received against the residential 222 household due to the number of dogs or cats housed on the premises, the owner 223 shall reduce the number of animals within thirty (30) days. 224 304.6-4. Running at Large. An owner shall not allow a dog or cat to run at large by being any 225 place except upon the premises of the owner, unless the dog or cat is crated, penned, or on a leash 226 under the control of a person physically able to control the animal. 227 (a) A stray dog or cat running at large may be referred to the Oneida Police Department or 228 Oneida Conservation Department. 229 (b) When an Oneida Police Officer or Oneida Conservation Warden finds a dog or cat 230 running at large, the officer and/or warden shall, if possible, pick up and impound such 231 232 (c) Whenever any impounded animal bears an identification mark, such as a collar with 233 identification tags or license tag, the owner shall be notified as soon as reasonably possible. 234 304.6-5. Nuisance. An Oneida Police Officer or Oneida Conservation Warden may pick up and 235 impound a dog or cat that has been found to be a nuisance. A dog or cat shall be found to be a 236 nuisance if the actions of the dog or cat: 237 (a) resulted in two (2) or more verified disturbances due to excessive barking and/or other 238 noise by the animal, or the animal running at large; and/or 239 (b) resulted in one (1) or more verified disturbance due to threatening behavior by the 240 animal running at large. 304.6-6. Investigations for Suspected Animal Bites. The owner shall notify the Oneida Police 241 242 Department in the event the owner's cat or dog bites a human or another domestic animal. 243 (a) The responding Oneida Police Officer or Oneida Conservation Warden shall: 244 (1) Ascertain whether the domestic animal is properly licensed and has current 245 vaccinations. 246 (2) Ensure all information provided is correct. 247 (3) Contact the Environmental, Health, Safety, and Land Division to provide 248 notification of the domestic animal bite. 249 (4) If the cat or dog has current rabies vaccinations, order the owner to: 250 (A) Quarantine the animal for ten (10) days; and 251 (B) Present the animal for examination by a veterinarian within twenty-

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in between the first twenty-four (24) hours and the tenth (10<sup>th</sup>) day.

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304.7. Livestock

- 304.7-1. An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep livestock on land zoned residential.
- 304.7-2. Limitations on Livestock. Livestock kept on land zoned residential are subject to the following limitations:
  - (a) One (1) large animal per one (1) acre. Examples of large animals include, but are not limited to, horses, cows, and pigs.
  - (b) One (1) small animal per one-half (½) acre. Examples of small animals include, but are not limited to, goats, and sheep.

- four (24) hours of the bite, on the last day of quarantine and on one (1) day
- (5) If the cat or dog does not have current rabies vaccination, order the owner to:
  - (A) Quarantine the animal for ten (10) days or deliver the animal to an isolation facility at the owner's expense. If a home quarantine is ordered. the owner shall present the domestic animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10<sup>th</sup>) day; or
  - (B) Euthanize the animal and send the specimen for analysis at the owner's expense, if the animal has exhibited any signs of rabies.
- (b) Upon expiration of a quarantine period, a veterinarian may extend the quarantine period. Upon expiration of all quarantine periods, if the veterinarian certifies that the animal has not exhibited any signs of rabies, the animal may be released from quarantine.
- (c) If the veterinarian certifies that the animal has exhibited any signs of rabies the following shall occur:
  - (1) If the animal has current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis, to be paid for by the Nation.
  - (2) If the animal does not have current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis at the owner's expense.
- 304.6-7. District Quarantine. A district quarantine may be initiated by staff designated by the Environmental, Health, Safety, and Land Division, an Oneida Police Officer, an Oneida Conservation Warden, and/or a Public Health Officer.
  - (a) If an area is subject to a district quarantine for rabies, all dogs and cats within the district shall be kept securely confined, tied, leashed or muzzled. Any dog or cat not confined, tied, leashed or muzzled is a public nuisance and may be impounded. All Oneida Police Officers and Oneida Conservation Wardens shall cooperate in the enforcement of the quarantine.
  - (b) An animal that is immunized against rabies as evidenced by a valid certificate of rabies vaccination or other evidence is exempt from the district quarantine provisions of this section.

- 295 (c) One (1) goat or sheep per recorded lot under one-half (½) acre when setback requirements can be met.
  - 304.7-3. Liability for Damage Caused by Livestock at Large. Any person whose livestock escapes from its normal confined area and becomes at large is responsible for any and all damage to persons and property caused by such livestock while it is away from its normal confined area.

#### 304.8. Hens

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- 304.8-1. *Hen Permit*. An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep hens on land zoned residential.
- 304.8-2. *Prohibition of Roosters*. An owner shall not keep a rooster on land zoned residential.
  - 304.8-3. *Limit on the Number of Hens Allowed*. The number of hens an owner may keep is dependent on the size of the residential lot.
    - (a) An owner may to keep up to six (6) hens on a residential lot that is smaller than two (2) acres in size.
    - (b) An owner may keep up to twelve (12) hens on a residential lot two (2) acres in size or larger.
    - 304.8-4. Standards for Keeping Hens. An owner shall keep hens in the following manner:
      - (a) No person shall keep a hen over eight (8) weeks of age in a principal structure.
      - (b) Hens shall be kept within a structure such as a coop or fenced area used exclusively to keep hens and shall provide at least four (4) square feet of space per hen.
      - (c) No accessory structure used to keep hens shall be located within twenty-five feet (25') of any principal structure which is not owned by the person permitted to keep the hens.
      - (d) No accessory structure used to keep hens shall be located in a front or side yard.
      - (e) All hens shall be kept and handled in a sanitary manner to prevent the spread of communicable diseases amongst birds or to humans.
    - 304.8-5. *Prohibition of Nuisance Hens*. No owner may keep hens that cause any other nuisance associated with unhealthy conditions, create a public health threat, or otherwise interfere with the normal use of property or enjoyment of life by humans or animals.

#### **304.9.** Prohibited Animals

- 304.9-1. No person shall bring into, keep, harbor, maintain, offer for sale or barter, act as a custodian, have custody or control of, or release to the wild on the Reservation a prohibited animal. 304.9-2. *Prohibited Animals*. The Oneida Business Committee shall provide through the adoption of a resolution which orders and families of animals, whether bred in the wild or in captivity, and any or all hybrids are prohibited from being on the Reservation.
- 330 304.9-3. *Prohibited Animals Exception*. The prohibition of certain animals shall not apply to:
  - (a) Individuals who are eligible for any grandfather provisions included in this law's adopting resolution.
  - (b) A zoological park and/or sanctuary, an educational or medical institution, and/or a specially trained entertainment organization who receives a permit from the Environmental, Health, Safety, and Land Division to own, harbor or possess the prohibited animal.
  - 304.9-4. Prohibited Animal Permit. The Environmental, Health, Safety, and Land Division may

issue a prohibited animal permit if:

- (a) the animal and animal quarters are kept in a clean and sanitary condition and maintained to eliminate objectionable odors; and
- (b) the animal is maintained in quarters so constructed as to prevent its escape.
- 304.9-5. *Release of Prohibited Animals*. The Environmental, Health, Safety, and Land Division, may approve a wildlife refuge and/or sanctuary to release prohibited animals within the Reservation without applying for and receiving a prohibited animal permit.
- 304.9-6. *Seizure of Prohibited Animals*. An unpermitted prohibited animal may be seized by the Oneida Police Department and/or the Oneida Conservation Department.
  - (a) A prohibited animal that is seized shall be held by the Oneida Police Department, the Oneida Conservation Department, or its designee until it can be determined if the animal is an endangered or threatened species.
  - (b) At any time after such identification, the Oneida Police Department and/or Oneida Conservation Department may seek an order from the Trial Court as to the care, custody and control of the animal.
  - (c) If the Trial Court finds the animal has been taken, employed, used or possessed in violation of this section, the owner shall be responsible for reimbursing the Oneida Police Department and/or the Oneida Conservation Department for the cost of holding the animal and any costs incurred in identifying the animal.
- 304.9-7. *Notice of Release or Escape*. The owner of a prohibited animal that has been released or escapes shall immediately notify the Oneida Police Department and/or the Oneida Conservation Department and shall be liable for any cost of recapture of the animal.
- 304.10-8. Forfeiture of the Prohibited Animal. An owner found in violation of this section shall forfeit or surrender the prohibited animal to the Oneida Police Department, Oneida Conservation Department, or designee. Upon such forfeiture or surrender, the Trial Court may direct destruction or transfer of the animal to a qualified zoological, educational, or scientific institution or qualified private propagator for safekeeping, with costs assessed against the owner.

#### **304.10.** Dangerous Animals

- 304.10-1. *Dangerous Animals*. No person shall own, keep, possess, return to or harbor a dangerous animal. An animal shall be presumed to be dangerous if the animal:
  - (a) approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack;
  - (b) bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or domestic animal;
  - (c) is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or
  - (d) has been declared to be a dangerous animal and/or ordered to be destroyed in any other jurisdiction.
- 304.10-2. *Dangerous Animal Determination*. An Oneida Police Officer or Oneida Conservation Warden may determine an animal to be dangerous whenever, upon investigation, the officer finds that the animal meets the definition of dangerous animal provided in section 304.10-1.
  - (a) Upon making a determination that an animal is dangerous, the Oneida Police Officer or Oneida Conservation Warden shall issue a written order with an accompanying citation

 declaring the animal to be dangerous.

 (b) The citation and order shall be personally delivered to the apparent owner or custodian of the dangerous animal.

 (c) Upon receipt of the written order and accompanying citation the owner shall remove the dangerous animal from the Reservation within three (3) business days.

3. Contacting a Dangerous Animal Determination. If the owner wishes to contest the

 304.10-3. *Contesting a Dangerous Animal Determination*. If the owner wishes to contest the dangerous animal determination, he or she shall file with the Trial Court a written objection to the order within three (3) business days of receipt of the order.

 (a) The written objection shall include specific reasons for objecting to or contesting the order. An owner may argue an animal should not be deemed dangerous due to the animal biting, attacking or menacing any person and/or domestic animal because the animal was acting to:

(1) defend its owner or another person from an attack by a person or animal;

(2) protect its young or another animal;

(3) defend itself against any person or animal which has tormented, assaulted or abused it; and/or

(4) defend its owner's property against trespassers.

(b) Pending the outcome of the hearing, the animal shall be securely confined in a humane manner either on the premises of the owner or caretaker, or with a licensed veterinarian. If confined on the premises of the owner or caretaker, the following requirements shall apply:

(1) Leash and Muzzle. No owner shall permit a dangerous animal to go outside its kennel or pen unless the animal is securely restrained with a leash no longer than four feet (4') in length by a person who is at least sixteen (16) years of age who is in physical control of the leash, competent to govern the animal and capable of physically controlling and restraining the animal. The owner shall not leash an animal to inanimate objects such as a tree, post, or building. When the animal is on a leash outside the animal's kennel, the owner shall muzzle the animal in a humane way by a commercially available muzzling device sufficient to prevent the animal from biting a person or other animal.

(2) Confinement. Except when leashed and muzzled the owner shall ensure the dangerous animal is securely confined indoors or in a securely enclosed and locked pen or kennel that is located on the premises of the owner and constructed in a manner that does not allow the animal to exit the pen or kennel on its own volition. The owner shall not permit an animal to be kept on a porch, patio, or in any part of a house or structure on the premises of the owner that would allow the animal to exit the building on its own volition. The owner shall not permit the animal to be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.

(3) *Signs*. The owner of a dangerous animal shall display, in prominent places on his or her premises near all entrances to the premises, signs in letters of not less than two inches (2") high warning that there is a dangerous animal on the property. A similar sign shall be posted on the kennel or pen of the animal. In addition, the

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 owner shall conspicuously display a sign with a symbol warning children of the presence of a dangerous animal.

(4) *Notification*. The owner of a dangerous animal shall notify the Oneida Police Department and/or the Oneida Conservation Department immediately if the animal is at large, is unconfined, has attacked another animal, or has attacked a person.

(c) If an owner or caretaker fails to follow the requirements for harboring a dangerous animal pending a hearing, the animal may be impounded by the Oneida Police Officer or Oneida Conservation Warden issuing the dangerous animal determination.

304.10-4. *Dangerous Animal Determination Hearing*. A hearing on the dangerous animal determination shall be held within fourteen (14) days of submission of the written objection with the Trial Court. At the hearing, the Trial Court shall determine whether the determination that the animal is dangerous should be substantiated.

(a) If the Trial Court concludes that the determination that the animal is dangerous is substantiated, then the Trial Court shall issue an order that mandates the animal be removed from the Reservation within forty-eight (48) hours of the determination.

(1) The order shall contain the requirement that the owner notify the Oneida Police Department within twenty-four (24) hours if the dangerous animal has been sold or been given away. If the dangerous animal has been sold or given away, the owner shall also provide the name, address and telephone number of the new owner of the dangerous animal. If the dangerous animal is sold or given away to a person residing outside the Reservation or to a person or entity that falls outside of the jurisdiction of this law, the owner shall present evidence to the Oneida Police Department showing that he or she has notified the police department or other law enforcement agency of the animal's new residence, including the name, address and telephone number of the new owner. The Oneida Police Department shall forward all such notifications to the Environmental, Health, Safety, and Land Division

within a reasonable amount of time.

(b) The Trial Court may order a dangerous animal to be destroyed. If such an order is issued, the Trial Court shall require the owner submit proof of destruction within five (5) business days from a licensed veterinarian. If the owner does not satisfy these requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall seize the animal and enforce compliance at the cost of the owner.

(c) The Trial Court may mandate attendance at an additional Trial Court hearing if restitution is appropriate.

304.10-5. Appeal of the Trial Court's Decision. An appeal of the Trial Court's decision on the dangerous animal determination may be appealed to the Nation's Court of Appeals.

(a) An appeal shall be submitted to the Court of Appeals within five (5) business days from the date of the Trial Court's decision.

(b) Upon an appeal to the Court of Appeals, the order to remove the animal from the Reservation or any order to destroy an animal is stayed pending the outcome of the appeal. 604.10-6. *Dangerous Animal Exception*. The Trial Court may provide an exception to the dangerous animal provisions of this law for a law enforcement or military animal upon presentation by the animal's owner or handler of a satisfactory arrangement for safe keeping of the

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#### 304.11. Owner Liability

- 304.11-1. An owner shall be liable for damages caused by his or her domestic animal.
  - (a) First Offense. The owner is liable for the full amount of damages caused by the domestic animal.
  - (b) *Subsequent Offenses*. The owner shall be liable for two (2) times the full amount of damages caused by the domestic animal if the owner knew or should have known that the domestic animal previously caused damages.

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#### **304.12.** Enforcement of Violations

- 304.12-1. *Citations*. A citation for the violation of this law and/or orders issued pursuant to this law may include fines, penalties and conditional orders in accordance with the fine, penalty, and licensing fee schedule. A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.
  - (a) The act of contesting a dangerous animal determination shall follow the process contained in section 304.10.
- 304.12-2. *Fines*. All fines as a result of a citation shall be paid to the Judiciary. Money received from fines shall be contributed to the General Fund.
  - (a) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

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End.

491 Adopted - BC-03-13-96-B 492 Amended - BC-06-22-11-G 493 Amended - BC-06-28-17-B 494 Amended - BC-05-08-19-C 495 Amended - BC-

# FINANCE ADMINISTRATION Fiscal Impact Statement



## **MEMORANDUM**

TO: Lawrence Barton, Chief Financial Officer

FROM: RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

DATE: April 29, 2020

**RE:** Fiscal Impact of the Domestic Animal Law Amendment

I. Estimated Fiscal Impact Summary

Law: Curfew Law		]	Draft 2
	Oneida Police Department Oneida Environmental Health, Safety and Land Division Oneida Conservation Department Oneida Environmental Resource Board		
Implementing Agency Oneida Comprehensive Housing Division Oneida Land Commission Oneida Emergency Coordinator Oneida Judiciary			
<b>Estimated time to comply</b>	10 days, in compliance wit	h the Legislative Proce	edures Act
<b>Estimated Impact</b>	Current Fiscal Year 10 Year Estimate		imate
<b>Total Estimated Fiscal Impact</b>	Indeterminate	Indeterminate	

#### II. Background

#### A. Legislative History

This law was adopted by the Oneida Business Committee by resolution BC 03-13-96B, amended by BC 06-22-11-G, BC 06-28-17B, and BC 05-08-19C. The required Domestic Animal Law Penalty and Fine Schedule was adopted by the Oneida Business Committee by resolution BC-05-08-19-C. The required Prohibited Animals was adopted by the Oneida Business Committee by resolution BC-05-08-19E.

#### B. Summary of Content

The amendment removes an incorrect reference to the Nation's territorial jurisdiction, removes duplicative personal jurisdiction provision and citation process and adds an animal abandonment provision.

#### 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.

#### IV. Executive Summary of Findings

- The Domestic Animal Law incorrectly states the territorial jurisdiction is limited to land owned by the Nation or individual trust and/or fee land of a member of the Nation. The Nation's jurisdiction is defined in the Constitution and By-Laws of the Nation and the Nation's Judiciary. The amendment deletes the incorrect reference.
- The amendment deletes reference to the Nation's personal jurisdiction in the Domestic Animal Law. The Judiciary law already defines the Nation's personal jurisdiction over members of the Oneida Nation, members of other federally recognized Indian tribes, and any "non-Indians" consenting to the jurisdiction of the Nation.
- The amendment updates the Enforcement of Violations section to properly reflect a citation will follow the procedure contained in the Nation's laws and policies governing citations.
- The amendment adds an Abandonment provision.

#### V. Agency

There are no startup, personnel, office or documentation costs associated with this legislation. The amendments will become effective 10 days from adoption.



#### VI. Financial Impact

The Domestic Animal Law includes a provision for a Fine, Penalty, and Licensing Fee Schedule. The required Fine, Penalty, and Licensing Fee Schedule was adopted by the Oneida Business Committee by resolution BC-05-08-19-C. The Domestic Animal Law grants the Oneida Police Department the authority to issue citations consistent with the fine and penalty schedule. All fines as a result of a citation shall be paid to the Judiciary. Money received shall be returned to the General Fund. The impact of the fines is indeterminate as the number of resulting fines is an unknown variable. According to the Oneida Police Department statistics the average amount of fines collected in the prior four-year period was six thousand sixty-eight dollars (\$6,068.00) annually.

#### VII. Recommendation

Finance Department does not make a recommendation in regard 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

1	Aı	BC Resolution # mended Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule
2 3 4 5	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
6 7	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and
8 9 10	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
11 12 13 14	WHEREAS,	the Domestic Animals law ('the Law") was adopted by the Oneida Business Committee through resolution BC-03-13-96-B, and the amended by resolutions BC-06-22-11-G, BC-06-28-17-B, BC-05-08-19-C, and BC; and
15 16 17 18	WHEREAS,	the Law delegates joint authority to the Environmental, Health, Safety, and Land Division and the Environmental Resource Board to develop a fine, penalty, and licensing fee schedule; and
19 20 21	WHEREAS,	the fine, penalty, and licensing fee schedule is required to be adopted by the Oneida Business Committee through resolution; and
22 23 24 25	WHEREAS,	the Environmental, Health, Safety, and Land Division and Environmental Resource Board jointly developed a fine, penalty, and licensing fee schedule that was adopted by the Oneida Business Committee through resolution BC-05-08-19-D; and
26 27 28 29	WHEREAS,	the Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule resolution is being amended to correspond with the adoption of the most recent amendments to the Law through resolution BC; and
30 31 32 33 34 35	WHEREAS,	on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" which declared a Public Health State of Emergency for the Nation in regard to the COVID-19 virus until April 12, 2020, and this Public Health State of Emergency was extended to May 12, 2020, through the adoption of resolution BC-03-28-20-A, "Extension of March 12th Declaration of Public Health State of Emergency"; and
36 37 38 39 40	WHEREAS,	on April 8, 2020, the Oneida Business Committee adopted resolution BC-04-08-20-C titled, "Tier V Budget Contingency Declared for Remainder of Fiscal Year 2020," which requires greater reduction in expenses as a result of zero gaming revenues supporting governmental functions, and included initial and on-going layoffs; and
41 42 43	WHEREAS,	the Oneida Business Committee also adoption resolution BC-04-08-20-B titled. "Placing Listed Boards, Committees, and Commissions in Temporary Closure Status" which identified that continuing to operate certain boards, committees, and commissions of the

Nation would generate expenses that would affect the overall financial status of the Nation, and therefore certain boards, committees, and commissions should be placed on temporary closure for the remainder of Fiscal Year 2020 and during any continuing resolution for Fiscal Year 2021 to preserve funding for necessary governmental services and activities; and

**WHEREAS,** the Environmental Resource Board was one of the boards, committees, and commissions of the Nation identified in resolution BC-04-08-20-B and placed in temporary closure status, and therefore not available to approve amendments to this resolution; and

**WHEREAS,** the Environmental, Health, Safety, and Land Division approved this resolution to come before the Oneida Business Committee for adoption; and

**NOW THEREFORE BE IT RESOLVED,** that the Nation hereby sets forth the following licensing and permit fee schedule in accordance with the Domestic Animals law:

LICENSING AND PERMIT FEE SCHEDULE					
License/Permit Type	Reference	Fee (per animal)	License/Permit Period	Location to Obtain License/Permit	
Cat License	304.6-1	\$5 if spayed or neutered; or \$25	January 1 – December 31	LBDC or Oneida Conservation	
Dog License	304.6-1	\$5 if spayed or neutered; or \$25	January 1 – December 31	LBDC or Oneida Conservation	
Additional Dog/Cat Permit	304.6-3(b)	\$5 if spayed or neutered; or \$25	January 1 – December 31	LBDC or Oneida Conservation	
Prohibited Animal Permit	304.9-4	\$50 - \$500	January 1 – December 31	LBDC or Oneida Conservation	
Conditional Use Permit – Livestock and Hens on Residential Areas	304.7-1 and 304.8-1	\$0	Permit expires when permittee resides at an address that is different than the address on the permit	Oneida Zoning Department	

**BE IT FURTHER RESOLVED**, that the Nation hereby sets forth the following fine and penalty schedule in accordance with the Domestic Animals law:

FINE AND PENALTY SCHEDULE					
Violation	Reference	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup> Offense	Mandatory
		Offense	Offense	and Up	Appearance
	TREATMEN	NT OF ANIM	ALS		
Failure to provide food and water	304.5-1	\$75	\$150	\$500	No
Failure to comply with shelter standards	304.5-2(a) 304.5-2(b)	\$75	\$150	\$500	No
Failure to comply with space standards	304.5-2(c)	\$75	\$150	\$500	No
Failure to comply with sanitation standards	304.5-2(d)	\$75	\$150	\$500	No

#### BC Resolution # \_\_\_\_\_ Amended Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule Page 3 of 4

Coilure to comply with	204 5 2	Φ7 <i>E</i>	<b>\$150</b>	<b>\$500</b>	No
Failure to comply with tethering standards	304.5-3	\$75	\$150	\$500	INO
Mistreatment of animals	304.5-4	\$500	\$1,000	\$2,000	Yes
Abandonment of an animal	304.5-5	\$500	\$1,000	\$2,000	Yes
Abandoninent of all allillar		AND CATS		ψ2,000	163
Failure to obtain license	304.6-1	\$25	\$50	\$100	No
Improperly placed/ no attached	304.6-1(c)	\$25	\$50	\$100	No
license	, ,				
No current rabies vaccination	304.6-2	\$75	\$150	\$500	No
Exceeding limit of allowed animals (per animal)	304.6-3	\$25	\$50	\$100	No
Animal running at large	304.6-4	\$75	\$150	\$500	No
Nuisance animal	304.6-5	\$75	\$150	\$500	No
Failure to notify an animal bite	304.6-6	\$150	\$500	\$750	No
Failure to comply with ordered quarantine	304.6-6	\$150	\$500	\$750	No
Failure to obey district quarantine	304.6-7	\$150	\$500	\$750	No
gaaranino	LIV	ESTOCK	1	l	
Failure to obtain conditional	304.7-1	\$75	\$150	\$500	No
use permit		<b>4.</b> 5	• • • • • • • • • • • • • • • • • • •	4555	
Violates limitations on	304.7-2	\$75	\$150	\$500	No
livestock based on lot size		<b>,</b>	*****	7555	
Livestock at large	304.7-3	\$150	\$500	\$750	No
3		HENS			<b>'</b>
Failure to obtain conditional use permit	304.8-1	\$75	\$150	\$500	No
Prohibited keeping of rooster	304.8-2	\$75	\$150	\$500	No
Exceeding limit of allowed	304.8-3	\$75	\$150	\$500	No
hens	001.00	Ψ	Ψ100	Ψοσο	110
Violation of standards for keeping hens	304.8-4	\$75	\$150	\$500	No
Nuisance hens	304.8-5	\$75	\$150	\$500	No
. 13.34.133 113113		ITED ANIMA		1 4000	1
Possessing a prohibited animal	304.9-1	\$250	\$500	\$1,000	No
Failure to obtain prohibited animal permit	304.9-4	\$250	\$500	\$1,000	No
Failure to provide notice of	304.9-7	\$250	\$500	\$1,000	No
release/escape	JU4.3-1	ΨΖΟΟ	ψ500	ψ1,000	INO
10.000,0000pc	DANGER	OUS ANIM	AL		1
Possessing a dangerous	304.10-1	\$500	\$1,000	\$2,000	No
animal			,		
Failure to remove animal from the Reservation	304.10-2(c) 304.10-4(a)	\$500	\$1,000	\$2,000	No
Failure to follow leash/muzzle requirements for dangerous animal	304.10-3(b)(1)	\$500	\$1,000	\$2,000	No

Failure to follow confinement requirements for dangerous animal	304.10-3(b)(2)	\$500	\$1,000	\$2,000	No
Failure to post required signs for dangerous animal	304.10-3(b)(3)	\$500	\$1,000	\$2,000	No
Failure to comply with notification requirements for	304.10-3(b)(4)	\$500	\$1,000	\$2,000	No
dangerous animal	304.10-4(a)(1)	<b>.</b>	*	<b>^</b>	
Failure to submit proof of destruction of animal	304.10-4(b)	\$150	\$300	\$500	No

**BE IT FURTHER RESOLVED,** that in addition to the fines listed above additional penalties may include seizure or impoundment of animal, restitution, costs, damages, dangerous animal determination, and destruction of animal as provided for by the Domestic Animals law.

**BE IT FURTHER RESOLVED,** criminal charges and referrals may be appropriate in certain cases and are not prohibited.

**BE IT FURTHER RESOLVED,** the issuance of a citation for a third offense or more on the fine and penalty schedule shall require the mandatory appearance of the offender at the Trial Court's citation pre-hearing.

**BE IT FURTHER RESOLVED**, the Oneida Police Department Officer or Conservation Warden issuing the citation shall have the discretion to require a mandatory appearance of the offender at the Trial Court's citation pre-hearing for any violation of this law if deemed appropriate.

**BE IT FINALLY RESOLVED**, the Oneida Business Committee hereby adopts this resolution which shall become effective on May 29, 2020.



### Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



#### Statement of Effect

Amended Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule

#### **Summary**

This resolution adopts an amended fine, penalty, and licensing fee schedule in accordance with the Domestic Animals law.

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

Date: April 30, 2020

#### Analysis by the Legislative Reference Office

The Domestic Animals law ("the Law") was adopted for the purpose of protecting the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals; setting minimum standards for the treatment of animals; prohibiting certain species of animals from being brought onto the Reservation; regulating the keeping of livestock on lots zoned residential within the Reservation; and establishing consequences for damages caused by domestic animals. [3 O.C. 304.1-1].

The Law delegates joint authority to the Environmental, Health, Safety, and Land Division and the Environmental Resource Board to develop a fine, penalty, and licensing fee schedule. [3 O.C. 304.5-3]. This fine, penalty, and licensing fee schedule is required to be adopted by the Oneida Business Committee through resolution. [3 O.C. 304.5-3].

The Environmental, Health, Safety, and Land Division and the Environmental Resource Board jointly developed a fine, penalty, and licensing fee schedule that was adopted by the Oneida Business Committee through resolution BC-05-08-19-D.

The Oneida Business Committee will consider the adoption of amendments to the Domestic Animals law on May 13, 2020. This resolution is amending the Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule resolution to correspond with that adoption of the most recent amendments to the Law.

Additionally, this resolution identifies that the Environmental Resource Board was placed in temporary closure status in accordance with resolution BC-04-08-20-B and therefore is unavailable to approve amendments to this resolution prior to consideration by the Oneida Business Committee. The proposed amendments were approved by the Environmental, Health, Safety, and Land Division.

The resolution sets forward to licensing fee schedule and fine and penalty schedule, and also addresses additional penalties that may be used in the enforcement of this Law, the allowance for criminal charges and referrals in addition to penalties under this Law, and mandatory appearances at the Nation's Trial Court's pre-hearing for violations of this law.

#### Conclusion

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



## May 5, 2020, Legislative Operating Committee E-Poll Adoption of Election Law Emergency Amendments Adoption Packet

E-POLL REQUEST: Adoption of the Election Law Emergency Amendments Adoption Packet



#### **Good Afternoon Legislative Operating Committee,**

This e-mail serves as the e-poll for the approval of the Election law emergency amendments adoption packet.

#### **EXECUTIVE SUMMARY**

Emergency amendments to the Election law (the "Law") are being sought to address the impact of the COVID-19 pandemic on the Nation's 2020 General Election. The emergency amendments to the Law will:

- Allow the Election Board to recommend to the Oneida Business Committee the cancellation of the primary election when large gatherings of people present a substantial risk to the health and safety of the Nation's citizens, and subsequently allow the Oneida Business Committee to cancel the primary election [1 O.C. 102.12-2(b)]; and
- Clarify that if a primary election is canceled then all eligible candidates shall be placed on the ballot for the General Election [1 O.C. 102.12-2(b)(1)].

The world is currently facing a pandemic of COVID-19 after an outbreak began in Wuhan, China and quickly spread to many other countries throughout the world, including the United States. The COVID-19 pandemic has resulted in high rates of infection and mortality as well as vast economic impacts including effects on the stock market and the closing of all non-essential businesses. The number of positive tests in Wisconsin, as well as across the country, continue to increase.

On March 12, 2020, in accordance with Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and provided the necessary authority should action need to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. [3 O.C. 302.8-1]. This declaration of a Public Health State of Emergency was extended by the Oneida Business Committee until May 12, 2020, through the adoption resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency." On May 6, 2020, the Oneida Business Committee will consider further extending the Public Health State of Emergency until June 11, 2020, through the adoption of resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until June 11, 2020."

On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. The "Safer at Home" declaration was updated by the COVID-19 Core Decision Making Team on April 21, 2020.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency amendments to the Election law are necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendments are needed to protect the Reservation population against the public health crisis that is the COVID-19 pandemic. The elimination of the requirement to hold a primary election while allowing those individuals who applied to be placed on the ballot for the General Election, as long as all eligibility requirements are met, will eliminate any unnecessary contact between individuals which could spread COVID-19, while also ensuring that the July 2020 General Election can occur without interruption.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The primary election is required to occur at least sixty (60) calendar days prior to the General Election, which is tentatively scheduled for July 25, 2020. [1 O.C. 102.12-1]. Therefore, the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the General Election could still occur on July 25, 2020, without violating the primary election procedures contained in the Election law.

An e-poll is necessary for this matter because the May 6, 2020, Legislative Operating Committee meeting has been canceled due to the COVID-19 pandemic, and immediate action is required by the Legislative Operating Committee to approve the Election law emergency amendments adoption packet so it may be forwarded to the Oneida Business Committee for consideration during the May 13, 2020, Oneida Business Committee meeting.

#### **REQUESTED ACTION**

Approve the Election law emergency amendments adoption packet and forward to the Oneida Business Committee for consideration.

#### **DEADLINE FOR RESPONSE**

May 5, 2020 at 4:30 p.m.

All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by Kirby Metoxen, Jennifer Webster, David P. Jordan, Daniel Guzman King, and Ernest Stevens III.

#### Approve: E-POLL REQUEST: Adoption of the Election Law Emergency Amendments Adoption Packet





#### RE: E-POLL REQUEST: Adoption of the Election Law Emergency Amendments Adoption Packet



Jennifer A. Webster

To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen

Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Clorissa N. Santiago

← Reply ≪ Reply All → Forward

Tue 5/5/2020 2:00 PM

Approve, Jenny

#### RE: E-POLL REQUEST: Adoption of the Election Law Emergency Amendments Adoption Packet



David P. Jordan

To LOC; Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Clorissa N. Santiago

≪ Reply All

← Reply

Tue 5/5/2020 2:16 PM

→ Forward

Approve

#### E-POLL REQUEST: Adoption of the Election Law Emergency Amendments Adoption Packet



Daniel P. Guzman

To Kirby W. Metoxen; David P. Jordan; LOC; Ernest L. Stevens; Jennifer A. Webster

Cc Jameson J. Wilson; Leyne C. Orosco; Clorissa N. Santiago; Rosa J. Laster; Jessica L. Wallenfang; Fawn J. Billie

≪ Reply All → Forward ← Reply Tue 5/5/2020 2:18 PM

Approve

Sent from Workspace ONE Boxer

#### Re: E-POLL REQUEST: Adoption of the Election Law Emergency Amendments Adoption Packet



Ernest L. Stevens

To LOC; Daniel P. Guzman; David P. Jordan; Jennifer A. Webster; Kirby W. Metoxen

Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Clorissa N. Santiago

≪ Reply All ... ← Reply → Forward

Tue 5/5/2020 2:31 PM

Approve

Sent from my Verizon, Samsung Galaxy smartphone



# Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson 🔯

DATE: May 13, 2020

RE: Election Law Emergency Amendments

Please find the following attached backup documentation for your consideration of the Election Law Emergency Amendments:

- 1. Resolution: Adoption of Emergency Amendments to the Election Law
- 2. Statement of Effect: Adoption of Emergency Amendments to the Election
- 3. Election Law Emergency Amendments Legislative Analysis
- 4. Election Law Amendments (Redline)
- 5. Election Law Amendments (Clean)

#### Overview

Emergency amendments to the Election law (the "Law") are being sought to address the impact of the COVID-19 pandemic on the Nation's 2020 General Election. The emergency amendments to the Law will:

- Allow the Election Board to recommend to the Oneida Business Committee the cancellation of the primary election when large gatherings of people present a substantial risk to the health and safety of the Nation's citizens, and subsequently allow the Oneida Business Committee to cancel the primary election [1 O.C. 102.12-2(b)]; and
- Clarify that if a primary election is canceled then all eligible candidates shall be placed on the ballot for the general election  $[1 \ O.C. \ 102.12-2(b)(1))]$ .

The world is currently facing a pandemic of COVID-19 after an outbreak began in Wuhan, China and quickly spread to many other countries throughout the world, including the United States. The COVID-19 pandemic has resulted in high rates of infection and mortality as well as vast economic impacts including effects on the stock market and the closing of all non-essential businesses. The number of positive tests in Wisconsin, as well as across the country, continue to increase.

On March 12, 2020, in accordance with Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and provided the necessary authority should action need to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. [3 O.C. 302.8-1]. This declaration of a Public Health State of Emergency was extended by the Oneida Business Committee until May 12, 2020, through the adoption resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency," and then

extended again until June 11, 2020, through the adoption of resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until June 11, 2020."

On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. The "Safer at Home" declaration was updated by the COVID-19 Core Decision Making Team on April 21, 2020.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency amendments to this Law are necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendments are needed to protect the Reservation population against the public health crisis that is the COVID-19 pandemic. The elimination of the requirement to hold a primary election while allowing those individuals who applied to be placed on the ballot for the general election, as long as all eligibility requirements are met, will eliminate any unnecessary contact between individuals which could spread COVID-19, while also ensuring that the July 2020 General Election can occur without interruption.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The primary election is required to occur at least sixty (60) calendar days prior to the General Election, which is tentatively scheduled for July 25, 2020. [1 O.C. 102.12-1]. Therefore, the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the General Election could still occur on July 25, 2020, without violating the primary election procedures contained in the Election law.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months, or until the 2020 General Election has concluded, whichever is sooner. There will be one (1) opportunity to extend the emergency amendments for an additional six (6) months. [1 O.C. 109.9-5(b)].

#### **Requested Action**

Approve the Resolution: Adoption of Emergency Amendments to the Election Law



### **Oneida Nation**

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

# BC Resolution # Adoption of Emergency Amendments to the Election Law

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1 2 3	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and			
4	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and			
5 6 7 8 9 10 11 12 13	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and			
	WHEREAS,	the Election law ("the Law") was adopted by the General Tribal Council for the purpose of governing the procedures for the conduct of orderly elections of the Nation, and was most recently amended by the Oneida Business Committee on an emergency basis through the adoption of resolution BC-03-17-20-B; and			
14 15 16 17 18	whereas, the Law requires a primary election be held on a Saturday at least sixty (60) can prior to the election whenever there are three (3) or more candidates for Business Committee officer positions or sixteen (16) or more candidates for council member positions; and				
19 20 21 22 23 24	WHEREAS,	after the primary election the two (2) candidates receiving the highest number of votes cast for each Oneida Business Committee officer position shall be placed on the ballot for the General Election, while the fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot for the General Election; and			
25 26 27 28 29	WHEREAS,	the federal government has proclaimed a public health emergency related to the spread of the COVID-19 virus and has identified that the spread of the virus has resulted in large numbers of individuals becoming ill and high mortality rates, impacts to the stock markets, and businesses; and			
30 31 32 33	WHEREAS,	state governors, including the State of Wisconsin, have declared public health emergencies and state public health officers have issued orders, for example, closing public schools, limiting public gatherings, and closing restaurants and bars except for take-out orders; and			
34 35 36 37 38 39	WHEREAS,	on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses; and			
40 41 42 43	WHEREAS,	on March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed; and			

WHEREAS, on March 28, 2020 the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's Public Health State of Emergency declaration until May 12, 2020;

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- WHEREAS, on May 6, 2020, the Oneida Business Committee adopted resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until June 11, 2020" which further extended the Nation's Public Health State of Emergency declaration until June 11, 2020; and
- WHEREAS, on April 27, 2020, the Oneida Election Board took action to postpone the primary for the 2020 General Elections in order to avoid large gatherings of members where the virus could be easily spread; and
- the Center for Disease Control has identified that the months of March, April and May WHEREAS, should be the time when the potential for the highest increases in the number of confirmed cases would occur: and
- WHEREAS. the Oneida Election Board has requested emergency amendments to the Election law to address the impact of COVID-19 on the Nation; and
- WHEREAS, the proposed emergency amendments to the Law allow the Election Board to recommend to the Oneida Business Committee the cancellation of the primary election when large gatherings of people present a substantial risk to the health and safety of the Nation's citizens, and subsequently allow the Oneida Business Committee to cancel the primary election: and
- WHEREAS. the proposed emergency amendments to the Law clarify that if a primary election is canceled then all eligible candidates shall be placed on the ballot for the General Election; and
- WHEREAS, the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis, to be in effect for a period of six (6) months, renewable for an additional six (6) months; and
- WHEREAS. emergency adoption of legislation is allowed when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act; and
- WHEREAS, the emergency adoption of these amendments to the Law are necessary for the preservation of the public health, safety, and general welfare of the Reservation population to protect the Reservation population against the public health crisis that is the COVID-19 pandemic since the elimination of the requirement to hold a primary election while allowing those individuals who applied to be placed on the ballot for the General Election, as long as all eligibility requirements are met, will eliminate any unnecessary contact between individuals which could spread COVID-19; and
- WHEREAS, observance of the requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest since the primary election at is required to occur at least sixty (60) calendar days prior to the General Election, which is tentatively scheduled for July 25, 2020, and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the General Election could still occur on July 25, 2020, without violating the primary election procedures contained in the Election law; and

BC Resolution \_\_\_\_\_\_
Adoption of Emergency Amendments to the Election Law
Page 3 of 3

100 101 102 103	WHEREAS,	the Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation; and
104 105 106 107	WHEREAS,	the Oneida Election Board is actively monitoring the public health crises and will notify membership as soon as possible should the election days be canceled, postponed or polling processes be amended to reduce the spread of the virus; and
108 109 110	<b>NOW THEREFORE BE IT RESOLVED,</b> the Oneida Business Committee hereby adopts emergence amendments to the Election Law effective immediately for six (6) months from the date of adoption of the resolution, or until the 2020 General Election is concluded, whichever is sooner.	



### Oneida Nation

**Oneida Business Committee** Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



#### Statement of Effect

Adoption of Emergency Amendments to the Election Law

#### Summary

This resolution adopts emergency amendments to the Election law which allows the Election Board to recommend to the Oneida Business Committee the cancellation of the primary election when large gatherings of people present a substantial risk to the health and safety of the Nation's citizens.

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

Date: May 4, 2020

#### Analysis by the Legislative Reference Office

This resolution adopts emergency amendments to the Election law ("the Law"). The purpose of the Law is to govern the procedures for the conduct of orderly elections of the Nation. [1 O.C. 102.1-1]. The emergency amendments to the Law will:

- Allow the Election Board to recommend to the Oneida Business Committee the cancellation of the primary election when large gatherings of people present a substantial risk to the health and safety of the Nation's citizens, and subsequently allow the Oneida Business Committee to cancel the primary election [1 O.C. 102.12-2(b)]; and
- Clarify that if a primary election is canceled then all eligible candidates shall be placed on the ballot for the general election  $[1 \ O.C. \ 102.12-2(b)(1))].$

The Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety or general welfare of the reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [1 O.C. 109.9-5].

The resolution provides various information on the COVID-19 pandemic that the world is now facing. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. On March 12, 2020, in accordance with Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a Public Health State of Emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. This declaration of a Public Health State of Emergency was extended by the Oneida Business Committee until May 12, 2020, through the adoption of resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency," and then extended again until June 11, 2020, through the adoption of resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until June 11, 2020."

On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. The "Safer at Home" declaration was updated by the COVID-19 Core Decision Making Team on April 21, 2020.

The resolution provides that the emergency amendments to this Law are necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendments are needed to protect the Reservation population against the public health crisis that is the COVID-19 pandemic. The elimination of the requirement to hold a primary election while allowing those individuals who applied to be placed on the ballot for the General Election, as long as all eligibility requirements are met, will eliminate any unnecessary contact between individuals which could spread COVID-19, while also ensuring that the July 2020 General Election can occur without interruption.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The primary election is required to occur at least sixty (60) calendar days prior to the General Election, which is tentatively scheduled for July 25, 2020. [1 O.C. 102.12-1]. Therefore, the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the General Election could still occur on July 25, 2020, without violating the primary election procedures contained in the Election law.

The emergency amendments to the Law will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendments will remain effective for six (6) months, or until the 2020 General Election concludes, whichever is sooner. The LPA provides the possibility to extend the emergency amendments for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

#### Conclusion

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





### **EMERGENCY AMENDMENTS TO ELECTION LAW LEGISLATIVE ANALYSIS**

#### **SECTION 1. EXECUTIVE SUMMARY**

Analysis by the Legislative Reference Office				
Intent of the Proposed Amendments	<ul> <li>Allow the Election Board to recommend to the Oneida Business Committee the cancellation of the primary election when large gatherings of people present a substantial risk to the health and safety of the Nation's citizens, and subsequently allow the Oneida Business Committee to cancel the primary election; and</li> <li>Clarify that if a primary election is canceled then all eligible candidates shall be placed on the ballot for the General Election.</li> </ul>			
Purpose	To govern the procedures for the conduct of orderly elections of the Nation [1 O.C. 102.1-1]			
Affected Entities	Oneida Election Board, Business Committee Support Office, Oneida Business Committee, Oneida Nation Judiciary, Oneida Gaming Commission, Legal Resource Center, Oneida Land Claims Commission, Oneida Land Commission, Oneida Nation Commission on Aging, Oneida Nation School Board, Oneida Trust Enrollment Committee.			
Related Legislation	Boards, Committees, and Commissions law, Emergency Management and Homeland Security law.			
<b>Public Meeting</b>	A public meeting is not required for emergency legislation [1 O.C. 109.8-1(b) and 109.9-5(a)].			
Fiscal Impact	A fiscal impact statement is not required for emergency legislation [1 O.C. 109.9-5(a)].			
Expiration of Emergency Amendments	Emergency amendments expire six (6) months after adoption and may be renewed for one additional six (6) month period.			

#### **SECTION 2. LEGISLATIVE DEVELOPMENT**

- A. Background. The Election law was first adopted on June 19, 1993, and most recently amended on an emergency basis by the Oneida Business Committee on March 17, 2020. The Election law governs the procedures for the conduct of orderly elections of the Nation. [1 O.C. 102.1-1].
  - March 17, 2020 Emergency Amendments. The Election law was amended on an emergency basis through resolution BC-03-17-20-B in response to the COVID-19 pandemic for the purpose of:
    - Eliminating the caucus from the election process;
    - Requiring an individual to submit an application in order to have his or her name placed on a ballot for an election;
    - Eliminating the requirement for an individual to obtain at least ten (10) signatures of qualified voters when submitting an application to be placed on the ballot;
    - Requiring that all applications be submitted to the Business Committee Support Office by the close of business on April 24, 2020;
    - Eliminating referendums from the election process; and
    - Reducing the number of Oneida Election Board members who are required to sign the election totals on machine counted ballots.

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- **B.** *COVID-19 Pandemic*. The world is currently facing a pandemic of the coronavirus disease 2019 (COVID-19). The COVID-19 outbreak originated in Wuhan, China and has spread to many other countries throughout the world, including the United States. The COVID-19 pandemic has resulted in high rates of infection and mortality as well as vast economic impacts including effects on the stock market and the closing of all non-essential businesses.
  - *Declarations of Emergency.*

- On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared the Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority should action need to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
  - The Public Health State of Emergency was extended by the Oneida Business Committee through the adoption of resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" until May 12, 2020.
  - The Public Health State of Emergency was then again extended by the Oneida Business Committee through the adoption of resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until June 11, 2020" until June 11, 2020.
- On March 12, 2020, Wisconsin Governor Evers declared a public health emergency for the State of Wisconsin based on COVID-19 cases in Wisconsin.
- On March 13, 2020, President Trump proclaimed a national emergency related to the spread of COVID-19.
- Additional Action taken by the Nation in Response to COVID-19.
  - On March 17, 2020, the Oneida Business Committee adopted emergency amendments to the Emergency Management and Homeland Security law to create and delegate authority to a COVID-19 Core Decision Making Team ("COVID-19 Team"). [3 O.C. 302.10]. When a public health emergency has been declared, the COVID-19 Team has the authority to declare exceptions to the Nation's laws, policies, procedures, regulations, or standard operating procedures during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees. [3 O.C. 302.10-2]. These declarations remain in effect for the duration of the Public Health State of Emergency. [3 O.C. 302.10-3].
  - On March 24, 2020, the Nation's COVID-19 Team issued a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. The "Safer at Home" declaration was updated by the COVID-19 Team on April 21, 2020.
  - On April 8, 2020, the Oneida Business Committee adopted resolution BC-04-08-20-C titled, "*Tier V Budget Contingency Declared for Remainder of Fiscal Year 2020*," which required a great reduction in expenses as a result of zero gaming revenues supporting governmental functions and included initial and on-going layoffs.
- **C.** 2020 General Election. The Nation is required to hold a General Election every three (3) years in the month of July. [Constitution and Bylaws of the Oneida Nation Article III, Section 5; 1 O.C. 102.9-1].
  - *Positions on the Ballot for the 2020 General Election*. The 2020 General Election ballot would include the following positions:
    - Oneida Business Committee;
      - One (1) vacancy Chairperson, three (3) year term.
      - One (1) vacancy Vice Chairperson, three (3) year term.
      - One (1) vacancy Treasurer, three (3) year term.
      - One (1) vacancy Secretary, three (3) year term.

- Five (5) vacancies Council Member, three (3) year term. 68 69 Oneida Election Board; ■ Three (3) vacancies – three (3) year term. 70 71 Oneida Gaming Commission; One (1) vacancy – five (5) year term. 72 73 Legal Resource Center;

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- One (1) vacancy Attorney, four (4) year term.
- One (1) vacancy Advocate, four (4) year term.
- Oneida Land Claims Commission;
  - Two (2) vacancies three (3) year term.
- Oneida Land Commission;
  - Two (2) vacancies three (3) year term.
- Oneida Nation Commission on Aging;
  - Three (3) vacancies three (3) year term.
- Oneida Nation School Board;
  - Three (3) vacancies Parent, three (3) year term.
- Oneida Trust Enrollment Committee; and
  - Two (2) vacancies three (3) year term.
- Oneida Judiciary.
  - Court of Appeals:
    - One (1) vacancy Appellate Court Chief Judge, six (6) year term.
    - One (1) vacancy Appellate Court Judge, six (6) year term.
  - Trial Court:
    - One (1) vacancy Trial Court Chief Judge, six (6) year term.
    - One (1) vacancy Trial Court Judge, six (6) year term.
- Originally, the caucus for the 2020 General Election was scheduled to be held on March 14, 2020, with the primary election to be held on May 16, 2020, and the General Election occurring on July 4, 2020. Upon cancelation of the caucus through the adoption of emergency amendments through BC-03-17-20-B, the primary election was rescheduled to May 23, 2020, and the 2020 General Election was rescheduled to July 25, 2020.
- **D.** Request for Emergency Amendments. In response to the COVID-19 pandemic, emergency amendments to the Law are being sought by the Election Board to allow the Oneida Business Committee, upon recommendation of the Election Board, to cancel a primary election when large gatherings of people present a substantial risk to the health and safety of the Nation's citizens. Canceling the primary election and providing that all eligible candidates be placed on the ballot for the General Election will ensure that the July 2020 General Election can occur as scheduled.

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

- A. Representatives from the following departments or entities participated in the development of this Law and legislative analysis:
  - Oneida Law Office.
- **B.** The following laws were reviewed in the drafting of this analysis:
  - Oneida Nation Constitution and Bylaws;
  - Emergency Management and Homeland Security law; and
  - Boards, Committees, and Commissions law.

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

A. These amendments are being considered on an emergency basis. The Oneida Business Committee may 115 116 temporarily enact an emergency law "where legislation is necessary for the immediate preservation of

- public health, safety, or general welfare of the Reservation population and enactment or amendment of legislation is required sooner than would be possible under this law" [1 O.C. 109.9-5].
  - Emergency amendments are being pursued for the immediate preservation of the public health, safety, and general welfare of the Reservation population against the public health crisis that is the COVID-19 pandemic. Chairman Tehassi Hill declared a Public Health State of Emergency for the Nation on March 12, 2020.
  - Observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The primary election at is required to occur at least sixty (60) calendar days prior to the General Election, which is tentatively scheduled for July 25, 2020. [1 O.C. 102.12-1]. Therefore, the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the General Election could still occur on July 25, 2020, without violating the primary election procedures contained in the Election law.
  - **B.** Emergency amendments typically expire six (6) months after adoption, with one (1) opportunity for a six (6) month extension of the emergency amendments. [1 O.C. 109.9-5(b)]. The resolution for these emergency amendments provides that the amendment will expire in six (6) months or until the 2020 General Election is concluded, whichever is sooner.
  - **C.** The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact statement will eventually be required when considering permanent adoption of these amendments.
  - **D.** The Legislative Operating Committee added these emergency amendments to the Active Files List on March 16, 2020.

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

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- A. Cancelation of the Primary Election. A primary election is held on a Saturday at least sixty (60) calendar days prior to the election whenever there are three (3) or more candidates for any Oneida Business Committee officer positions or sixteen (16) or more candidates for the at-large council member positions. [1 O.C. 102.12-1]. The purpose of a primary election is to narrow down the candidates that will appear on the ballot for the General Election. After the primary election the two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot for the General Election, while the fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot for the General Election. [1] O.C. 102.12-1(a)-(b)]. The proposed amendments allow the Election Board to recommend to the Oneida Business Committee the cancellation of the primary election when large gatherings of people present a substantial risk to the health and safety of the Nation's citizens. [1 O.C. 102.12-2(b)]. The Oneida Business Committee is then required to consider the Election Board's recommendation at the next scheduled Oneida Business Committee meeting and decide whether to cancel the primary election. [1 O.C. 102.12-2(b)]. If the Oneida Business Committee makes the decision to cancel the primary election, then all candidates that are determined eligible according to section 102.5 and are not made ineligible under section 102.6-2 shall be placed on the ballot for the General Election. [1 O.C. 102.12-2(b)(1)]. Previously, the Election law only allowed the Election Board to cancel a primary election when the Business Committee positions did not draw the requisite number of candidates for a primary. [GTC-04-23-17-A - 1 O.C. 102.12-3].
  - Effect. The proposed emergency amendment would provide flexibility for a primary election to be canceled by the Oneida Business Committee when large gatherings of people present a substantial risk to the health and safety of the Nation's citizens. The elimination of the requirement to hold a primary election while allowing those individuals who applied to be placed on the ballot for the General Election, as long as all eligibility requirements are met, will eliminate any unnecessary contact between individuals which could spread COVID-19. The inclusion of this provision in the Election law also ensures that the July 2020 General Election can occur without interruption.

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#### **SECTION 6. EXISTING LEGISLATION**

- **A.** *Related Legislation*. The following laws of the Nation are related to the emergency amendments to this Law:
  - Boards, Committees, and Commissions law. The Boards, Committees, and Commission law governs boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1].
    - The Boards, Committees, and Commissions law provides that all elected positions shall be nominated at a caucus called by the Oneida Election Board, or petition for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment. [1 O.C. 105.8-1]. The Boards, Committees, and Commissions law then goes on to provide that all other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections. [1 O.C. 105.8-2].
    - In accordance with the Boards, Committees, and Commissions law, this Law shall govern the election process for the election of a member of an entity.
  - Emergency Management and Homeland Security law. The Emergency Management and Homeland Security law provides for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; and provides for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; and establishes the use of the National Incident Management System; and designates authority and responsibilities for public health preparedness. [3 O.C. 302.1-1].
    - The Emergency Management and Homeland Security law provides that the Oneida Business Committee shall be responsible for proclaiming or ratifying the existence of an emergency. [3 O.C. 302.8-1]. A public health emergency is defined as the occurrence or imminent threat of an illness or health condition which:
      - (1) is a quarantinable disease, or is believed to be caused by bioterrorism or a biological agent; and
      - (2) poses a high probability of any of the following:
        - (A) a large number of deaths or serious or long-term disability among humans; or (B) widespread exposure to a biological, chemical, or radiological agent that creates a significant risk of substantial future harm to a large number of people. [3 O.C. 302.3-1(o)].
    - Chairman Tehassi Hill's March 12, 2020, "Declaration of Public Health State of Emergency" and the subsequent extensions conform with the requirements of the Emergency Management and Homeland Security law.

#### **SECTION 7. OTHER CONSIDERATIONS**

- **A.** *Deadline for Permanent Adoption of Amendments.* The emergency amendments will expire six (6) months after adoption or until the 2020 General Election is concluded, whichever is sooner. The emergency amendments may be renewed for an additional six (6) month period.
  - *Conclusion:* The Legislative Operating Committee will need to consider the development and adoption of permanent amendments to this Law within the next six (6) to twelve (12) months.
- **B.** Consideration of Additional Amendments. The Oneida Election Board will be actively monitoring the Public Health State of Emergency and will notify the membership of the Nation as soon as possible should the 2020 General Election day be canceled or postponed, or if the polling processes need to be amended to reduce the spread of COVID-19.
  - Conclusion: The Legislative Operating Committee may have to consider additional amendments

- to this Law if the 2020 General Election timeframe or procedure will be further impacted by the
   COVID-19 Public Health State of Emergency.
   Fiscal Impact. A fiscal impact statement is not required for emergency legislation.
- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

### Title 1. Government and Finances - Chapter 102 On<yote>a=k@= Tho Ni= Y%t Tsi> <yethiyatal@ko Tsi> Kayanl^hsla

People of the Standing Stone how it is we will appoint them the kind of laws we have **ELECTION** 

102.1.	Purpose and Policy	102.8.	Registration of Voters
102.2.	Adoption, Amendment, Repeal	102.9.	Election Process
102.3.	Definitions	102.10	. Tabulating and Securing Ballots
102.4.	Election Board	102.11.	Election Outcome and Ties
102.5.	Candidate Eligibility	102.12	Elections
102.6.	Selection of Candidates	102.13	Oneida Nation Constitution and By-law Amendments
102.7	Notice of Polling Places		

#### 1 102.1. Purpose and Policy

2 102.1-1. It is the policy of the Nation that this law shall govern the procedures for the conduct of

- 3 orderly elections of the Nation, including pre-election activities. Because of the desire for orderly
- 4 and easily understood elections, there has not been an allowance made for write-in candidates on
- 5 ballots.

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102.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida Nation in the conduct of elections. It is intended to govern all procedures used in the election process.

#### 10 102.2. Adoption, Amendment, Repeal

- 11 102.2-1. This law was adopted by the Oneida General Tribal Council by resolution GTC 07-06-
- 98-A and amended by resolutions GTC-01-04-10-A, BC-02-25-15-C, GTC-04-23-17-A, BC-03-
- 13 17-20-B, and emergency amended by BC-03-17-20-B.
- 14 102.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to
- the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding
- amendments to this law and policies adopted regarding implementation of this law are to be
- presented to the Business Committee who shall then adopt or forward action(s) to the General
- 18 Tribal Council for adoption.
- 19 102.2-3. 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
- 21 to have legal force without the invalid portions.
- 102.2-4. In the event of a conflict between a provision of this law and a provision of another law,
- 23 the provisions of this law shall control.
- 24 102.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### 102.3. Definitions

- 27 102.3-1. 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.
- 102.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.
- 31 102.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for
- 32 acceptance on a ballot.
- 33 102.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. 4:30 p.m., excluding
- 34 holidays of the Nation.
- 35 102.3-5. "Campaigning" shall mean all efforts designed to influence members of the Nation to
- support or reject a particular candidate of the Nation including, without limitation, advertising,
- 37 rallying, public speaking, or other communications with members of the Nation.

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- 38 102.3-6. "Candidate" shall mean an applicant for an elected position whose name is placed on the
- 39 ballot by the Election Board after successful application.
- 40 102.3-7. "Clerk" shall mean the election official who identifies proper registration for the purpose
- 41 of determining voter eligibility.
- 42 102.3-8. "Close of business" shall mean 4:30 p.m. Monday through Friday.
- 43 102.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political
- or otherwise, in which a Nation elected official, employee, consultant, appointed or elected,
- 45 member of any board, committee or commission, or their immediate relatives, friends or
- associates, or any other person with whom they have contact, that conflicts with any right of the
- Nation to property, information, or any other right to own and operate its enterprises, free from
- 48 undisclosed competition or other violation of such rights of the Oneida Nation, or as defined in
- any law or policy of the Nation.
- 50 102.3-10. "Election" shall mean every primary and election.
- 51 102.3-11. "General election" shall mean the election held every three (3) years in July to elect the
- 52 Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the
- Business Committee and may include contests for elected boards, committees and commissions
- 54 positions.
- 55 102.3-12. "Judge" shall mean the election official who informs and advises the Chairperson of
- discrepancies, complaints and controversy regarding voter eligibility.
- 57 102.3-13. "Judiciary" means the judicial system that was established by Oneida General Tribal
- 58 Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of
- 59 the Nation.
- 60 102.3-14. "Lot drawing" shall mean the equal chance method used to select a candidate as the
- winner of an elected position, in the case of a tie between two (2) or more candidates.
- 62 102.3-15. "Nation" means the Oneida Nation.
- 63 102.3-16. "Nation's newspaper" shall mean the Kalihwisaks, or any other newspaper operated by
- the Nation for the benefit of transmitting news to members of the Nation, which is designated by
- the Election Board as a source for election related news.
- 66 102.3-17. "Oneida Police Officer" shall mean an enrolled member of the Oneida Nation who is a
- 67 police officer on any police force.
- 68 102.3-18. "Private property" shall mean any lot of land not owned by the Nation, a residential
- dwelling or a privately owned business within the boundaries of the Reservation.
- 70 102.3-19. "Prominent locations" shall mean the polling places, main doors of the Norbert Hill
- 71 Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida
- 72 Community Health Center, the SEOTS building and all One-Stop locations.
- 73 102.3-20. "Qualified voter" shall mean an enrolled member of the Nation who is eighteen (18)
- years of age or older.
- 75 102.3-21. "Rejected Ballots" shall mean those ballots which are rejected by the vote tabulating
- 76 machine.
- 77 102.3-22. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise marred
- and is not tabulated.
- 79 102.3-23. "Teller" shall mean the election official in charge of collecting and storing of all ballots.

- 83 Section A. Establishment, Composition and Election
- 84 102.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this
- law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.
- 86 102.4-2. The Election Board shall consist of nine (9) elected members. All members shall be
- elected to terms of three (3) years, not to exceed two (2) consecutive terms.
- 88 102.4-3. *Recusal*. An Election Board member shall recuse himself/herself from participating as an
- 89 Election Board member in any pre-election, election day, or post-election activities while he or
- 90 she is an applicant or candidate in any election or there is otherwise a conflict of interest.
- 91 102.4-4. Removal. Removal of members shall be pursuant to the Oneida Removal Law. A member
- 92 who is removed from the Election Board shall be ineligible to serve on the Board for three (3)
- 93 years from the time he or she is removed from the Election Board.
- 94 102.4-5. Vacancies. Any vacancy in an unexpired term shall be filled by appointment by the
- 95 Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed
- 96 to correspond with the pre-election activities and the needs of the Election Board.
- 97 102.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.
- 98 102.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to
- the Election Board, as recommended by the Election Board, to assist with election day and preelection activities.
- 101 102.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in
- the By-laws of the Election Board, to preside over the meetings. This selection shall be carried
- out at the first meeting of the Election Board following an election. The Chairperson shall then
- ask the Election Board to select a Vice-Chairperson and Secretary.

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- Section B. Duties of the Election Board
  - 102.4-9. The Election Board shall have the following duties, along with other responsibilities listed throughout this law.
    - (a) The Election Board shall be in charge of all registration and election procedures; and
    - (b) Upon completion of an election, the Election Board shall make a final report on the election results as set out in this law.

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- Section C. Specific Duties of Officers and Election Board Members
- 102.4-10. Specific duties of the Chairperson and other Election Board members, in addition to being present at all Election Board meetings and assisting the handicapped through the voting process, are as set out herein:
  - (a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 102.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and Trust Enrollment Department personnel when their election day duties are complete; and shall post and report election results.
  - (b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.
- 123 (c) Secretary: Shall keep a record of the meetings and make them available to the Nation's Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.
  - (d) Clerks: Shall implement the requirements of identifying and registering all voters and determining voter eligibility. Clerks shall work in conjunction with the Trust Enrollment

- Department personnel in the registration process, and assist the Chairperson as directed in conducting the election. Clerks cannot be currently employed by the Trust Enrollment Department.
  - (e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as determined by this law. Shall assist the Chairperson in conducting the election.
  - (f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between members of the Nation and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

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#### Section D. Compensation Rates

- 141 102.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee.
- The Election Board shall have a budget, approved through the Nation's budgeting process.
  - 102.4-12. The Trust Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

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#### 102.5. Candidate Eligibility

- 148 Section A. Requirements
- 102.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted bylaws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.
- 152 102.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:
  - (a) be an enrolled member of the Nation, as verified by membership rolls of the Nation.
  - (b) be a qualified voter on the day of the election.
  - (c) provide proof of physical residency as required for the position for which they have applied. Proof of residency may be through one (1) or more of the following:
    - (1) a valid Wisconsin driver's license;
    - (2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;
    - (3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.

163 102.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to election.

- 102.5-4. Applications shall be filed by presenting the information to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, by April 24, 2020. No mailed, internal Nation mail delivery, faxed or other delivery method shall be accepted.
- 169 102.5-5. The names of the candidates and the positions sought shall be a public record and made
- available to the public upon the determination of eligibility by the Election Board or the Board's designated agent.

- 173 Section B. Eligibility Review
- 174 102.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal.
- 175 At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall
- select the hearing body. The hearing shall be held within two (2) business days of receipt of the
- appeal. The applicant shall be notified by phone of time and place of the hearing. The decision
- of the hearing body shall be sent via certified mail or hand delivery within two (2) business days
- of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the
- 180 Judiciary on an accelerated schedule.
- 181 102.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a position shall be notified by certified mail return receipt requested. The notice shall provide the following information:
  - (a) Position for which they were considered
  - (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
  - (c) A brief summary explaining why the applicant was found to be ineligible.
  - (d) That the applicant has two (2) business days from notification to make an appeal. Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal Nation mail, faxed or other delivery method will be accepted.

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#### Section C. Campaign Financing

#### 102.5-8. Contributions:

- (a) Solicitation of Contributions by Candidates.
  - (1) Candidates shall only accept contributions from individuals who are members of the Nation or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.
  - (2) Candidates shall not solicit or accept contributions in any office or business/facility of the Nation.
- (b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.
- 102.5-9. Campaign Signs and Campaigning:
  - (a) Placement of campaign signs:
    - (1) Campaign signs shall not be posted or erected on any property of the Nation except for private property with the owner/tenant's permission.
    - (2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.
    - (3) No campaign sign shall project beyond the property line into the public right of way.
  - (b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.
  - (c) Employees of the Nation shall not engage in campaigning for offices of the Nation during work hours. The Nation's employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.
  - (d) Enforcement. The Zoning Administrator shall cause to be removed any campaign

signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.

(e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

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#### Section D. Candidate Withdrawal

- 102.5-10. Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.
- 102.5-11. After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.
- 232 102.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.
  - 102.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.
    - 102.5-14. Candidate Withdrawal After Winning an Election.
      - (a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.
      - (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

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#### 2.6. Selection of Candidates

- 102.6-1. Any eligible member of the Nation may apply to be placed on a ballot according to the following procedures:
  - (a) Applicants shall use an official form as designated by this law which may be obtained in the Office of the Nation's Secretary.
  - (b) The form shall consist of information that satisfies the minimum requirements for eligible candidates, as descried in section 102.5-2 of this law.
  - (c) Applications shall be presented to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business on April 24, 2020. The location to drop-off applications shall be the Business Committee Support Office.
  - (d) The Nation's Secretary shall forward all applications to the Election Board Chairperson the next business day following the close of submissions.
- 102.6-2. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

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#### **102.7.** Notice of Polling Places

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- 102.7-1. The Election Board shall post a notice in the prominent locations, stating the location of 263
- the polling places and the time the polls will be open. This notice shall also be posted in an easily 264
- visible position, close to the entrance of the Nation's businesses/facilities. 265
- 102.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the 266
- 267 election, and shall remain posted until the poll closes on the day of the election.
- 102.7-3. Except for a Special Election, notice for the election shall be mailed to all Nation 268
- members, stating the time and place of the election and a sample of the ballot, no less than ten (10) 269
- 270 calendar days prior to the election, through a mass mailing. The Trust Enrollment Department
- shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior 271
- to the requested mailing. 272
- 102.7-4. Notice of the election shall be placed in the Nation's newspaper. 273

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#### **102.8.** Registration of Voters

- 276 Section A. Requirements
- 277 102.8-1. Registration of Voters. All enrolled members of the Nation, who are eighteen (18) years
- of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the 278
- Oneida Nation Constitution. 279

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- Section B. Identification of Voters 281
- 102.8-2. All voters must present one of the following picture identifications in order to be able to 282
- 283 vote:
- 284 (a) Oneida Nation I.D.
- 285 (b) Drivers License. 286
  - (c) Other I.D. with name and photo.

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- 288 Section C. Registration Procedures
- 289 102.8-3. Voters shall physically register, on the day of the election, at the polls.
- 102.8-4. Trust Enrollment Department personnel shall be responsible for verifying enrollment 290
- 291 with the Nation. Conduct of Trust Enrollment Department personnel is governed by the Election
- 292 Officials during the voting period.
- 102.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration 293
- Form containing the voter's following information: 294
- 295 (a) name and maiden name (if any);
- 296 (b) current address;
  - (c) date of birth; and
  - (d) enrollment number.

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- 300 Section D. Qualification/Verification of Voter Eligibility
- 301 102.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote,
- the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with 302
- 303 the Trust Enrollment Department personnel who are registering voters, to decide the voting
- member's eligibility currently being questioned and shall make such decisions from the facts 304
- 305 available, whether the applicant is, in fact, qualified/verifiable under the Oneida Nation
- Constitution, Article III Section 2, to vote in the Nation's elections. 306
- 307 102.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be

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- placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of
- 309 the voter shall be written next to a numbered list which corresponds to the numbered and sealed
- envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box
- 311 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they
- desire to challenge the decision made by the Election Officials. The Election Board shall make a
- final decision, within five (5) business days of receiving the appeal and shall report this decision
- in the final report sent to the Oneida Business Committee.

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#### 102.9. Election Process

- 317 Section A. Polling Places and Times
- 318 102.9-1. In accordance with Article III, Section 5 of the Oneida Nation Constitution, elections
- shall be held in the month of July on a date set by the General Tribal Council. The General Tribal
- 320 Council shall set the election date at the January annual meeting, or at the first GTC meeting held
- during a given year. Special Elections shall be set in accordance with 102.12-6.
- 102.9-2. Elections shall be held in an Oneida Nation facility(s) as determined by the Election Board.
- 102.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line to vote at 7:00 p.m. shall be allowed to vote.
  - (a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four
  - (4) members of the Nation verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.
- 102.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, and until the counting of ballots is completed, and tentative results posted.
- 332 102.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such
- that there is an area with at least two sides and a back enclosure.
- 102.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of
- 335 the voting area, excluding private property.
- 336 102.9-7. No one causing a disturbance shall be allowed in the voting area.
- 337 102.9-8. Election Board members may restrict the voting area to qualified voters only. This
- restriction is in the interest of maintaining security of the ballots and voting process.

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- 340 Section B. Ballot Box
- 341 102.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and
- shall be locked until counting at the close of polls. Provided that, with electronic ballot counting,
- 343 the ballots may be placed within the ballot counting machine as they are received.

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- 345 Section C. Spoiled Ballots
- 346 102.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.
- 347 102.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials
- 348 and placed in an envelope marked as "Spoiled Ballots."
- 349 102.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15)
- calendar days following finalization of any challenge of the election, at the Records Management
- 351 Department.

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- 353 Section D. Rejected Ballots
- 354 102.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.
  - (a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 102.9-10 through 102.9-12.
    - (b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

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#### 102.10. Tabulating and Securing Ballots

- 365 Section A. Machine Counted Ballots
- 102.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.
- 102.10-2. At least three (3) Election Board members shall sign the election totals, which shall include the tape signed by the members of the Nation before the polls were opened per section 102.9-3(a).

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- 372 Section B. Manually Counted Ballots
- 102.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.
- 375 102.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall be secured in a sealed container for transportation to the ballot counting location. The sealed
- ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election
- 378 Officials for counting/tallying of ballots.
- 102.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and witnessed/monitored by an Oneida Police Officer.
- 102.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.

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- 384 Section C. Securing Ballots
- 385 102.10-7. The Judges shall place together all ballots counted and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots, and the election totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The Oneida Police Officer shall then deliver, on the day of the election, the sealed container to the Records Management Department for retaining.

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#### 102.11. Election Outcome and Ties

- 393 Section A. Election Results Announcement
- 394 102.11-1. The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain
- 396 the following statement:
- 397 "The election results posted here are tentative results. Final election results are forwarded

by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"

102.11-2. The Election Board shall post, in the prominent locations, and publish in the Nation's newspaper, the tentative results of an election.

404 Section B. Tie

- 102.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to determine the outcome of an election, the Election Board shall conduct an automatic recount of the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.
- 102.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.
  - (a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.
  - (b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.
  - (c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

Section C. Recount Procedures

- 102.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the office of the Nation's Secretary, or noticed designated agent, within five (5) business days after the election.
- Requests shall be limited to one (1) request per candidate. The Nation's Secretary shall contact the Election Board Chairperson by the next business day after the request for recounts.
- 437 102.11-6. The Election Board shall respond by the close of business on the fifth (5<sup>th</sup>) day after the
- request regarding the results of the recount. Provided that, no recount request need be honored
- where there have been two (2) recounts completed as a result of a request either as a recount of the
- whole election results, or of that sub-section.
- 441 102.11-7. All recounts shall be conducted manually with, if possible, the original Election
- Officials and Oneida Police Officer present, regardless of the original type of counting process.

Manual recounts may, at the discretion of the Election Officials, be of the total election results, or

- of the challenged sub-section of the election results.
- 445 102.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed
- container with the ballots from the Records Management Department and transporting it to the
- 447 ballot recounting location.

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- 102.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three
- 449 (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election
- Board Chairperson and an Oneida Police Officer shall witness the recount.
- 451 102.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be counted until two (2) final tallies are equal in back to back counting and the total count of ballots
- reconciles with the total count from the ballot counting machine. Sub-sections of candidates may be recounted in lieu of a full recount.
  - (a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.
  - (b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

Section D. Challenges and Declaration of Results

- 102.11-11. Challenges. Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.
  - (a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.
  - (b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.
- 102.11-12. *The Final Report*. The Election Board shall forward a Final Report to the Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:
  - (a) Total number of persons voting.
  - (b) Total votes cast for each candidate by subsection of the ballot.
  - (c) List of any ties and final results of those ties, including the method of resolution.
  - (d) List of candidates elected and position elected to.
  - (e) Number of spoiled ballots.
  - (f) Cost of the election, including the compensation paid to each Election Board member.
- 484 102.11-13. *Declaration of Results*. The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.
  - 102.11-14. Candidates elected to the Business Committee shall resign from any salaried position

- 488 effective prior to taking a Business Committee oath of office
- 102.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the
- official results of an election are declared by the Business Committee.
  - (a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.
  - (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.
  - 102.11-16. The Election Board shall send notice to the Records Management Department to destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

#### **102.12.** Elections

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- Section A. Primary Elections; Business Committee
- 102.12-1. When <u>to Hold</u> a <u>primary Primary Election</u>. A <u>primary election for Business Committee</u> <u>positions</u> is required <u>under 102.12-2</u>, <u>it shallto</u> be held on a Saturday at least sixty (60) calendar days prior to the election.
- 102.12-2. There shall be a primary election for Business Committee positions whenever there are three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the atlarge council member positions.
  - (a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.
  - (b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.
  - (c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.
- 102.12-3-2. Cancelation of a Primary Election. A primary election for Business Committee positions may be canceled in the following circumstances:
  - (a) The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary.
  - (b) The Election Board may recommend to the Business Committee the cancellation of the primary election when large gatherings of people present a substantial risk to the health and safety of the Nation's citizens. The Business Committee shall consider the Election Board's recommendation at the next scheduled Business Committee meeting and decide whether to cancel the primary election.
    - (1) In the event the Business Committee cancels the primary election, all candidates that are determined eligible according to section 102.5 and are not made ineligible under section 102.6-2 shall be placed on the ballot for the general election.
- 102.12-4. In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for notifying the Oneida public in section 102.5-11 and 102.5-12 shall be followed, including the requirement to

\$33 print a notice in the Nation's newspaper if time linestimelines allow.

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- Section B. Special Elections 535
- 102.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as 536
- 537 defined in this law, may be placed on the same ballot as the subject matter of an election.
- 102.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business 538
- Committee as recommended by the Election Board or as ordered by the Judiciary in connection 539
- 540 with an election challenge.
- 541 102.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent
- locations, and placed in the Nation's newspaper not less than ten (10) calendar days prior to the 542
- 543 Special Election.
- 544 102.12-8. In the event of an emergency, the Election Board may reschedule the election, provided
- that no less than twenty-four (24) hours notice of the rescheduled election date is given to the 545
- 546 voters, by posting notices in the prominent locations.

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- 548 Section C. Initiation of Special Elections
- 102.12-9. Special Elections may be initiated by a request or directive of the General Tribal Council 549
- or the Oneida Business Committee. 550
- 551 102.12-10. Special Election may be requested by a member of the Nation to the Business
- 552 Committee or General Tribal Council.
- 553 102.12-11. All Special Elections shall follow rules established for all other elections. This includes
- positions for all Boards, Committees and Commissions. 554

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#### 102.13. Oneida Nation Constitution and By-law Amendments

- 102.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition of qualified voters. The requirements for the Oneida Business Committee's initiation of Constitutional amendments are as provided in the Constitution and as further detailed in the supporting standard operating procedures which the Oneida Business Committee shall adopt. Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting a petition to the Office of the Nation's Secretary which includes the full text of the proposed amendments and signatures that are equal in number to at least ten percent (10%) of all members qualified to vote.
- (a) Qualified voters may request a petition form from the Office of the Nation's Secretary.
  - (b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall direct the Trust Enrollment Department to calculate the number of signatures currently required for a petition submittal, which shall be ten percent (10%) of all members qualified to vote on the date the petition form is requested from the Office of the Nation's Secretary. When the Nation's Secretary receives the calculation from the Trust Enrollment Department, the Nation's Secretary shall provide the requester with the petition form and the number of signatures that are currently required.
  - (c) Such petitions shall be circulated with all supporting materials and submitted a minimum of ninety (90) days prior to the election at which the proposed amendment is to be voted upon. If a petition includes supporting materials in addition to the petition form, each qualified voter signing the petition shall also acknowledge that the supporting

- materials were available for review at the time he or she signed the petition by initialing where required on the petition form.
  - (d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment Department for verification of signatures and to the Election Board to provide notice that the petition may need to be placed on an upcoming ballot.
  - (e) If the petition is verified by the Trust Enrollment Department to contain signatures from at least ten percent (10%) of all qualified voters, the Election Board shall make an official announcement of the proposed amendments to the Oneida Nation Constitution at least sixty (60) days prior to the election at which the proposed amendments are to be voted on.
- 102.13-2. The Election Board shall place any proposed amendments to the Oneida Nation Constitution that meet the requirements contained in 102.13-1 on the ballot at the next general election. Provided that, the Oneida Business Committee or General Tribal Council may order a special election be held to consider the proposed amendments. In such circumstances, the Election Board shall place any proposed amendments to the Oneida Nation Constitution on the ballot at the next special election.
- 102.13-3. The Election Board shall publish any proposed amendments by publishing a sample ballot no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing. Copies of such publications shall be prominently posted in each polling place and at administrative offices of the Nation and shall also be published in official Oneida media outlets, which the Oneida Business Committee shall identify by resolution. For the purposes of this section, Oneida administrative offices means the location where the Oneida Business Committee conducts business.
- 102.13-4. The Election Board shall ensure that the ballot contains a statement of the purpose of the proposed amendments prepared by the Oneida Law Office. The Oneida Law Office shall ensure that the statement of purpose is one hundred (100) words or less exclusive of caption, is a true and impartial statement and is written in such a manner that does not create prejudice for or against the proposed amendment.
- 102.13-5. Pursuant to Article VI, Section 3 of the Oneida Nation Constitution, proposed amendments that are approved by sixty-five percent (65%) of the qualified voters that vote on that amendment shall become part of the Constitution and By-laws, and shall abrogate or amend existing provisions of the Constitution and By-laws at the end of thirty (30) days after submission of the final election report.
- 102.13-6. If two (2) or more amendments approved by the voters at the same election conflict, the amendment receiving the highest affirmation vote prevails.

*End.* 

618 Adopted - June 19, 1993

- Amended June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)
- 620 Presented for Adoption of 1997 Revisions GTC-7-6-98-A
- Amended- October 11, 2008 (General Tribal Council Meeting)
- 622 Amended-GTC-01-04-10-A
- 623 Amended BC-02-25-15-C
- 624 Amended GTC-04-23-17-A
- 625 Emergency Amended BC-03-17-20-B

\$26 Emergency Amended – BC- - - -

### Title 1. Government and Finances - Chapter 102 On<yote>a=k@= Tho Ni= Y%t Tsi> <yethiyatal@ko Tsi> Kayanl^hsla

People of the Standing Stone how it is we will appoint them the kind of laws we have **ELECTION** 

102.1.	Purpose and Policy	102.8. Registration of Voters
102.2.	Adoption, Amendment, Repeal	102.9. Election Process
102.3.	Definitions	102.10. Tabulating and Securing Ballots
102.4.	Election Board	102.11. Election Outcome and Ties
102.5.	Candidate Eligibility	102.12. Elections
102.6.	Selection of Candidates	102.13. Oneida Nation Constitution and By-law Amendments
102.7	Notice of Polling Places	

#### 1 102.1. Purpose and Policy

2 102.1-1. It is the policy of the Nation that this law shall govern the procedures for the conduct of

- 3 orderly elections of the Nation, including pre-election activities. Because of the desire for orderly
- 4 and easily understood elections, there has not been an allowance made for write-in candidates on

5 ballots.

102.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida Nation in the conduct of elections. It is intended to govern all procedures used in the election process.

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#### 102.2. Adoption, Amendment, Repeal

- 11 102.2-1. This law was adopted by the Oneida General Tribal Council by resolution GTC 07-06-
- 98-A and amended by resolutions GTC-01-04-10-A, BC-02-25-15-C, GTC-04-23-17-A, BC-03-
- 13 17-20-B, and emergency amended by BC- - .
- 14 102.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to
- the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding
- amendments to this law and policies adopted regarding implementation of this law are to be
- presented to the Business Committee who shall then adopt or forward action(s) to the General
- 18 Tribal Council for adoption.
- 19 102.2-3. 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
- 21 to have legal force without the invalid portions.
- 22 102.2-4. In the event of a conflict between a provision of this law and a provision of another law,
- 23 the provisions of this law shall control.
- 24 102.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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#### 102.3. Definitions

- 102.3-1. 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.
- 29 102.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on
- the Election Board during an election and until election results have been certified.
- 31 102.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for
- acceptance on a ballot.
   102.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. 4:30 p.m., excluding
- 34 holidays of the Nation.
- 35 102.3-5. "Campaigning" shall mean all efforts designed to influence members of the Nation to
- 36 support or reject a particular candidate of the Nation including, without limitation, advertising,
- 37 rallying, public speaking, or other communications with members of the Nation.

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- 38 102.3-6. "Candidate" shall mean an applicant for an elected position whose name is placed on the
- 39 ballot by the Election Board after successful application.
- 40 102.3-7. "Clerk" shall mean the election official who identifies proper registration for the purpose
- 41 of determining voter eligibility.
- 42 102.3-8. "Close of business" shall mean 4:30 p.m. Monday through Friday.
- 43 102.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political
- or otherwise, in which a Nation elected official, employee, consultant, appointed or elected,
- 45 member of any board, committee or commission, or their immediate relatives, friends or
- associates, or any other person with whom they have contact, that conflicts with any right of the
- Nation to property, information, or any other right to own and operate its enterprises, free from
- 48 undisclosed competition or other violation of such rights of the Oneida Nation, or as defined in
- any law or policy of the Nation.
- 50 102.3-10. "Election" shall mean every primary and election.
- 51 102.3-11. "General election" shall mean the election held every three (3) years in July to elect the
- 52 Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the
- Business Committee and may include contests for elected boards, committees and commissions
- 54 positions.
- 55 102.3-12. "Judge" shall mean the election official who informs and advises the Chairperson of
- discrepancies, complaints and controversy regarding voter eligibility.
- 57 102.3-13. "Judiciary" means the judicial system that was established by Oneida General Tribal
- 58 Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of
- 59 the Nation.
- 60 102.3-14. "Lot drawing" shall mean the equal chance method used to select a candidate as the
- winner of an elected position, in the case of a tie between two (2) or more candidates.
- 62 102.3-15. "Nation" means the Oneida Nation.
- 63 102.3-16. "Nation's newspaper" shall mean the Kalihwisaks, or any other newspaper operated by
- the Nation for the benefit of transmitting news to members of the Nation, which is designated by
- the Election Board as a source for election related news.
- 66 102.3-17. "Oneida Police Officer" shall mean an enrolled member of the Oneida Nation who is a
- 67 police officer on any police force.
- 68 102.3-18. "Private property" shall mean any lot of land not owned by the Nation, a residential
- dwelling or a privately owned business within the boundaries of the Reservation.
- 70 102.3-19. "Prominent locations" shall mean the polling places, main doors of the Norbert Hill
- 71 Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida
- 72 Community Health Center, the SEOTS building and all One-Stop locations.
- 73 102.3-20. "Qualified voter" shall mean an enrolled member of the Nation who is eighteen (18)
- years of age or older.
- 75 102.3-21. "Rejected Ballots" shall mean those ballots which are rejected by the vote tabulating
- 76 machine.
- 77 102.3-22. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise marred
- and is not tabulated.
- 79 102.3-23. "Teller" shall mean the election official in charge of collecting and storing of all ballots.

- 83 Section A. Establishment, Composition and Election
- 84 102.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this
- law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.
- 86 102.4-2. The Election Board shall consist of nine (9) elected members. All members shall be
- elected to terms of three (3) years, not to exceed two (2) consecutive terms.
- 88 102.4-3. *Recusal*. An Election Board member shall recuse himself/herself from participating as an
- 89 Election Board member in any pre-election, election day, or post-election activities while he or
- she is an applicant or candidate in any election or there is otherwise a conflict of interest.
- 91 102.4-4. Removal. Removal of members shall be pursuant to the Oneida Removal Law. A member
- 92 who is removed from the Election Board shall be ineligible to serve on the Board for three (3)
- 93 years from the time he or she is removed from the Election Board.
- 94 102.4-5. Vacancies. Any vacancy in an unexpired term shall be filled by appointment by the
- 95 Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed
- be to correspond with the pre-election activities and the needs of the Election Board.
- 97 102.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.
- 98 102.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to
- the Election Board, as recommended by the Election Board, to assist with election day and preelection activities.
- 101 102.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in
- the By-laws of the Election Board, to preside over the meetings. This selection shall be carried
- out at the first meeting of the Election Board following an election. The Chairperson shall then
- ask the Election Board to select a Vice-Chairperson and Secretary.

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Section B. Duties of the Election Board

102.4-9. The Election Board shall have the following duties, along with other responsibilities listed throughout this law.

- (a) The Election Board shall be in charge of all registration and election procedures; and
- (b) Upon completion of an election, the Election Board shall make a final report on the election results as set out in this law.

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Section C. Specific Duties of Officers and Election Board Members

- 102.4-10. Specific duties of the Chairperson and other Election Board members, in addition to being present at all Election Board meetings and assisting the handicapped through the voting process, are as set out herein:
  - (a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 102.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and Trust Enrollment Department personnel when their election day duties are complete; and shall post and report election results.
  - (b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.
- 123 (c) Secretary: Shall keep a record of the meetings and make them available to the Nation's Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.
  - (d) Clerks: Shall implement the requirements of identifying and registering all voters and determining voter eligibility. Clerks shall work in conjunction with the Trust Enrollment

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- Department personnel in the registration process, and assist the Chairperson as directed in conducting the election. Clerks cannot be currently employed by the Trust Enrollment Department.
  - (e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as determined by this law. Shall assist the Chairperson in conducting the election.
  - (f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between members of the Nation and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

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#### Section D. Compensation Rates

- 141 102.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee.
- 143 The Election Board shall have a budget, approved through the Nation's budgeting process.
  - 102.4-12. The Trust Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

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#### 102.5. Candidate Eligibility

- 148 Section A. Requirements
- 102.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted bylaws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.
- 152 102.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:
  - (a) be an enrolled member of the Nation, as verified by membership rolls of the Nation.
  - (b) be a qualified voter on the day of the election.
  - (c) provide proof of physical residency as required for the position for which they have applied. Proof of residency may be through one (1) or more of the following:
    - (1) a valid Wisconsin driver's license;
    - (2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;
    - (3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.
  - 102.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to election.
- 166 102.5-4. Applications shall be filed by presenting the information to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, by April 24,
- 168 2020. No mailed, internal Nation mail delivery, faxed or other delivery method shall be accepted.
- 169 102.5-5. The names of the candidates and the positions sought shall be a public record and made
- available to the public upon the determination of eligibility by the Election Board or the Board's

designated agent.

- 173 Section B. Eligibility Review
- 174 102.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal.
- At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall
- select the hearing body. The hearing shall be held within two (2) business days of receipt of the
- appeal. The applicant shall be notified by phone of time and place of the hearing. The decision
- of the hearing body shall be sent via certified mail or hand delivery within two (2) business days
- of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the
- Judiciary on an accelerated schedule.
- 181 102.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a position shall be notified by certified mail return receipt requested. The notice shall provide the following information:
  - (a) Position for which they were considered
  - (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
  - (c) A brief summary explaining why the applicant was found to be ineligible.
  - (d) That the applicant has two (2) business days from notification to make an appeal. Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal Nation mail, faxed or other delivery method will be accepted.

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Section C. Campaign Financing

102.5-8. Contributions:

- (a) Solicitation of Contributions by Candidates.
  - (1) Candidates shall only accept contributions from individuals who are members of the Nation or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.
  - (2) Candidates shall not solicit or accept contributions in any office or business/facility of the Nation.
- (b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.
- 102.5-9. Campaign Signs and Campaigning:
  - (a) Placement of campaign signs:
    - (1) Campaign signs shall not be posted or erected on any property of the Nation except for private property with the owner/tenant's permission.
    - (2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.
    - (3) No campaign sign shall project beyond the property line into the public right of way.
  - (b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.
  - (c) Employees of the Nation shall not engage in campaigning for offices of the Nation during work hours. The Nation's employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.
  - (d) Enforcement. The Zoning Administrator shall cause to be removed any campaign

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signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.

(e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

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#### Section D. Candidate Withdrawal

- 102.5-10. Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.
- 102.5-11. After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.
- 232 102.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.
  - 102.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.
    - 102.5-14. Candidate Withdrawal After Winning an Election.
      - (a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.
      - (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

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#### 2.6. Selection of Candidates

- 102.6-1. Any eligible member of the Nation may apply to be placed on a ballot according to the following procedures:
  - (a) Applicants shall use an official form as designated by this law which may be obtained in the Office of the Nation's Secretary.
  - (b) The form shall consist of information that satisfies the minimum requirements for eligible candidates, as descried in section 102.5-2 of this law.
  - (c) Applications shall be presented to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business on April 24, 2020. The location to drop-off applications shall be the Business Committee Support Office.
  - (d) The Nation's Secretary shall forward all applications to the Election Board Chairperson the next business day following the close of submissions.
- 102.6-2. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

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#### **102.7.** Notice of Polling Places

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- 263 102.7-1. The Election Board shall post a notice in the prominent locations, stating the location of
- the polling places and the time the polls will be open. This notice shall also be posted in an easily
- visible position, close to the entrance of the Nation's businesses/facilities.
- 266 102.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the
- election, and shall remain posted until the poll closes on the day of the election.
- 268 102.7-3. Except for a Special Election, notice for the election shall be mailed to all Nation
- members, stating the time and place of the election and a sample of the ballot, no less than ten (10)
- 270 calendar days prior to the election, through a mass mailing. The Trust Enrollment Department
- shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior
- to the requested mailing.
- 273 102.7-4. Notice of the election shall be placed in the Nation's newspaper.

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#### 102.8. Registration of Voters

- 276 Section A. Requirements
- 277 102.8-1. Registration of Voters. All enrolled members of the Nation, who are eighteen (18) years
- of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the
- 279 Oneida Nation Constitution.

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- 281 Section B. Identification of Voters
- 102.8-2. All voters must present one of the following picture identifications in order to be able to vote:
  - (a) Oneida Nation I.D.
  - (b) Drivers License.
  - (c) Other I.D. with name and photo.

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- 288 Section C. Registration Procedures
- 289 102.8-3. Voters shall physically register, on the day of the election, at the polls.
- 290 102.8-4. Trust Enrollment Department personnel shall be responsible for verifying enrollment
- with the Nation. Conduct of Trust Enrollment Department personnel is governed by the Election
- 292 Officials during the voting period.
- 293 102.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration
- Form containing the voter's following information:
- 295 (a) name and maiden name (if any);
- 296 (b) current address;
  - (c) date of birth; and
  - (d) enrollment number.

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- 300 Section D. Qualification/Verification of Voter Eligibility
- 301 102.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote,
- 302 the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with
- 303 the Trust Enrollment Department personnel who are registering voters, to decide the voting
- 304 member's eligibility currently being questioned and shall make such decisions from the facts
- available, whether the applicant is, in fact, qualified/verifiable under the Oneida Nation
- Constitution, Article III Section 2, to vote in the Nation's elections.
- 307 102.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be

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- placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of
- 309 the voter shall be written next to a numbered list which corresponds to the numbered and sealed
- envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box
- 311 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they
- desire to challenge the decision made by the Election Officials. The Election Board shall make a
- final decision, within five (5) business days of receiving the appeal and shall report this decision
- in the final report sent to the Oneida Business Committee.

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#### 102.9. Election Process

- 317 Section A. Polling Places and Times
- 318 102.9-1. In accordance with Article III, Section 5 of the Oneida Nation Constitution, elections
- shall be held in the month of July on a date set by the General Tribal Council. The General Tribal
- 320 Council shall set the election date at the January annual meeting, or at the first GTC meeting held
- during a given year. Special Elections shall be set in accordance with 102.12-6.
- 322 102.9-2. Elections shall be held in an Oneida Nation facility(s) as determined by the Election
- 323 Board.
- 324 102.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line
- 325 to vote at 7:00 p.m. shall be allowed to vote.
- 326 (a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four
  - (4) members of the Nation verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.
- 102.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, and until the counting of ballots is completed, and tentative results posted.
- 332 102.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such
- that there is an area with at least two sides and a back enclosure.
- 334 102.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of
- 335 the voting area, excluding private property.
- 336 102.9-7. No one causing a disturbance shall be allowed in the voting area.
- 337 102.9-8. Election Board members may restrict the voting area to qualified voters only. This
- restriction is in the interest of maintaining security of the ballots and voting process.

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- 340 Section B. Ballot Box
- 341 102.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and
- shall be locked until counting at the close of polls. Provided that, with electronic ballot counting,
- 343 the ballots may be placed within the ballot counting machine as they are received.

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- 345 Section C. Spoiled Ballots
- 346 102.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.
- 347 102.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials
- and placed in an envelope marked as "Spoiled Ballots."
- 349 102.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15)
- calendar days following finalization of any challenge of the election, at the Records Management
- 351 Department.

#### 353 Section D. Rejected Ballots

- 354 102.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.
  - (a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 102.9-10 through 102.9-12.
    - (b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

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#### 102.10. Tabulating and Securing Ballots

- 365 Section A. Machine Counted Ballots
- 102.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.
- 102.10-2. At least three (3) Election Board members shall sign the election totals, which shall include the tape signed by the members of the Nation before the polls were opened per section 102.9-3(a).

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- 372 Section B. Manually Counted Ballots
- 102.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.
- 375 102.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall
- be secured in a sealed container for transportation to the ballot counting location. The sealed
- ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election Officials for counting/tallying of ballots.
- 102.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and witnessed/monitored by an Oneida Police Officer.
- 102.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.

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- 384 Section C. Securing Ballots
- 385 102.10-7. The Judges shall place together all ballots counted and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots, and the election totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The Oneida Police Officer shall then deliver, on the day of the election, the sealed container to the Records Management Department for retaining.

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#### 102.11. Election Outcome and Ties

- 393 Section A. Election Results Announcement
- 394 102.11-1. The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain
- 396 the following statement:
- 397 "The election results posted here are tentative results. Final election results are forwarded

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by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"

102.11-2. The Election Board shall post, in the prominent locations, and publish in the Nation's newspaper, the tentative results of an election.

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- 102.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to determine the outcome of an election, the Election Board shall conduct an automatic recount of the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.
- 102.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.
  - (a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.
  - (b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.
  - (c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

Section C. Recount Procedures

- 102.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the office of the
- 434 Nation's Secretary, or noticed designated agent, within five (5) business days after the election.
- Requests shall be limited to one (1) request per candidate. The Nation's Secretary shall contact 435
- 436 the Election Board Chairperson by the next business day after the request for recounts.
- 102.11-6. The Election Board shall respond by the close of business on the fifth (5<sup>th</sup>) day after the 437 request regarding the results of the recount. Provided that, no recount request need be honored 438
- 439 where there have been two (2) recounts completed as a result of a request either as a recount of the
- 440 whole election results, or of that sub-section.
- 102.11-7. All recounts shall be conducted manually with, if possible, the original Election 441
- 442 Officials and Oneida Police Officer present, regardless of the original type of counting process.

- Manual recounts may, at the discretion of the Election Officials, be of the total election results, or
- of the challenged sub-section of the election results.
- 102.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed
- container with the ballots from the Records Management Department and transporting it to the
- 447 ballot recounting location.

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- 102.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three
- 449 (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election
- Board Chairperson and an Oneida Police Officer shall witness the recount.
- 102.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be
- counted until two (2) final tallies are equal in back to back counting and the total count of ballots
- reconciles with the total count from the ballot counting machine. Sub-sections of candidates may
- be recounted in lieu of a full recount.

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  (a) Manually counted ballots
  - (a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.
  - (b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

Section D. Challenges and Declaration of Results

- 102.11-11. Challenges. Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.
  - (a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.
  - (b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.
- 102.11-12. *The Final Report*. The Election Board shall forward a Final Report to the Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:
  - (a) Total number of persons voting.
  - (b) Total votes cast for each candidate by subsection of the ballot.
  - (c) List of any ties and final results of those ties, including the method of resolution.
  - (d) List of candidates elected and position elected to.
  - (e) Number of spoiled ballots.
- (f) Cost of the election, including the compensation paid to each Election Board member.
- 484 102.11-13. *Declaration of Results*. The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.
- 487 102.11-14. Candidates elected to the Business Committee shall resign from any salaried position

- 488 effective prior to taking a Business Committee oath of office
- 102.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the official results of an election are declared by the Business Committee.
  - (a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.
  - (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.
  - 102.11-16. The Election Board shall send notice to the Records Management Department to destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

#### **102.12.** Elections

- Section A. Primary Elections; Business Committee
- 102.12-1. When to Hold a Primary Election. A primary election for Business Committee positions is required to be held on a Saturday at least sixty (60) calendar days prior to the election whenever there are three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-large council member positions.
  - (a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.
  - (b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.
  - (c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.
- 102.12-2. *Cancelation of a Primary Election*. A primary election for Business Committee positions may be canceled in the following circumstances:
  - (a) The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary.
  - (b) The Election Board may recommend to the Business Committee the cancellation of the primary election when large gatherings of people present a substantial risk to the health and safety of the Nation's citizens. The Business Committee shall consider the Election Board's recommendation at the next scheduled Business Committee meeting and decide whether to cancel the primary election.
    - (1) In the event the Business Committee cancels the primary election, all candidates that are determined eligible according to section 102.5 and are not made ineligible under section 102.6-2 shall be placed on the ballot for the general election.
- 102.12-4. In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for notifying the Oneida public in section 102.5-11 and 102.5-12 shall be followed, including the requirement to print a notice in the Nation's newspaper if timelines allow.

- 533 Section B. Special Elections
- 534 102.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as
- defined in this law, may be placed on the same ballot as the subject matter of an election.
- 536 102.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business
- Committee as recommended by the Election Board or as ordered by the Judiciary in connection
- with an election challenge.
- 539 102.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent
- locations, and placed in the Nation's newspaper not less than ten (10) calendar days prior to the
- 541 Special Election.
- 542 102.12-8. In the event of an emergency, the Election Board may reschedule the election, provided
- that no less than twenty-four (24) hours notice of the rescheduled election date is given to the
- voters, by posting notices in the prominent locations.

- 546 Section C. Initiation of Special Elections
- 547 102.12-9. Special Elections may be initiated by a request or directive of the General Tribal Council
- or the Oneida Business Committee.
- 549 102.12-10. Special Election may be requested by a member of the Nation to the Business
- 550 Committee or General Tribal Council.
- 551 102.12-11. All Special Elections shall follow rules established for all other elections. This includes
- positions for all Boards, Committees and Commissions.

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#### 102.13. Oneida Nation Constitution and By-law Amendments

- 102.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition of qualified voters. The requirements for the Oneida Business Committee's initiation of Constitutional amendments are as provided in the Constitution and as further detailed in the supporting standard operating procedures which the Oneida Business Committee shall adopt. Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting a petition to the Office of the Nation's Secretary which includes the full text of the proposed amendments and signatures that are equal in number to at least ten percent (10%) of all members qualified to vote.
  - (a) Qualified voters may request a petition form from the Office of the Nation's Secretary.
  - (b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall direct the Trust Enrollment Department to calculate the number of signatures currently required for a petition submittal, which shall be ten percent (10%) of all members qualified to vote on the date the petition form is requested from the Office of the Nation's Secretary. When the Nation's Secretary receives the calculation from the Trust Enrollment Department, the Nation's Secretary shall provide the requester with the petition form and the number of signatures that are currently required.
  - (c) Such petitions shall be circulated with all supporting materials and submitted a minimum of ninety (90) days prior to the election at which the proposed amendment is to be voted upon. If a petition includes supporting materials in addition to the petition form, each qualified voter signing the petition shall also acknowledge that the supporting materials were available for review at the time he or she signed the petition by initialing where required on the petition form.

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- (d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment Department for verification of signatures and to the Election Board to provide notice that the petition may need to be placed on an upcoming ballot.
- (e) If the petition is verified by the Trust Enrollment Department to contain signatures from at least ten percent (10%) of all qualified voters, the Election Board shall make an official announcement of the proposed amendments to the Oneida Nation Constitution at least sixty (60) days prior to the election at which the proposed amendments are to be voted on.
- 102.13-2. The Election Board shall place any proposed amendments to the Oneida Nation Constitution that meet the requirements contained in 102.13-1 on the ballot at the next general election. Provided that, the Oneida Business Committee or General Tribal Council may order a special election be held to consider the proposed amendments. In such circumstances, the Election Board shall place any proposed amendments to the Oneida Nation Constitution on the ballot at the next special election.
- 591 102.13-3. The Election Board shall publish any proposed amendments by publishing a sample ballot no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust 592 Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty 593 (20) calendar days prior to the requested mailing. Copies of such publications shall be prominently 594 posted in each polling place and at administrative offices of the Nation and shall also be published 595 in official Oneida media outlets, which the Oneida Business Committee shall identify by 596 597 resolution. For the purposes of this section, Oneida administrative offices means the location 598 where the Oneida Business Committee conducts business.
- 599 102.13-4. The Election Board shall ensure that the ballot contains a statement of the purpose of 600 the proposed amendments prepared by the Oneida Law Office. The Oneida Law Office shall 601 ensure that the statement of purpose is one hundred (100) words or less exclusive of caption, is a true and impartial statement and is written in such a manner that does not create prejudice for or 602 against the proposed amendment. 603
  - 102.13-5. Pursuant to Article VI, Section 3 of the Oneida Nation Constitution, proposed amendments that are approved by sixty-five percent (65%) of the qualified voters that vote on that amendment shall become part of the Constitution and By-laws, and shall abrogate or amend existing provisions of the Constitution and By-laws at the end of thirty (30) days after submission of the final election report.
  - 102.13-6. If two (2) or more amendments approved by the voters at the same election conflict, the amendment receiving the highest affirmation vote prevails.

End.

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- 616 Adopted - June 19, 1993 617 Amended - June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda) 618 Presented for Adoption of 1997 Revisions - GTC-7-6-98-A
- 619 Amended- October 11, 2008 (General Tribal Council Meeting)
- 620 Amended-GTC-01-04-10-A
- 621 Amended - BC-02-25-15-C
- 622 Amended – GTC-04-23-17-A
- 623 Emergency Amended – BC-03-17-20-B
- 624 Emergency Amended – BC- - - -

# May 11, 2020, Legislative Operating Committee E-Poll Approval of the Tobacco Law Amendments Materials and Fiscal Impact Request Memorandum

E-POLL REQUEST: Approval of the Tobacco Law Amendments Materials and Fiscal Impact Statement Request M...



#### **Good Morning Legislative Operating Committee,**

This e-mail serves as the e-poll for the approval of the Tobacco law amendments public comment period review memorandum, draft, updated legislative analysis, and fiscal impact statement request memorandum to the Finance Department.

#### **EXECUTIVE SUMMARY**

The Legislative Operating Committee has been developing permanent amendments to the Tobacco law after the Oneida Business Committee adopted emergency amendments to this law through the adoption of resolution BC-02-26-20-A. The public comment period for the Tobacco law closed on May 7, 2020. No written comments were received during the public comment period for the proposed amendments to the Tobacco law. Receiving no public comments, the proposed amendments to the Tobacco law are now ready to continue through the legislative process.

The next step in the legislative process is to request a fiscal impact statement. 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 can 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)].

Attached to this e-poll please find the follow documentation:

- Tobacco law amendments public comment period review memorandum with attached public meeting draft;
- Tobacco law amendments draft (redline to last permanent);
- Tobacco law amendments draft (clean);
- Tobacco law amendments legislative analysis; and
- Fiscal impact statement request memorandum.

The Legislative Operating is now being asked to approve by e-poll the public comment period review memorandum, draft, updated legislative analysis, and fiscal impact statement request memorandum, and to forward the fiscal impact statement request memorandum to the Finance Department directing that a fiscal impact statement of the proposed amendments to the Tobacco law be prepared and submitted to the LOC by May 27, 2020.

An e-poll is necessary for this matter because the Legislative Operating Committee has canceled all meetings until June 2020 due to the COVID-19 pandemic, and immediate action is required by Legislative Operating Committee to approve these materials so a fiscal impact statement from the Finance Department can be requested.

#### **REQUESTED ACTION**

Approve the public comment period review memorandum, draft, updated legislative analysis, and fiscal impact statement request memorandum; and forward the fiscal impact statement request memorandum to the Finance Department directing that a fiscal impact statement of the proposed amendments to the Tobacco law be prepared and submitted to the Legislative Operating Committee by May 27, 2020.

#### **DEADLINE FOR RESPONSE**

May 11, 2020 at 3:30 p.m.

All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by David P. Jordan, Kirby Metoxen, Ernest Stevens III, and Jennifer Webster. Daniel Guzman King did not provide a response.





## Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54:115-0365



TO: Legislative Operating Committee (LOC)

FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney

DATE: May 11, 2020

RE: Tobacco Law Amendments: Public Comment Period Review

An outbreak of the COVID-19 virus has turned into a worldwide pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts.

On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. The "Safer at Home" declaration prohibits all public gatherings of any number of people.

Then on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

On March 28, 2020 the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's Public Health State of emergency declaration until May 12, 2020.

On March 31, 2020, the Legislative Operating Committee approved the Tobacco law amendments public comment period packet and set the public comment period for the Tobacco law amendments to be held open until May 7, 2020.

On May 6, 2020 the Oneida Business Committee adopted resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until June 11, 2020" which further extended the Nation's Public Health State of Emergency declaration until June 11, 2020.

Although the Nation's COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration suspended public meetings and therefore no public meeting was scheduled for the amendments to the Tobacco law, a public comment period

was still held to allow members of the community to provide written submissions of comments or questions to the Legislative Operating Committee through e-mail.

No written comments were received during the public comment period for the proposed amendments to the Tobacco law. A copy of the public meeting draft has been attached to this memorandum.



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

#### **TOBACCO**

1	1	5	1	Purpose	and	Policy

115.2. Adoption, Amendment, Repeal

115.3. Definitions

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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

2 115.1-1. *Purpose*. The purpose of this law is to regulate the sale, possession, and distribution of cigarettes within the Reservation.

4 115.1-2. *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

8 115.2-1. 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-

10 20-A-, and BC- - - - .

- 11 115.2-2. 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.
- 14 115.2-3. 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.
- 17 115.2-4. 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.
- 19 115.2-5. 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

- Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any land added thereto pursuant to federal law.
  - (g) "Stamped Cigarettes" means cigarettes bearing valid Wisconsin tax stamps.
  - (h) "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

#### 115.4. Oneida Retail Locations

- 115.4-1. The Nation shall maintain Oneida retail locations within the Reservation as it deems necessary to provide adequate service to consumers of stamped cigarettes.
- 115.4-2. Each Oneida retail location established hereunder shall be managed and operated by the Oneida Nation.

#### 115.5. Purchase of, Title to and Possession of Tobacco Products

115.5-1. The Nation shall purchase stamped cigarettes from such suppliers as it may choose and shall take title and possession on delivery to an Oneida retail location on the Reservation (the. The title shall be subject to any purchase money security interest). Possession of the stamped cigarettes (, but not title), shall be transferred to the manager of the Oneida retail location to be held for sale to the consumers. The Nation shall retain title to stamped cigarettes until sold to a consumer.

#### 115.6. Restrictions on Sales

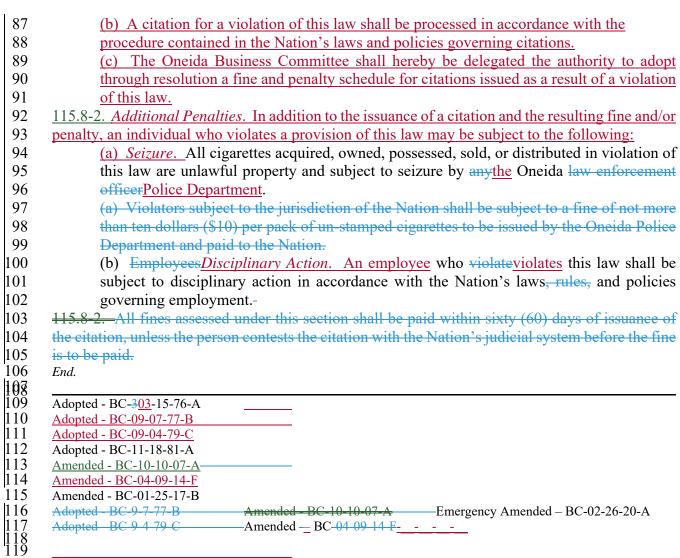
- 115.6-1. The Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal Cigarette tax stamp within the Reservation. Furthermore, only the Nation may claim the tax refunds on cigarettes sold on the Reservation as provided for under state law.
- 115.6-2. The Nation reserves the right to restrict sales, volume, pricing and profit margin of stamped cigarettes sold at an Oneida retail location.
- 115.6-3. Cigarettes—and, electronic cigarettes, and/or other tobacco products shall not be sold to any person under the age of twenty-one (21)—). Cigarettes—and, electronic cigarettes, and/or other tobacco products for sale at an Oneida retail location shall be on display behind a counter. No person other than an authorized employee shall sell cigarettes—and, electronic cigarettes, and/or other tobacco products at an Oneida retail location.
  - 115.6-4. No person may sell or offer for sale unstamped cigarettes on the Reservation.

#### 115.7. Liability

115.7-1. The Nation shall be responsible for all risks to the stamped cigarettes and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary any person owning a purchase money security interest in the products to the extent his or her interest may appear.

#### 115.8 Violations

- 115.8-1. <u>Issuance of a Citation</u>. An individual who violates a provision of this law may be issued a citation by the Oneida Police Department.
  - (a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Trial Court.



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

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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

2 115.1-1. *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.

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#### 115.2. Adoption, Amendment, Repeal

- 8 115.2-1. This law was adopted by the Oneida Business Committee by resolution BC- 11-18-81-
- 9 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,

10 and BC-\_-\_.

- 11 115.2-2. 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.
- 14 115.2-3. 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.
- 17 115.2-4. 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.
- 19 115.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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#### 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

- Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any land added thereto pursuant to federal law.
  - (g) "Stamped Cigarettes" means cigarettes bearing valid Wisconsin tax stamps.
  - (h) "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

#### 115.4. Oneida Retail Locations

- 115.4-1. The Nation shall maintain Oneida retail locations within the Reservation as it deems necessary to provide adequate service to consumers of stamped cigarettes.
- 115.4-2. Each Oneida retail location established hereunder shall be managed and operated by the Oneida Nation.

#### 115.5. Purchase of, Title to and Possession of Tobacco Products

115.5-1. The Nation shall purchase stamped cigarettes from such suppliers as it may choose and shall take title and possession on delivery to an Oneida retail location on the Reservation. The title shall be subject to any purchase money security interest. Possession of the stamped cigarettes, but not title, shall be transferred to the manager of the Oneida retail location to be held for sale to the consumers. The Nation shall retain title to stamped cigarettes until sold to a consumer.

#### 115.6. Restrictions on Sales

- 115.6-1. The Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal Cigarette tax stamp within the Reservation. Furthermore, only the Nation may claim the tax refunds on cigarettes sold on the Reservation as provided for under state law.
- 115.6-2. The Nation reserves the right to restrict sales, volume, pricing, and profit margin of stamped cigarettes sold at an Oneida retail location.
- 115.6-3. Cigarettes, electronic cigarettes, and/or other tobacco products shall not be sold to any person under the age of twenty-one (21). Cigarettes, electronic cigarettes, and/or other tobacco products for sale at an Oneida retail location shall be on display behind a counter. No person other than an authorized employee shall sell cigarettes, electronic cigarettes, and/or other tobacco products at an Oneida retail location.
  - 115.6-4. No person may sell or offer for sale unstamped cigarettes on the Reservation.

#### 115.7. Liability

115.7-1. The Nation shall be responsible for all risks to the stamped cigarettes and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary any person owning a purchase money security interest in the products to the extent his or her interest may appear.

#### 115.8 Violations

- 115.8-1. *Issuance of a Citation*. An individual who violates a provision of this law may be issued a citation by the Oneida Police Department.
  - (a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the 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 the Oneida Police Department.
  - (b) *Disciplinary Action*. An employee who violates this law shall be subject to disciplinary action in accordance with the Nation's laws and policies governing employment.

End.

Adopted - BC-03-15-76-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
Emergency Amended - BC-02-26-20-A
Amended - BC-\_\_-\_\_\_

#### Title 1. Government and Finances - Chapter 115

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matters concerning tobacco

#### **TOBACCO**

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#### matters concerning tobacco

115.1.	Purpose	and	Policy	v

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

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4 115.1-2. *Policy*. It is the policy of the Nation to ensure that all cigarette sales on the Reservation 5 are conducted in a lawful manner.

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#### 115.2. Adoption, Amendment, Repeal

- 8 115.2-1. This law was adopted by the Oneida Business Committee by resolution BC- 11-18-81-
- 9 A and amended by resolution BC-10-10-07-A, BC-04-09-14-F, and BC-01-25-17-B-, and BC-

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- 11 115.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the
- 12 Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures
- 13
- 14 115.2-3. Should a provision of this law or the application thereof to any person or circumstances
- 15 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. 16
- 115.2-4. In the event of a conflict between a provision of this law and a provision of another law, 17
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- 19 115.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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#### 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.
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  - (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 36 cigarettes within the Oneida Nation Reservation.

- 38 (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.
  - (g) "Stamped Cigarettes" means cigarettes bearing valid Wisconsin tax stamps.
  - (h) "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

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#### 115.6. Restrictions on Sales

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- 115.6-2. The Nation reserves the right to restrict sales, volume, pricing, and profit margin of stamped cigarettes sold at an Oneida retail location.
  - 115.6-3. Cigarettes—and, electronic cigarettes, and/or other tobacco products shall not be sold to any person under the age of eighteen (18twenty-one (21)). Cigarettes—and, electronic cigarettes, and/or other tobacco products for sale at an Oneida retail location shall be on display behind a counter. No person other than an authorized employee shall sell cigarettes—and, electronic cigarettes, and/or other tobacco products at an Oneida retail location.
    - 115.6-4. No person may sell or offer for sale unstamped cigarettes on the Reservation.

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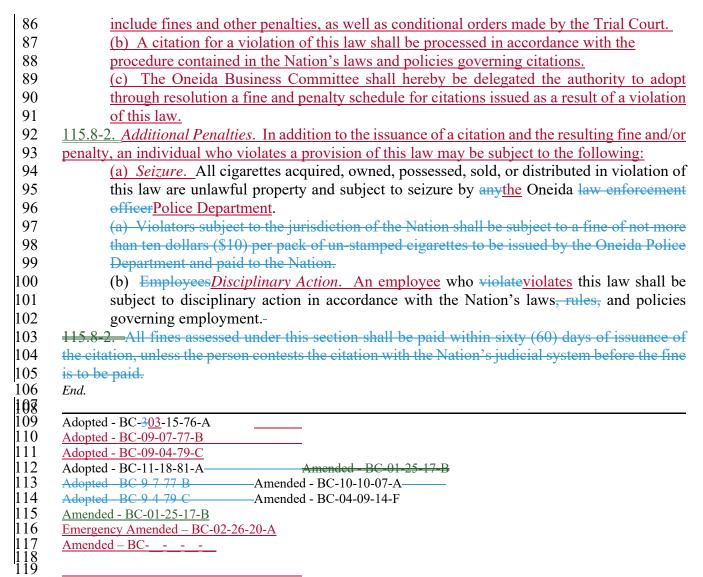
#### 115.7. Liability

115.7-1. The Nation shall be responsible for all risks to the stamped cigarettes and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary any person owning a purchase money security interest in the products to the extent his or her interest may appear.

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#### 115.8 Violations

- 115.8-1. *Issuance of a Citation*. An individual who violates a provision of this law may be issued a citation by the Oneida Police Department.
  - (a) A citation for a violation of this law and/or any orders issued pursuant to this law may



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

#### **TOBACCO**

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115.2. Adoption, Amendment, Repeal

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#### 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-\_\_-\_

11 115.2-2. 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

13 Act.

14 115.2-3. 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.

17 115.2-4. 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.

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#### 115.3. Definitions

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- (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

- Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any land added thereto pursuant to federal law.
  - (g) "Stamped Cigarettes" means cigarettes bearing valid Wisconsin tax stamps.
  - (h) "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

#### 115.4. Oneida Retail Locations

- 115.4-1. The Nation shall maintain Oneida retail locations within the Reservation as it deems necessary to provide adequate service to consumers of stamped cigarettes.
- 115.4-2. Each Oneida retail location established hereunder shall be managed and operated by the Oneida Nation.

#### 115.5. Purchase of, Title to and Possession of Tobacco Products

115.5-1. The Nation shall purchase stamped cigarettes from such suppliers as it may choose and shall take title and possession on delivery to an Oneida retail location on the Reservation. The title shall be subject to any purchase money security interest. Possession of the stamped cigarettes, but not title, shall be transferred to the manager of the Oneida retail location to be held for sale to the consumers. The Nation shall retain title to stamped cigarettes until sold to a consumer.

#### 115.6. Restrictions on Sales

- 115.6-1. The Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal Cigarette tax stamp within the Reservation. Furthermore, only the Nation may claim the tax refunds on cigarettes sold on the Reservation as provided for under state law.
- 115.6-2. The Nation reserves the right to restrict sales, volume, pricing, and profit margin of stamped cigarettes sold at an Oneida retail location.
- 115.6-3. Cigarettes, electronic cigarettes, and/or other tobacco products shall not be sold to any person under the age of twenty-one (21). Cigarettes, electronic cigarettes, and/or other tobacco products for sale at an Oneida retail location shall be on display behind a counter. No person other than an authorized employee shall sell cigarettes, electronic cigarettes, and/or other tobacco products at an Oneida retail location.
  - 115.6-4. No person may sell or offer for sale unstamped cigarettes on the Reservation.

#### 115.7. Liability

115.7-1. The Nation shall be responsible for all risks to the stamped cigarettes and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary any person owning a purchase money security interest in the products to the extent his or her interest may appear.

#### 115.8 Violations

- 115.8-1. *Issuance of a Citation*. An individual who violates a provision of this law may be issued a citation by the Oneida Police Department.
  - (a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the 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 the Oneida Police Department.
  - (b) *Disciplinary Action*. An employee who violates this law shall be subject to disciplinary action in accordance with the Nation's laws and policies governing employment.

End.

Adopted - BC-03-15-76-A 102 Adopted - BC-09-07-77-B 103 Adopted - BC-09-04-79-C 104 Adopted - BC-11-18-81-A 105 Amended - BC-10-10-07-A 106 Amended - BC-04-09-14-F 107 Amended - BC-01-25-17-B 108 Emergency Amended – BC-02-26-20-A 109 110 111 Amended – BC-\_\_-\_-\_



### AMENDMENTS TO THE TOBACCO LAW LEGISLATIVE ANALYSIS

#### **SECTION 1. EXECUTIVE SUMMARY**

Analysis by the Legislative Reference Office		
T 4 4 641	· · · · · · · · · · · · · · · · · · ·	
Intent of the	<ul> <li>Provide a definition for "tobacco products;"</li> </ul>	
Amendments	<ul> <li>Clarify that all tobacco products, and not just cigarettes and electronic</li> </ul>	
	cigarettes, shall not be sold to any person under the age of twenty-one (21)	
	years;	
	<ul> <li>Clarify that no person other than an authorized employee shall sell tobacco</li> </ul>	
products, and not just cigarettes and electronic cigarettes, at an Oneida reta		
	location;	
	• Clarify that the process and procedure contained in the Nation's Citations law	
	will govern citations issued under this Law; and	
	• 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.	
Purpose	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	
Related Legislation	Oneida Personal Policies and Procedures, Citations law	
<b>Public Meeting</b>	A public comment period was held open until May 7, 2020. A public meeting was	
	not held in accordance with the Nation's COVID-19 Core Decision Making Team's	
	declaration titled, "Suspension of Public Meetings under the Legislative Procedures	
	Act."	
Fiscal Impact	A fiscal impact statement has not yet been requested.	
1 Iscar Impact	11 fiscar impact statement has not yet been requested.	

#### **SECTION 2. LEGISLATIVE DEVELOPMENT**

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- A. *Background*. The Tobacco law ("the Law") regulates the sale, possession, and distribution of cigarettes within the Reservation. [1 O.C. 115.1-1]. The Oneida Business Committee originally adopted this Law on March 15, 1976. The Law was most recently amended on an emergency basis on February 26, 2020.
- B. *Emergency Amendments*. On February 26, 2020, the Oneida Business Committee adopted emergency amendments to the Law through resolution BC-02-26-20-A. The emergency amendment raised the minimum age for the sale of cigarettes and electronic cigarettes from eighteen (18) to twenty-one (21).
  - The Oneida Business Committee is allowed to temporarily enact an emergency law where legislation is necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and the enactment or amendment of legislation is required sooner than would be possible by utilizing the standard legislative process [1 O.C. 109.9-5].
  - An emergency amendment to the Law was pursued based on President Trump's December 20, 2019, action to sign into law an amendment to the Federal Food, Drug, and Cosmetic Act which raised the legal age to purchase tobacco products to at least twenty-one (21) years old, effective immediately. The Oneida Retail Enterprise began implementing this change on January 1, 2020.
  - The Oneida Business Committee determined emergency adoption of the amendment to the Law was necessary for the preservation of the public health and general welfare of the Reservation population because it ensures the Nation is in compliance with federal law. Additionally, the

- Oneida Business Committee found that observance of the requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest.
  - The emergency amendment to the Law will expire on August 26, 2020. The Legislative Procedures Act allows a one-time emergency law extension of up to six (6) months. [1 O.C. 109.9-5(b)].

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#### SECTION 3. CONSULTATION AND OUTREACH

- A. Representatives from the following departments of the Nation participated in the development of this Law and legislative analysis:
  - Oneida Retail Enterprise;
  - Community Health Services Department; and
  - Oneida Law Office.
- B. The following laws of the Nation were reviewed in drafting this analysis:
  - Oneida Personnel Policies and Procedures; and
  - Citations law.

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

- A. Thus far, this Law has followed the process set forth in the Legislative Procedures Act.
  - The Tobacco law emergency amendments was added to the Legislative Operating Committee's Active Files List on February 5, 2020.
  - The Oneida Business Committee adopted the emergency amendments on February 26, 2020, through the adoption of resolution BC-02-26-20-A.
  - The emergency amendments will expire on August 26, 2020.
  - A public comment period for the proposed amendments was held open until May 7, 2010.
  - B. At the time this legislative analysis was developed the following work meetings had been held regarding the development of these amendments:
    - January 30, 2020: Work meeting with LOC and Oneida Law Office.
    - March 2, 2020: Work meeting with Oneida Retail Enterprise and Community Health Services Department.
    - March 4, 2020: Work meeting with LOC.
    - April 9, 2020: Work meeting with LOC.
    - May 7, 2020: Work meeting with LOC.

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#### **SECTION 5. CONTENTS OF THE AMENDMENTS**

- A. *Definition of Tobacco Products*. The proposed amendments add a definition for "tobacco products" to the Law. [1 O.C. 115.3-1(h)]. Previously, the Law only defined and referenced "cigarettes" and "electronic cigarettes" and was silent as to other tobacco products. The Oneida Retail Enterprise uses the same minimum age for the sale of tobacco products as cigarettes and electronic cigarettes, the Law just did not reflect this practice.
  - *Effect*. The addition of the definition and reference to tobacco products better reflects the Oneida Retail Enterprise's current practice and informs the reader that tobacco products are treated in the same manner as cigarettes and electronic cigarettes.
- B. *Minimum Age of Sale*. The proposed amendments provide that cigarettes, electronic cigarettes, and/or other tobacco products shall not be sold to any person under the age of twenty-one (21). [1 O.C. 115.6-3]. Prior to the adoption of the emergency amendments, the Law only stated that cigarettes and electronic cigarettes shall not be sold to any person under the age of eighteen (18).
  - Effect. This proposed amendment permanently adopts the emergency amendment which raised the minimum age of sales of cigarettes and electronic cigarettes from eighteen (18) to twenty-one (21). This amendment also clarifies that the minimum age for the sale of tobacco products is twenty-one (21). Although the current version of the Law does not reference tobacco

products other than cigarettes and electronic cigarettes, this amendment reflects the Oneida Retail Enterprise's current practice.

- C. Sale by Authorized Employees Only. The proposed amendments provide that no person other than an authorized employee shall sell cigarettes, electronic cigarettes, and/or other tobacco products at an Oneida retail location. [1 O.C. 115.6-3]. Previously, the Law only referenced cigarettes and electronic cigarettes in this section.
  - Effect. This amendment clarifies that the restriction of sales to authorized employees applies to the sale of tobacco products at Oneida retail locations. Although the current version of the Law does not reference tobacco products other than cigarettes and electronic cigarettes, this amendment reflects the Oneida Retail Enterprise's current practice.
- D. Citations Issued for Violations of this Law. The proposed amendments provide that an individual who violates a provision of this Law may be issued a citation by the Oneida Police Department. [1 O.C. 115.8-1]. The Law goes on to provide that citations, which may include fines and other penalties, shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations. [1 O.C. 115.8-1(a)-(b)]. The proposed amendments also delegate 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. [1 O.C. 115.8-1(c)]. Previously, the Law provided that violators subject to the jurisdiction of the Nation shall be subject to a fine of not more than ten dollars (\$10) per pack of unstamped cigarettes to be issued by the Oneida Police Department and paid to the Nation. The Law also previously provided that all fines assessed 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.
  - Adoption of a Citations Law. In February 2020 the Oneida Business Committee adopted a Citations law for the purpose of providing a consistent process that governs all citations that fall under the jurisdiction of the Oneida Nation. [8 O.C. 807.1-1].
  - Effect. The proposed amendments better clarify that the process and procedure contained in the Nation's Citations law will govern citations issued under this Law. The proposed amendment's removal of language specific to fines and penalties from the Law to instead be placed into a resolution containing a fine and penalty schedule is also consistent with the Nation's recent legislative drafting practices.

#### SECTION 6. EFFECT ON EXISTING LEGISLATION

- A. Reference to other Laws of the Nation. The following laws of the Nation are referenced in this Law:
  - Oneida Personnel Policies and Procedures. This Law provides that an employee who violates this Law shall be subject to disciplinary action in accordance with the Nation's laws and policies governing employment. [1 O.C. 115.8-2(b)].
    - The Oneida Personnel Policies and Procedures is the Nation's law which governs employment. The Oneida Personnel Policies and Procedures provides the process for handling complaints, disciplinary actions, and grievances. [Section V.D.].
    - A supervisor would have to follow the disciplinary action procedure contained in the Oneida Personnel Policies and Procedures to hold an employee accountable for a violation of this Law.
  - Citations law. This Law provides that 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.
    - The Citations law is the Nation's law governing citations. The Citations law provides how a citation action is started such as who has the authority to issue a citation, the requirements of the form of the citation, and how a citation is served and filed; stipulations for the settlement of a citation; and the citation hearing procedures. [8 O.C. 807].

 Any citations issued by the Oneida Police Department for a violation of this Law must comply with the requirements and procedures of the Citations law.

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#### SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

- A. *Enforcement*. This Law is enforced in the following ways:
  - *Procedures and Policies*. The Oneida Retail enterprise is the entity responsible for carrying out the process, procedures, and responsibilities of this Law.
  - *Issuance of a Citation*. The Oneida Police Department is authorized to issue a citation for a violation of this Law. [1 O.C. 115.8-1].
  - Seizure of Unstamped Cigarettes. The Oneida Police Department is authorized to seize any cigarettes acquired, owned, possessed, sold, or distributed in violation of this Law. [1 O.C. 115.8-2(a)].
  - Disciplinary Action. A supervisor may utilize disciplinary action in accordance with the Oneida Personnel Policies and Procedures for any employee who violates this Law. [1 O.C. 115.8-2(b)].

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

- A. *Timeframe for Permanent Adoption of Amendments*. The emergency amendments to this Law, as adopted by the Oneida Business Committee through resolution BC-02-26-20-A, will expire on August 26, 2020. The Legislative Procedures Act allows a one-time extension of up to an additional six (6) months. [1 O.C. 109.9-5(b)]. This means that the Legislative Operating Committee has until February 21, 2021, at the latest to adopt these permanent amendments to this Law before the emergency amendments expire.
- B. *Fine and Penalty Schedule*. This Law provides that 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. [1 O.C. 115.8-1(c)]. The fine and penalty schedule resolution for the Tobacco law is currently under development. The Legislative Operating Committee intends to bring this proposed fine and penalty schedule resolution to the Oneida Business Committee at the time these amendments are up for adoption.
- C. Fiscal Impact. A fiscal impact statement has not yet been requested.
  - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation. [1 O.C. 109.6-1].
  - A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee. [1 O.C. 109.6-1(a and b).].





## Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-365



TO: Lawrence E. Barton, Chief Financial Officer

Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer

FROM: David P. Jordan, Legislative Operating Committee Chairman

DATE: May 11, 2020

RE: Tobacco Law Amendments Fiscal Impact Statement

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

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

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed legislation being forwarded to the Oneida Business Committee for consideration. [1 O.C. 109.6-2]. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct the Finance Department or any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. [1 O.C. 109.6-1].

Oneida Business Committee resolution BC-09-25-19-A titled, "Interpreting 'Fiscal Impact Statement' in the Legislative Procedures Act" provides further clarification on the process for directing a fiscal impact statement be completed. This resolution provides that when developing a fiscal impact statement for proposed legislation to be used for presentation to and consideration of adoption by the Oneida Business Committee, the Finance Department shall, within ten (10) business days of final approval of draft legislation by the LOC, provide a fiscal impact statement to the LOC.

On May 11, 2020, the Legislative Operating Committee approved the final draft of the proposed amendments to the Tobacco law. Therefore, the LOC is directing the Finance Department to provide a fiscal impact statement on the proposed amendments to the Tobacco law by May 27, 2020.

A copy of the proposed amendments to the Tobacco law, as well as the legislative analysis, have been attached to this memorandum for your convenience.

#### **Requested Action**

Provide the LOC a fiscal impact statement of the proposed amendments to the Tobacco law by May 27, 2020.



## May 12, 2020, Legislative Operating Committee E-Poll Approval of the Boards, Committees, and Commissions Law Amendments Materials and Public Comment Period

E-POLL REQUEST: Approval of the Boards, Committees, and Commissions Law Amendments Materials and Publi...



#### Good Afternoon Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the Boards, Committees, and Commissions law amendments materials and public comment period.

#### **EXECUTIVE SUMMARY**

The Oneida Business Committee adopted emergency amendments to the Boards, Committees, and Commissions law through the adoption of resolution BC-03-11-20-B and then BC-03-17-20-C. The emergency amendments to the Boards, Committees, and Commissions law are set to expire on September 17, 2020, with a one (1) time opportunity for an additional six (6) month extension. The Legislative Operating Committee has been developing permanent amendments to be adopted before the emergency amendments expire.

The Legislative Operating Committee is now prepared to approve a draft of proposed amendments to the Boards, Committees, and Commissions law, a legislative analysis, and a public comment period notice setting the public comment period to be held open until June 15, 2020. The Nation's COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration suspends the requirement to hold a public meeting during this Public Health State of Emergency, but still requires a public comment period be held to allow the community an opportunity to participate in the legislative process by providing written input on proposed legislation via e-mail, when it is unsafe to hold a public meetings in person during the public comment period.

Attached to this e-poll please find the follow documentation:

- Boards, Committees, and Commissions law amendments draft (redline to last permanent draft);
- Boards, Committees, and Commissions law amendments draft (clean);
- Boards, Committees, and Commissions law amendments legislative analysis; and
- Boards, Committees, and Commissions law public comment period notice.

An e-poll is necessary for this matter because the Legislative Operating Committee has canceled all meetings until June 2020 due to the COVID-19 pandemic, and immediate action is required by Legislative Operating Committee to approve these materials so that a public comment period can be scheduled and held.

#### **REQUESTED ACTION**

Approve the Boards, Committees, and Commissions law draft, legislative analysis, and public comment period notice, and set the public comment period for the Boards, Committees, and Commissions law amendments to be held open until June 15, 2020.

#### **DEADLINE FOR RESPONSE**

May 12, 2020 at 5:30 p.m.

All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by Jennifer Webster, Ernest Stevens III, David P. Jordan, Daniel Guzman King, and Kirby Metoxen.



#### Draft 1 (Redline to Last Permanent Draft) – Public Comment Draft 2020 06 15

### Title 1. Government and Finances – Chapter 105 BOARDS, COMMITTEES AND COMMISSIONS

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#### **BOARDS, COMMITTEES, AND COMMISSIONS**

105.1. Purpose and Policy	105.10. Bylaws
105.2. Adoption, Amendment, Repeal	105.11 Electronic Polling
105.3. Definitions	105.12. Reporting Requirements
105.4. Creation of an Entity	105.13. Stipends, Reimbursement and Compensation
105.5. Applications	105.14. Confidential Information
105.6. Vacancies	105.15. Conflicts of Interest
105.7. Appointment to an Entity	105.16. Use of the Nation's Assets
105.8. Election to an Entity	105.17. Dissolution of an Entity
105.9. Oath of Office	105.18. Enforcement

#### 105.1. Purpose and Policy

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105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

- (a) This law shall not apply to the Oneida Business Committee, or Standing Committees of the Oneida Business Committee.
- (b) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.

105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

#### 105.2. Adoption, Amendment, Repeal

17 105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-14-97-F 18 and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, and BC-09-26-18-C- and amended 19 by BC- - - - .

- 105.2-2. This law may be amended or repealed by the Oneida Business Committee or the General
   Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 105.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.
- 105.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 27 105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### **29 105.3. Definitions**

105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Application" means the form by which a person seeks to be appointed to fill a vacancy on an entity.
- (b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.
- (c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
- (d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.
- (e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.
- (f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.
- (g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.
- (h(h) "Direct report" means a position which requires direct contact and supervision by the Oneida Business Committee because of the position, the duties, or the services provided. Direct reports shall be identified by the Oneida Business Committee through resolution
- (i) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.
- (ij) "E-poll" means an electronic poll, which is the act of delivering an e-mail to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.
- (jk) "Joint meeting" means a meeting with the Oneida Business Committee.
- (kl) "Nation" means the Oneida Nation.
- (1)—Am) "Per Diem=" means the payment made by the Nation to offset the costs of being on travel on behalf of the Oneida Nation.
- (mn) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member's daily activities and operations.
- (no) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance

included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

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- (e) Ap) "Stipend" means the amount paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation.

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(pq) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.

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(qr) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by clear and convincing evidence.

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(FS) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.

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(st) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

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#### 105.4. Creation of an Entity

105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.

98 105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.

100 105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

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#### 105.5. Applications

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105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

107 108 (a) All applications shall include:

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(1) a statement explaining the attendance requirements of section 105.12-3; and (2) a section regarding disclosures of conflicts of interest.

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(b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.

- 116 105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date.
- 118 105.5-3. Within eight (8) days after the posted deadline for filing applications, the Business
- 119 Committee Support Office shall notify all persons who have filed an application of the date his or

- her application was received and if his or her application met the deadline to be considered for the election or appointment.
- 122 105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. Applications for appointed positions shall be verified by the Business
- 124 Committee Support Office as needed or as required in the bylaws of the entity.
- 105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Oneida Business Committee Support Office may elect to:repost for an additional time period.
  - (a) include within The Business Committee Support Office shall notify the pool of appointed persons late applications, or
    - (b) repostOneida Business Committee if a position will be reposted for an additional time period.
    - (b) In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.
    - (c) The Oneida Business Committee may elect to include within the pool of appointed persons late applications.

#### 105.6. Vacancies

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- 105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.
- 105.6-2. A position on an entity shall be considered vacant in the following situations:
  - (a) *End of Term.* A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.
    - (1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.
  - (b) Removal. Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.
  - (c) Termination of Appointment. A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.
  - (d) Resignation. A resignation is effective upon:
    - (1) Deliverance of a letter to the Business Committee Support Office and to the Chairperson of the entity, or designee; or-
    - (2) Acceptance by motion of the entity of a verbal resignation.
  - (e) New Positions. Vacancies on new entities are effective upon adoption of bylaws.
- 105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.
- 161 105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the
- 162 Secretary. The Secretary shall request and receive approval from the Oneida Business Committee
- 163 to post the notice of vacancy. The Business Committee Support Office shall post notice of

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- (a) End of Term. Automatically sixty (60) days prior to completion of the term.
- (b) *Removal*. No later than the next Oneida Business Committee meeting following the effective date of the removal.
- (c) Resignation. No later than the next Oneida Business Committee meeting following the Business Committee Support Office's receipt of notice of an effective resignation from the entity.
- (d) New Positions. Upon one of the following conditions:
  - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
  - (2) upon date specified when creating the entity.
- (e) *Termination of appointment*. No later than the next Oneida Business Committee meeting following the effective date of the termination.
- 105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

# 105.7. Appointment to an Entity

- 105.7-1. Appointment Selection. The following procedures shall be used to determine how the applicant for an appointed position is selected:
  - (a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
    - (1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and
    - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made-; or
    - (3) if delays in compiling the applications, summary of qualifications, or results of any investigations exist, request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2).
  - (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
    - (1) The entity's Chairperson may have until the executive session to review the application materials and providesubmit to the Business Committee Support Office a recommendation to the Oneida Business Committee a recommendation of an applicant for appointment.
      - (A) The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida Business Committee meeting in which the appointment is intended to be

- made.
- (c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:
  - (1) chooseselect an applicant for appointment, or
  - (2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.
- (d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.
- (e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:
  - (1) accept the selected applicant and vote to appoint the individual to the vacant position, or
  - (2) reject the selected applicant and vote to oppose the appointment of the individual.
- (f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.
- 105.7-2. *Notification of Appointment*. Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.
  - (a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.
  - (b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: A The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."
- 105.7-3. *Declination of Appointment*. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.
  - (a) An individual may decline an appointment to an entity in the following ways:
    - (1) Delivery of ana letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or
    - (2) The failure to take the oath of office within thirty (30) days of being selected

for appointment by the Oneida Business Committee.

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- (b) The Business Committee Support Office shall notify the Oneida Business Committee 256
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- if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined in section 105.7-1 to select another applicant for appointment. 105.7-4. Termination of Appointment. An appointed member of an entity serves at the discretion
- of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.
  - (a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.
  - (b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

# 105.8. Election to an Entity

- 105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or petitionapply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.
  - (a) When the Election Board notifies a petitioner an applicant or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: A"The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income..."
- 105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

#### 105.9. Oath of Office

- 105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternate time and location as determined by the Secretary. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.
  - (a) The When taking an oath at an Oneida Business Committee meeting, the appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.
- 105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.
- 105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall

- be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded to the new member of the entity and the entity.
- 298 105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is 299 pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws
- and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation
- 301 Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people
- with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will
- carry out the duties and responsibilities as a member of the [entity name], and all recommendations shall be made in the best interest of the Oneida Nation as a whole.
  - 105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware of their duty to the Nation and as members of the entity.

#### 105.10. Bylaws

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- 105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.
  - (a) All existing entities <u>mustshall</u> comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law.
  - (b) Bylaws <u>mustshall</u> contain at least the minimum information required by law, although more information is not prohibited.
  - (c) *Exception*. Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities mustshall have, at minimum, mission or goal statements for completion of the task.
- 105.10-2. Articles. Bylaws shall contain, at a minimum, the following Articles:
  - (a) Article I. Authority.
  - (b) Article II. Officers.
  - (c) Article III. Meetings.
  - (d) Article IV. Expectations.
  - (e) Article V. Stipends and Compensation.
  - (f) Article VI. Records and Reporting.
  - (g) Article VII. Amendments.
- 105.10-3. Sections. Articles shall be divided into "sections" as set out.
  - (a) "Article I. Authority" shall consist of the following:
    - (1) *Name*. The full name of the entity shall be stated, along with any short name that will be officially used.
    - (2) *Establishment*. This section shall state the citation and name, if any, of the creation document.
    - (3) *Authority*. This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.
    - (4) Office. There shall be listed the official office or post box of the entity.
    - (5) *Membership*. The following information shall be in this section:
      - (A) Number of members on the entity;
      - (B) If members on the entity are elected or appointed, and how a member

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(i) In order to qualify for membership on an entity, a person shall

344	meet the minimum age requirements set forth for status as a
345	qualified voter of the Nation, unless a law, policy, or directive sets
346	forth a minimum age requirement.
347	(6) Termination or Removal. This section shall identify causes for termination or
348	removal, if any, in addition to those already identified in laws and/or policies of the
349	Nation.
350	(7) Trainings and Conferences. This section shall describe any trainings and/or
351	conferences that the entity deems necessary for members to responsibly serve the
352	entity, if any.
353	(b) "Article II. Officers" shall consist of the following:
354	(1) Chairperson and Vice-Chairperson. This section creates the chairperson and
355	vice-chairperson positions of the entity. Other officer positions may also be created
356	here.
357	(2) Responsibilities of the Chairperson. Because of the importance of this position,
358	all duties and responsibilities of the chairperson, as well as limitations of the
359	chairperson shall be specifically listed here.
360	(3) Responsibilities of the Vice-Chairperson. Because of the importance of this
361	position, all duties and responsibilities of the vice-chairperson, as well as
362	limitations of the vice-chairperson shall be specifically listed here.
363	(4) Responsibilities of Additional Officers. There may be additional sections as
364	needed for every officer position created in subsection one (1) above. These
365	sections shall state all duties and responsibilities of the officer, as well as any
366	limitations of the officer.
367	(5) Selection of Officers. This section shall identify how a member of the entity
368	shall be selected for an official officer position in the entity.
369	(6) Budgetary Sign-Off Authority and Travel. This section shall identify the
370	entity's varying levels of budgetary sign-off authority, the members that are
371	authorized to sign-off at each level, and how the entity shall handle approving travel
372	on behalf of the entity.
373	(A) An entity shall follow the Nation's policies and procedures regarding
374	purchasing and sign-off authority.
375	(B) An entity shall approve a member's request to travel on behalf of the
376	entity by majority vote at a regular or emergency meeting of the entity.
377	(7) <i>Personnel</i> . This section shall state the entity's authority for hiring personnel,
378	if any, and the duties of such personnel.
379	(c) "Article III. Meetings" shall consist of the following:
380	(1) Regular meetings. This section shall identify when and where regular meetings
381	shall be held, and how the entity shall provide notice of the meeting agenda,
382	documents, and minutes.
383	(2) <i>Emergency meetings</i> . This section shall identify what constitutes an emergency
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is elected or appointed;

(C) How vacancies are filled; and

(D) Qualifications for membership on the entity.

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384 meeting, how emergency meetings shall be called, and how the entity shall provide notice of the emergency meeting. 385 (A) All bylaws shall include a provision requiring that within seventy-two 386 387 (72) hours after an emergency meeting, the entity shall provide the Nation's 388 Secretary with notice of the meeting, the reason for the emergency meeting. and an explanation of why the matter could not wait for a regular meeting. 389 390 (3) Joint Meetings. This section shall identify if joint meetings shall be held, the 391 frequency and location of joint meetings, and how the entity shall provide notice of 392 the meeting agenda, documents, and minutes. 393 (4) Quorum. This section shall identify how many members of an entity create a 394 quorum. 395 (5) Order of Business. This section sets out how the agenda will be set up. 396 (6) Voting. This section shall identify voting requirements, such as, but not limited 397 to: 398 (A) the percentages that shall be needed to pass different items; 399 (B) if, and when, the chairperson is allowed to vote; (C) if the use of an e-poll is permissible; and 400 (D) if the use of and e-poll is permissible, who will serve as the 401 402 Chairperson's designee for the responsibility of conducting an e-poll, if a 403 designee is utilized. 404 (d) "Article IV. Expectations" shall consist of the following information: 405 (1) Behavior of Members. This section shall identify the behavioral expectations 406 and requirements of a member of the entity, and identify how the entity shall 407 enforce these behavioral expectations. 408 (2) Prohibition of Violence. This section shall prohibit any violent intentional act 409 committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property, and 410 set forth any further expectations regarding the prohibition of violence. 411 (3) Drug and Alcohol Use. This section shall prohibit the use of alcohol and 412 prohibited drugs for a member of an entity when acting in their official capacity, 413 and set forth any further expectations regarding the use of prohibited drugs and 414 415 416 (4) Social Media. This section shall identify expectations for the use of social 417 media in regards to official business of the entity. 418 (5) Conflict of Interest. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest 419 and how they are handled, as well as requirements related to prohibited activities 420 421 resulting from disclosed conflicts of interest, and means by which a party can 422 alleviate or mitigate the conflict of interest. (e) "Article V. Stipends and Compensation" shall consist of the following information: 423 424 (1) Stipends. This section shall include a comprehensive list of all stipends 425 members are eligible to receive and the requirements for collecting each stipend, if 426 any in addition to those contained in this law. 427 (2) Compensation. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting

(1) Agenda Items. Agenda items shall be maintained in a consistent format as

(2) Minutes. Minutes shall be typed and in a consistent format designed to generate

the most informative record of the meetings of the entity. This may include a

summary of action taken by the entity. This section shall identify the format for

minutes, and a reasonable timeframe by which minutes shall be submitted to the

(3) Attachments. Handouts, reports, memoranda, and the like may be attached to

the minutes and agenda, or may be kept separately, provided that all materials can

be identified to the meeting in which they were presented. This section shall

(4) Oneida Business Committee Liaison. Entities shall regularly communicate with

the Oneida Business Committee member who is their designated liaison. This section shall identify a format and frequency for communication which may be as

the liaison and entity agree to, but not less than that required in any law or policy

on reporting developed by the Oneida Business Committee or Oneida General

Tribal Council. The purpose of the liaison relationship is to uphold the ability of

(5) Audio Recordings. An entity shall audio record all meetings. This section shall state how the entity shall audio record meetings, and how the entity shall maintain

(1) Amendments to Bylaws. This section shall describe how amendments to the bylaws are made. Any amendments to bylaws shall conform to the requirements

of this and any other policy of the Nation. Amendments to bylaws shall be

approved by the Oneida Business Committee, in addition to the General Tribal

(A) Exception. Audio recordings of executive session portions of a meeting

such compensation, if any in addition to those contained in this law. (f) "Article VI. Records and Reporting" shall consist of the following information:

identified by this section.

Business Committee Support Office.

identify how records of attachments shall be kept.

the liaison to act as a support to that entity.

shall not be required.

(g) "Article VII. Amendments" consists of:

the audio records.

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105.11. Electronic Polling 462

- 105.11-1. An entity may utilize an e-poll when approval of an action may be required before the next available meeting agenda of the entity.
- 105.11-2. Conducting an E-Poll. The Chairperson of the entity, or designee, shall e-mail the epoll to all members of the entity. Requests for an e-poll shall be sent only from an official e-mail address of the entity. The e-poll's message shall include the following information:
  - (a) The e-mail subject line shall begin with "E-poll Request:" and include a short title describing the purpose of the request.
  - (b) The body of the e-poll shall contain the following elements:

Council when applicable, prior to implementation.

(1) An executive summary of the reason for the request and why the request cannot be presented at the next available meeting of the entity;

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- (2) A proposed motion which shall be in bold and identified in a separate paragraph by the words "Requested Action;"
  - (3) All attachments in \*.pdf format, which are necessary to understand the request being made; and
  - (4) A deadline date for a response to be returned regarding the results of the electronic poll which shall be in bold and identified in a separate paragraph by the words "Deadline for Response."
    - (A) E-poll requests shall be open for response not less than one (1) hour and no more than twenty-four (24) hours.
    - (B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.
  - 105.11-3. Response to an E-Poll. Only the member of an entity shall respond to an e-poll. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.
    - (a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.
    - (b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.
    - (c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.
    - (d) The Chairperson, or designee, shall monitor all responses and deadline dates for responses.
- 105.11-4. *Entering an E-Poll in the Record*. Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:
  - (a) Original e-poll request and all supporting documentation;
  - (b) A summary of the e-poll results identifying each member of the entity and his or her response; and
  - (c) A copy of any comment by a member of the entity if comments are made beyond a vote.

#### 105.12. Reporting Requirements

- 105.12-1. *Minutes*. All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.
  - (a) Actions taken by an entity are valid upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.
  - (b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.
  - (c) No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.

- 516 105.12-2. Standard Operating Procedures. All standard operating procedures established by an
- entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.
- 519 105.12-3. *Quarterly Reports to the Oneida Business Committee*. Entities shall provide quarterly reports to the Oneida Business Committee in accordance with the quarterly reporting schedule
- approved by the Oneida Business Committee. All quarterly reports shall be approved by official
- entity action before they are submitted. The quarterly reports shall not contain any information
- that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the
- entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda
- item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:
  - (a) *Contact Information*. The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.
  - (b) *Meetings*. When and how often the entity is holding meetings and whether any emergency meetings have been held.
    - (1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.
  - (c) Accomplishments. Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.
  - (d) Goals. Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.
  - (e) *Budget*. The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.
  - (f) Requests. Details of any requests to the Oneida Business Committee.
  - (g) Other. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.
  - 105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.
    - (a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.
    - (b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.
  - 105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

## 105.13. Stipends, Reimbursement and Compensation

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105.13-1. Stipends and reimbursement for expenses shall follow the procedures as set out in this section and according to procedures for payment as set out by the Nation, unless otherwise declined

by the entity through its bylaws, or declined by a member.

- 105.13-2. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending the resolution. Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards. 105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than one (1 twelve (12) meeting stipends per month year).
  - (b) *Meeting Stipends for an Elected Entity*. An individual serving on an elected entity shall be paid no more than two (2twenty-four (24) meeting stipends per monthyear.
  - (c) Demonstrating Presence During a Meeting. An entity shall demonstrate presence during an entire meeting by taking roll call on the record at both the beginning and conclusion of a meeting.
- 105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting. *Joint meetings can occur in person*, by telephone, through videoconferencing, or through other telecommunications.
  - (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
    - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
- 105.13-5. *Oneida Judiciary Hearings*. A member of an entity shall receive a Judiciary hearing stipend if the member's attendance at the Judiciary hearing is required by official subpoena.
- 105.13-6. *Hearings of an Entity*. A member of an entity that maintains hearing authority may obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.
- 105.13-7. *Other Stipends*. The Oneida Business Committee shall determine if, and when, any other stipends are appropriate to compensate members of entities for their official actions. All possible stipends shall be included in the Oneida Business Committee resolution which sets stipend amounts.
- 105.13-8. *Conferences and Training*. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:
  - (a) A member shall be eligible for a stipend for each full day the member is present at the attending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
    - (1) The amount of the stipend a member is eligible to receive for attendance at a

conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a conference or training.

- (b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.(c) No stipend payments shall be made for those days spent traveling to and from the

conference or training.

105.13-9. Business Expenses. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.

105.13-10. Task Force and Ad Hoc Subcommittees. Members of task force ad hoc committees.

 105.13-10. *Task Force and Ad Hoc Subcommittees*. Members of task force, ad hoc committees and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

#### 105.14. Confidential Information

105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order to protect the interest of the Nation and ensure that no persons engaged in by the Nation, nor their relatives or associates, benefit from the use of confidential information.

 (a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.

 (b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Nation and the entity.

(c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.

(d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.

105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and <u>eanshall</u> only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents <u>mustshall</u> be made in accordance with the Nation's laws and policies <u>regardinggoverning</u> open records and open meetings.

105.14-3. *Official Oneida Nation E-mail Address*. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.

(a) If a member is also an employee of the Nation, he or she shall receive a separate e-

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- mail address from his or her regular work e-mail address.
  - (b) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
  - (c) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.
  - (d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

#### 105.15. Conflicts of Interest

- 105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.
- 105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises, and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.
  - (a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action <u>mustshall</u> be taken by the Nation regarding the status of the official.
- 105.15-3. <u>Ineligibility Due to Conflicts of Interest.</u> Due to the potential for a real or perceived conflict of interest to exist, <u>political appointees the following individuals</u> shall not <u>be eligible to</u> serve on an appointed or elected entity:
  - (a) political appointees;
  - (b) an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, or Intergovernmental Affairs and Communications; and
  - (c) an employee who serves as a direct report to the Oneida Business Committee.

#### 105.16. Use of the Nation's Assets

- 105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.
- 105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:
  - (a) all transactions are executed in accordance with management's authorization; and
  - (b) access to assets is permitted only in accordance with management's authorization; and
  - (c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.
- 105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

#### 105.17. Dissolution of an Entity

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- 692 105.17-1. *Dissolution of a Task Force or Ad Hoc Committee*. A task force or ad hoc committee 693 dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials 694 generated by a task force or ad hoc committee shall be forwarded to the Business Committee 695 Support Office for proper disposal within two (2) weeks of the dissolution.
- 696 105.17-2. *Dissolution of an Entity*. All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee.
- 698 105.17-3. *Notice of Dissolution*. Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida Business Committee shall provide the entity written notice of the dissolution.
  - 105.17-4. *Management of Records and Materials*. All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.
    - (a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

#### 105.18. Enforcement

105.18-1. Any member of an entity found to be in violation of this law may be subject to:

- (a) sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;
- (b) removal pursuant to any laws or policies of the Nation's governing removal, if the individual is a member of an elected entity; or
- (c) termination of appointment by the Oneida Business Committee, if the individual is a member of an appointed entity.

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- 723 Adopted BC-08-02-95-A 724 Amended - BC-05-14-97-F
- 725 Emergency Amendments Amended BC-04-12-06-JJ
- Amended BC-09-27-06-E (permanent adoption of emergency amendments)
- 727 Amended BC-09-22-10-C
- 728 Amended BC-09-26-18-C
- 729 Emergency Amended BC-03-11-20-B
- 730 Emergency Amended BC-03-17-20-C
- 731 <u>Amended BC- - -</u>

# Title 1. Government and Finances – Chapter 105 Laotiyanl<hsla>sh&ha k<tyohkway<=t&=se>

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# **BOARDS, COMMITTEES, AND COMMISSIONS**

105.1. Purpose and Policy	105.10.	Bylaws
105.2. Adoption, Amendment, Repeal	105.11	Electronic Polling
105.3. Definitions	105.12.	Reporting Requirements
105.4. Creation of an Entity	105.13.	Stipends, Reimbursement and Compensation
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105.6. Vacancies	105.15.	Conflicts of Interest
105.7. Appointment to an Entity	105.16.	Use of the Nation's Assets
105.8. Election to an Entity	105.17.	Dissolution of an Entity
105.9. Oath of Office	105.18.	Enforcement

# 105.1. Purpose and Policy

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105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

- (a) This law shall not apply to the Oneida Business Committee, or standing committees of the Oneida Business Committee.
- (b) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.
- 105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

# 105.2. Adoption, Amendment, Repeal

- 17 105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-14-97-F 18 and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C and amended by 19 BC- - - - .
- 105.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 22 105.2-3. Should a provision of this law or the application thereof to any person or circumstances
- be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.
- 105.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
  - 105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### 105.3. Definitions

- 105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Application" means the form by which a person seeks to be appointed to fill a vacancy

on an entity.

- (b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.
- (c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
- (d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.
- (e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.
- (f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.
- (g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.
- (h) "Direct report" means a position which requires direct contact and supervision by the Oneida Business Committee because of the position, the duties, or the services provided. Direct reports shall be identified by the Oneida Business Committee through resolution
- (i) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.
- (j) "E-poll" means an electronic poll, which is the act of delivering an e-mail to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.
- (k) "Joint meeting" means a meeting with the Oneida Business Committee.
- (1) "Nation" means the Oneida Nation.
- (m) "Per Diem" means the payment made by the Nation to offset the costs of being on travel on behalf of the Oneida Nation.
- (n) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member's daily activities and operations.
- (o) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used

in an unauthorized or unlawful manner.

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- (p) "Stipend" means the amount paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation.
- (q) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.
- (r) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by clear and convincing evidence.
- (s) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.
- (t) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

#### 105.4. Creation of an Entity

- 105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.
- 97 105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.
- 99 105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

#### 105.5. Applications

- 105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.
  - (a) All applications shall include:
    - (1) a statement explaining the attendance requirements of section 105.12-3; and
    - (2) a section regarding disclosures of conflicts of interest.
  - (b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.
- 105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date.
- 117 105.5-3. Within eight (8) days after the posted deadline for filing applications, the Business
- 118 Committee Support Office shall notify all persons who have filed an application of the date his or
- her application was received and if his or her application met the deadline to be considered for the election or appointment.

- 121 105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. Applications for appointed positions shall be verified by the Business Committee Support Office as needed or as required in the bylaws of the entity.
  - 105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Business Committee Support Office may repost for an additional time period.
    - (a) The Business Committee Support Office shall notify the Oneida Business Committee if a position will be reposted for an additional time period.
    - (b) In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.
    - (c) The Oneida Business Committee may elect to include within the pool of appointed persons late applications.

#### 105.6. Vacancies

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- 105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.
- 105.6-2. A position on an entity shall be considered vacant in the following situations:
  - (a) End of Term. A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.
    - (1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.
  - (b) *Removal*. Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.
  - (c) Termination of Appointment. A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.
  - (d) *Resignation*. A resignation is effective upon:
    - (1) Deliverance of a letter to the Business Committee Support Office and to the Chairperson of the entity, or designee; or
    - (2) Acceptance by motion of the entity of a verbal resignation.
  - (e) New Positions. Vacancies on new entities are effective upon adoption of bylaws.
- 105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.
- 105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The Business Committee Support Office shall post notice of vacancies at the following times:
  - (a) End of Term. Automatically sixty (60) days prior to completion of the term.
  - (b) *Removal*. No later than the next Oneida Business Committee meeting following the effective date of the removal.

- (c) Resignation. No later than the next Oneida Business Committee meeting following the Business Committee Support Office's receipt of notice of an effective resignation from the entity.
- (d) New Positions. Upon one of the following conditions:
  - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
  - (2) upon date specified when creating the entity.
- (e) *Termination of appointment*. No later than the next Oneida Business Committee meeting following the effective date of the termination.
- 105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

### 105.7. Appointment to an Entity

- 105.7-1. *Appointment Selection*. The following procedures shall be used to determine how the applicant for an appointed position is selected:
  - (a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
    - (1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and
    - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made; or
    - (3) if delays in compiling the applications, summary of qualifications, or results of any investigations exist, request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2).
  - (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
    - (1) The entity's Chairperson may review the application materials and submit to the Business Committee Support Office a recommendation to the Oneida Business Committee of an applicant for appointment.
      - (A) The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida Business Committee meeting in which the appointment is intended to be made.
  - (c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:
    - (1) select an applicant for appointment, or

(2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.

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- (d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.

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(e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:

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(1) accept the selected applicant and vote to appoint the individual to the vacant position, or

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(2) reject the selected applicant and vote to oppose the appointment of the individual.

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(f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.

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105.7-2. *Notification of Appointment*. Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.

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(a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.

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(b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: "The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

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105.7-3. *Declination of Appointment*. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.

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(a) An individual may decline an appointment to an entity in the following ways:

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Delivery of a letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or
 The failure to take the oath of office within thirty (30) days of being selected

247 248 for appointment by the Oneida Business Committee.

(b) The Business Committee Support Office shall notify the Oneida Business Committee

- if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined in section 105.7-1 to select another applicant for appointment.
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- 105.7-4. Termination of Appointment. An appointed member of an entity serves at the discretion

of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.

- (a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.
- (b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

### 105.8. Election to an Entity

- 105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or apply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.
  - (a) When the Election Board notifies an applicant or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: "The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."
- 105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

#### 105.9. Oath of Office

- 105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternate time and location as determined by the Secretary. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.
  - (a) When taking an oath at an Oneida Business Committee meeting, the appointed or elected member shall appear in person to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.
- 105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.
- 105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded to the new member of the entity and the entity.
- 105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people
- with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will
- 295 carry out the duties and responsibilities as a member of the [entity name], and all recommendations
- shall be made in the best interest of the Oneida Nation as a whole.

105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware of their duty to the Nation and as members of the entity.

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#### 105.10. Bylaws

- 105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.
  - (a) All existing entities shall comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law.
  - (b) Bylaws shall contain at least the minimum information required by law, although more information is not prohibited.
  - (c) *Exception*. Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities shall have, at minimum, mission or goal statements for completion of the task.
- 105.10-2. Articles. Bylaws shall contain, at a minimum, the following Articles:
  - (a) Article I. Authority.
  - (b) Article II. Officers.
  - (c) Article III. Meetings.
  - (d) Article IV. Expectations.
  - (e) Article V. Stipends and Compensation.
  - (f) Article VI. Records and Reporting.
  - (g) Article VII. Amendments.
- 105.10-3. Sections. Articles shall be divided into "sections" as set out.
  - (a) "Article I. Authority" shall consist of the following:
    - (1) *Name*. The full name of the entity shall be stated, along with any short name that will be officially used.
    - (2) *Establishment*. This section shall state the citation and name, if any, of the creation document.
    - (3) *Authority*. This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.
    - (4) Office. There shall be listed the official office or post box of the entity.
    - (5) *Membership*. The following information shall be in this section:
      - (A) Number of members on the entity;
      - (B) If members on the entity are elected or appointed, and how a member is elected or appointed;
      - (C) How vacancies are filled; and
      - (D) Qualifications for membership on the entity.
        - (i) In order to qualify for membership on an entity, a person shall meet the minimum age requirements set forth for status as a qualified voter of the Nation, unless a law, policy, or directive sets forth a minimum age requirement.
    - (6) Termination or Removal. This section shall identify causes for termination or removal, if any, in addition to those already identified in laws and/or policies of the

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- (7) *Trainings and Conferences*. This section shall describe any trainings and/or conferences that the entity deems necessary for members to responsibly serve the entity, if any.
- (b) "Article II. Officers" shall consist of the following:
  - (1) Chairperson and Vice-Chairperson. This section creates the chairperson and vice-chairperson positions of the entity. Other officer positions may also be created here.
  - (2) Responsibilities of the Chairperson. Because of the importance of this position, all duties and responsibilities of the chairperson, as well as limitations of the chairperson shall be specifically listed here.
  - (3) Responsibilities of the Vice-Chairperson. Because of the importance of this position, all duties and responsibilities of the vice-chairperson, as well as limitations of the vice-chairperson shall be specifically listed here.
  - (4) Responsibilities of Additional Officers. There may be additional sections as needed for every officer position created in subsection one (1) above. These sections shall state all duties and responsibilities of the officer, as well as any limitations of the officer.
  - (5) Selection of Officers. This section shall identify how a member of the entity shall be selected for an official officer position in the entity.
  - (6) Budgetary Sign-Off Authority and Travel. This section shall identify the entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and how the entity shall handle approving travel on behalf of the entity.
    - (A) An entity shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.
    - (B) An entity shall approve a member's request to travel on behalf of the entity by majority vote at a regular or emergency meeting of the entity.
  - (7) *Personnel*. This section shall state the entity's authority for hiring personnel, if any, and the duties of such personnel.
- (c) "Article III. Meetings" shall consist of the following:
  - (1) Regular meetings. This section shall identify when and where regular meetings shall be held, and how the entity shall provide notice of the meeting agenda, documents, and minutes.
  - (2) *Emergency meetings*. This section shall identify what constitutes an emergency meeting, how emergency meetings shall be called, and how the entity shall provide notice of the emergency meeting.
    - (A) All bylaws shall include a provision requiring that within seventy-two (72) hours after an emergency meeting, the entity shall provide the Nation's Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular meeting.
  - (3) *Joint Meetings*. This section shall identify if joint meetings shall be held, the frequency and location of joint meetings, and how the entity shall provide notice of the meeting agenda, documents, and minutes.

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- (4) *Quorum*. This section shall identify how many members of an entity create a quorum.
- (5) Order of Business. This section sets out how the agenda will be set up.
- (6) *Voting*. This section shall identify voting requirements, such as, but not limited to:
  - (A) the percentages that shall be needed to pass different items;
  - (B) if, and when, the chairperson is allowed to vote;
  - (C) if the use of an e-poll is permissible; and
  - (D) if the use of and e-poll is permissible, who will serve as the Chairperson's designee for the responsibility of conducting an e-poll, if a designee is utilized.
- (d) "Article IV. Expectations" shall consist of the following information:
  - (1) Behavior of Members. This section shall identify the behavioral expectations and requirements of a member of the entity, and identify how the entity shall enforce these behavioral expectations.
  - (2) *Prohibition of Violence*. This section shall prohibit any violent intentional act committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property, and set forth any further expectations regarding the prohibition of violence.
  - (3) Drug and Alcohol Use. This section shall prohibit the use of alcohol and prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and alcohol.
  - (4) Social Media. This section shall identify expectations for the use of social media in regards to official business of the entity.
  - (5) Conflict of Interest. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities resulting from disclosed conflicts of interest, and means by which a party can alleviate or mitigate the conflict of interest.
- (e) "Article V. Stipends and Compensation" shall consist of the following information:
  - (1) *Stipends*. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.
  - (2) Compensation. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.
- (f) "Article VI. Records and Reporting" shall consist of the following information:
  - (1) Agenda Items. Agenda items shall be maintained in a consistent format as identified by this section.
  - (2) *Minutes*. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the

429	Business Committee Support Office.
430	(3) Attachments. Handouts, reports, memoranda, and the like may be attached to
431	the minutes and agenda, or may be kept separately, provided that all materials can
432	be identified to the meeting in which they were presented. This section shall
433	identify how records of attachments shall be kept.
434	(4) Oneida Business Committee Liaison. Entities shall regularly communicate with
435	the Oneida Business Committee member who is their designated liaison. This
436	section shall identify a format and frequency for communication which may be as
437	the liaison and entity agree to, but not less than that required in any law or policy
438	on reporting developed by the Oneida Business Committee or Oneida General
439	Tribal Council. The purpose of the liaison relationship is to uphold the ability of
440	the liaison to act as a support to that entity.
441	(5) Audio Recordings. An entity shall audio record all meetings. This section shall
442	state how the entity shall audio record meetings, and how the entity shall maintain
443	the audio records.
444	(A) Exception. Audio recordings of executive session portions of a meeting
445	shall not be required.
446	(g) "Article VII. Amendments" consists of:
447	(1) Amendments to Bylaws. This section shall describe how amendments to the
448	bylaws are made. Any amendments to bylaws shall conform to the requirements
449	of this and any other policy of the Nation. Amendments to bylaws shall be
450	approved by the Oneida Business Committee, in addition to the General Tribal
451	Council when applicable, prior to implementation.
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453	105.11. Electronic Polling
454	105.11-1. An entity may utilize an e-poll when approval of an action may be required before the
455	next available meeting agenda of the entity.
456	105.11-2. Conducting an E-Poll. The Chairperson of the entity, or designee, shall e-mail the e-
457	poll to all members of the entity. Requests for an e-poll shall be sent only from an official e-mail
458	address of the entity. The e-poll's message shall include the following information:
459	(a) The e-mail subject line shall begin with "E-poll Request:" and include a short title
460	describing the purpose of the request.
461	(b) The body of the e-poll shall contain the following elements:
462	(1) An executive summary of the reason for the request and why the request cannot
463	be presented at the next available meeting of the entity;
464	(2) A proposed motion which shall be in bold and identified in a separate paragraph
465	by the words "Requested Action;"
466	(3) All attachments in *.pdf format, which are necessary to understand the request
467	being made; and
468	(4) A deadline date for a response to be returned regarding the results of the
469	electronic poll which shall be in bold and identified in a separate paragraph by the
470	words "Deadline for Response."
471	(A) E-poll requests shall be open for response not less than one (1) hour
472	and no more than twenty-four (24) hours.

(B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.

105.11-3. Response to an E-Poll. Only the member of an entity shall respond to an e-poll. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.

(a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.

 (b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.

 (c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.

 (d) The Chairperson, or designee, shall monitor all responses and deadline dates for responses.

105.11-4. Entering an E-Poll in the Record. Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:

 (a) Original e-poll request and all supporting documentation;

(b) A summary of the e-poll results identifying each member of the entity and his or her response; and

 (c) A copy of any comment by a member of the entity if comments are made beyond a vote.

### **105.12.** Reporting Requirements

 105.12-1. *Minutes*. All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.

(a) Actions taken by an entity are valid upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.

 (b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.(c) No action or approval of minutes is required by the Oneida Business Committee on

minutes submitted by an entity unless specifically required by the bylaws of that entity. 105.12-2. *Standard Operating Procedures*. All standard operating procedures established by an

105.12-2. Standard Operating Procedures. All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.

105.12-3. *Quarterly Reports to the Oneida Business Committee*. Entities shall provide quarterly reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda

- item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:
  - (a) *Contact Information*. The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.
  - (b) *Meetings*. When and how often the entity is holding meetings and whether any emergency meetings have been held.
    - (1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.
  - (c) Accomplishments. Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.
  - (d) Goals. Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.
  - (e) *Budget*. The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.
  - (f) Requests. Details of any requests to the Oneida Business Committee.
  - (g) Other. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.
- 105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.
  - (a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.
  - (b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.
- 105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

#### 105.13. Stipends, Reimbursement and Compensation

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- 105.13-1. Stipends and reimbursement for expenses shall follow the procedures as set out in this section and according to procedures for payment as set out by the Nation, unless otherwise declined by the entity through its bylaws, or declined by a member.
- 553 105.13-2. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending the resolution. Stipends
- are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards.
- 557 105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly
- adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the
- stipend is present for the entire meeting. Meetings can occur in person, by telephone, through

videoconferencing, or through other telecommunications.

- (a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than twelve (12) meeting stipends per year.
- (b) *Meeting Stipends for an Elected Entity*. An individual serving on an elected entity shall be paid no more than twenty-four (24) meeting stipends per year.
- (c) Demonstrating Presence During a Meeting. An entity shall demonstrate presence during an entire meeting by taking roll call on the record at both the beginning and conclusion of a meeting.
- 105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
    - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
- 105.13-5. *Oneida Judiciary Hearings*. A member of an entity shall receive a Judiciary hearing stipend if the member's attendance at the Judiciary hearing is required by official subpoena.
- 105.13-6. *Hearings of an Entity*. A member of an entity that maintains hearing authority may obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.
- 105.13-7. Other Stipends. The Oneida Business Committee shall determine if, and when, any other stipends are appropriate to compensate members of entities for their official actions. All possible stipends shall be included in the Oneida Business Committee resolution which sets stipend amounts.
- 105.13-8. *Conferences and Training*. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:
  - (a) A member shall be eligible for a stipend for attending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
    - (1) The amount of the stipend a member is eligible to receive for attendance at a conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a conference or training.
  - (b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.
  - (c) No stipend payments shall be made for those days spent traveling to and from the conference or training.
- 105.13-9. *Business Expenses*. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.
- 604 105.13-10. Task Force and Ad Hoc Subcommittees. Members of task force, ad hoc committees

and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

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#### 105.14. Confidential Information

- 105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order to protect the interest of the Nation and ensure that no persons engaged in by the Nation, nor their relatives or associates, benefit from the use of confidential information.
  - (a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.
  - (b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Nation and the entity.
  - (c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.
  - (d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.
- 105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and shall only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents shall be made in accordance with the Nation's laws and policies governing open records and open meetings.
- 105.14-3. Official Oneida Nation E-mail Address. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
  - (a) If a member is also an employee of the Nation, he or she shall receive a separate email address from his or her regular work e-mail address.
  - (b) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
  - (c) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.
  - (d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

#### 649 **105.15.** Conflicts of Interest

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- 650 105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.
- 652 105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as 653 soon as the conflict arises and update a conflict of interest disclosure form with the Nation's 654 Secretary on an annual basis.
  - (a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action shall be taken by the Nation regarding the status of the official.
  - 105.15-3. *Ineligibility Due to Conflicts of Interest*. Due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed or elected entity:
    - (a) political appointees;
    - (b) an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, or Intergovernmental Affairs and Communications; and
    - (c) an employee who serves as a direct report to the Oneida Business Committee.

#### 105.16. Use of the Nation's Assets

- 105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.
- 105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:
  - (a) all transactions are executed in accordance with management's authorization; and
  - (b) access to assets is permitted only in accordance with management's authorization; and
  - (c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.
- 105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

#### 105.17. Dissolution of an Entity

- 105.17-1. *Dissolution of a Task Force or Ad Hoc Committee*. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.
- 686 105.17-2. *Dissolution of an Entity*. All other entities of the Nation shall be dissolved only by 687 motion of the Oneida General Tribal Council or the Oneida Business Committee.
- 688 105.17-3. Notice of Dissolution. Within five (5) business days of the Oneida General Tribal
- 689 Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida
- Business Committee shall provide the entity written notice of the dissolution.
- 691 105.17-4. Management of Records and Materials. All chairpersons and secretaries of dissolved
- entities shall be responsible for closing out open business of the entity and forwarding all materials

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and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.

(a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

#### 105.18. Enforcement

- 105.18-1. Any member of an entity found to be in violation of this law may be subject to:
  - (a) sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;
  - (b) removal pursuant to any laws or policies of the Nation's governing removal, if the individual is a member of an elected entity; or
  - (c) termination of appointment by the Oneida Business Committee, if the individual is a member of an appointed entity.

End.

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       Adopted - BC-08-02-95-A
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       Amended - BC-05-14-97-F
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       Emergency Amended - BC-04-12-06-JJ
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       Amended - BC-09-27-06-E (permanent adoption of emergency amendments)
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       Amended – BC-09-22-10-C
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       Amended - BC-09-26-18-C
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       Emergency Amended – BC-03-11-20-B
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       Emergency Amended – BC-03-17-20-C
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# AMENDMENTS TO BOARDS, COMMITTEES, and COMMISSIONS LAW LEGISLATIVE ANALYSIS

#### **SECTION 1. EXECUTIVE SUMMARY**

SECTION 1. I	EXECUTIVE SUMMARY
	Analysis by the Legislative Reference Office
Intent of the	Allow the Business Committee Support Office to repost a vacancy for an additional
Proposed	time period if insufficient applications are received, as long as notification is provided to the Oneida Business Committee;
Amendments	<ul> <li>Allow the Business Committee;</li> <li>Allow the Business Committee Support Office to request additional time from the</li> </ul>
	Oneida Business Committee in compiling the applications, summary of qualifications, or results of any investigation;
	<ul> <li>Clarify a deadline for when a Chair of a board, committee, or commission of the</li> </ul>
	Nation has to submit a recommendation for an appointment to the entity for the Oneida Business Committee's consideration;
	<ul> <li>Allow for the oath of office to be taken at an alternative time and location than during</li> </ul>
	a regular or special Oneida Business Committee meeting as determined by the Secretary;
	Require that an entity audio record all meetings;
	Clarify that only a member of an entity shall respond to e-polls;
	Eliminate the requirement that a member of a board, committee, or commission be
	physically present during the entirety of a meeting or joint meeting in order to be
	eligible to receive a meeting stipend, but still require the member to be present and
	participate for the entire meeting through some means;
	<ul> <li>Provide that meetings and joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications;</li> </ul>
	<ul> <li>Revise how the limitation of stipend eligible meetings is calculated;</li> </ul>
	<ul> <li>Clarify how eligibility for a conference or training stipend is calculated; and</li> </ul>
	• Specify that certain positions within the Nation are ineligible to serve on a board, committee, or commission of the Nation due to the potential for a real or perceived
	conflict of interest to exist.
Purpose	To govern boards, committees, and commissions of the Nation, including the procedures
	regarding the appointment and election of persons to boards, committees and
commissions, creation of bylaws, maintenance of official records, competitions and commissions. (1.0 C, 105.1)	
Affected	other items related to boards, committees and commissions. [1 O.C. 105.1-1] Oneida Election Board, Oneida Gaming Commission, Oneida Land Claims Commission,
Entities	Oneida Land Commission, Oneida Nation Commission on Aging, Oneida Nation School
	Board, Oneida Trust Enrollment Committee, Anna John Resident Centered Care
	Community Board, Oneida Community Library Board, Oneida Environmental Resource
	Board, Oneida Nation Arts Board, Oneida Personnel Commission, Oneida Police
	Commission, Oneida Pow Wow Committee, Oneida Nation Veterans Affairs Committee,
	Pardon and Forgiveness Screening Committee, Southeastern WI Oneida Tribal Services Advisory Board
Public	A public comment period will be held open until June 15, 2020. A public meeting will
Meeting	not be held in accordance with the Nation's COVID-19 Core Decision Making Team's
	declaration titled, "Suspension of Public Meetings under the Legislative Procedures
70. 1.7	Act."
Fiscal Impact	A fiscal impact statement has not yet been developed.

#### **SECTION 2. LEGISLATIVE DEVELOPMENT**

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- **A.** *Background*. The Boards, Committees, and Commissions law ("the Law") was first adopted by the Oneida Business Committee on August 2, 1995, for the purpose of governing boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1]. The Law was last amended on a permanent basis thorough the adoption of resolution BC-09-26-18-C, and then amended on an emergency basis through the adoption of resolution BC-03-11-20-B and BC-03-17-20-C.
- 10 **B.** The Legislative Operating Committee is proposed amendments be made to this Law to permanently adopt emergency amendments that were recently made to the Law, as well as to address various considerations that arose during the one (1) year review of the Law.
  - C. Table 1 illustrates the various boards, committees, and commissions of the Nation this Law applies to. This Law does not apply to the Oneida Business Committee, standing committees of the Oneida Business Committee, corporate entities, or members of the Judiciary.

# Table 1. Boards, Committees and Commissions of the Nation

ELECTED	APPOINTED
<ul> <li>Oneida Election Board</li> </ul>	Anna John Resident Centered Care Community
<ul> <li>Oneida Gaming Commission</li> </ul>	Board (AJRCC)
<ul><li>Oneida Land Claims Commission</li></ul>	<ul> <li>Oneida Community Library Board</li> </ul>
<ul><li>Oneida Land Commission</li></ul>	<ul> <li>Oneida Environmental Resource Board (ERB)</li> </ul>
<ul><li>Oneida Nation Commission on</li></ul>	<ul> <li>Oneida Nation Arts Board</li> </ul>
Aging (ONCOA)	<ul> <li>Oneida Personnel Commission</li> </ul>
<ul> <li>Oneida Nation School Board</li> </ul>	<ul> <li>Oneida Police Commission</li> </ul>
<ul> <li>Oneida Trust Enrollment</li> </ul>	<ul> <li>Oneida Pow Wow Committee</li> </ul>
Committee	■ Oneida Nation Veterans Affairs Committee
	(ONVAC)
	<ul> <li>Pardon and Forgiveness Screening Committee</li> </ul>
	<ul> <li>Southeastern WI Oneida Tribal Services Advisory</li> </ul>
	Board (SEOTS)

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

- **A.** Representatives from the following departments or entities participated in the one (1) year review of the Law which was then used in development of amendments to this Law and legislative analysis:
  - Oneida Law Office;
  - Business Committee Support Office;
  - Oneida Land Commission;
  - Oneida Trust Enrollment Committee;
  - Oneida Nation Commission on Aging;
- Oneida Nation School Board;
  - Oneida Police Commission;
    - Oneida Personnel Commission; and
- Oneida Nation Arts Board.

**B.** The following laws were reviewed in the drafting of this analysis: Election Law, Removal law, Code of Ethics, Conflict of Interest Policy, Oneida Nation Gaming Ordinance, Computer Resources Ordinance, Social Media Policy.

# **SECTION 4. PROCESS**

- **A.** The amendments to this Law have followed the process set forth in the Legislative Procedures Act.
  - On February 12, 2020, the Oneida Business Committee adopted a motion "to request the Legislative Operating Committee to consider amendments to the Boards, Committees and Commissions law as agreed upon at the February 3, 2020, joint meeting with the Oneida Land Commission."
  - The LOC added the amendments to the Active Files List on February 19, 2020.
  - The Oneida Business Committee adopted emergency amendments to the Law on March 11, 2020, through the adoption of resolution BC-03-11-20-B, to address ineligibility due to a conflict of interest. These emergency amendments were set to expire on September 11, 2020.
  - The Oneida Business Committee adopted emergency amendments to the Law on March 17, 2020, through the adoption of resolution BC-03-17-20-C, to address how meetings are held, and limitations on stipends. These emergency amendments will expire on September 17, 2020.
  - **B.** At the time this legislative analysis was developed the following work meetings had been held regarding the development of these amendments:
    - April 23, 2020: LOC work meeting.
    - April 30, 2020: LOC work meeting.
    - May 7, 2020: LOC work meeting.
  - C. COVID-19 Pandemic's Effect on the Legislative Process. A public meeting for the proposed amendments to this Law will not be held due to the COVID-19 pandemic.
    - On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
    - On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibits all public gatherings of any number of people.
    - Then on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.
    - On March 28, 2020, the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's Public Health State of Emergency declaration until May 12, 2020.
    - On May 6, 2020, the Oneida Business Committee adoption resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until June 11, 2020" which further extended the Nation's Public Health State of Emergency until June 11, 2020.
    - Although a public meeting will not be held on the proposed amendments to the Law, a public comment period will still be scheduled and held open in accordance with the Legislative Procedures Act.

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

- **A.** Reposting for Insufficient Applications. The proposed amendments to the Law allow the Business Committee Support Office to repost a vacancy for an additional time period when insufficient applications are received after the deadline date has passed for appointed positions. [1 O.C. 105.5-5]. The Business Committee Support Office is required to provide the Oneida Business Committee notification that a position will be reposted. [1 O.C. 105.5-5(a)]. Previously, if an insufficient number of applications were received after the deadline date has passed for appointed positions, it was the Oneida Business Committee who could elect to repost the vacancy for an additional time period.
  - Effect. The proposed amendments make the process for reposting a vacancy for an additional time period when insufficient applications are received more efficient because the Business Committee Support Office can take this action immediately, as long as notification is provided to the Oneida Business Committee, instead of having to take the request to the Oneida Business Committee and wait for official action to be taken by the Oneida Business Committee as to whether to repost.
- **B.** Appointment Selection Process. The Law provides that within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made. [1 O.C. 105.7-1(a)(1)-(2)]. The proposed amendments to the Law provide that if delays in compiling the applications, summary of qualifications, or results of any investigations exist, the Business Committee Support Office shall request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2). [1 O.C. 105.7-1(a)(3)].
  - Effect. The proposed amendments to the Law provide flexibility to the Business Committee Support Office to request additional time to complete the compilation of materials and submission onto the next executive session portion of an Oneida Business Committee meeting if delays exist. The Business Committee Support Office identified that during the first year of this provision being in effect a situation arose where results of a drug test were not available during the twenty-one (21) day time-period. The Business Committee Support Office wants to ensure that if there are any delays in receiving results of a background investigation or drug test, additional time can be requested so that the Business Committee Support Office can ensure that all available relevant information is shared with the Oneida Business Committee and the entity's Chairperson.
- C. Deadline for Recommendation for Appointment by the Chair of an Entity. The proposed amendments to the Law provide that the Chairperson of an entity may review the application materials and submit to the Business Committee Support Office a recommendation to the Oneida Business Committee of an applicant for appointment. [1 O.C. 105.7-1(b)(1)]. The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida Business Committee meeting in which the appointment is intended to be made. [1 O.C. 105.7-1(b)(1)(A)]. Previously, the Law simply stated that the entity's Chairperson may have until the executive session to review the application materials and provide the Oneida Business Committee a recommendation of an applicant for appointment.

■ Effect. The proposed amendments to the Law provide more clarification as to a specific deadline and method for recommendations to be submitted. The Business Committee Support Office provided that how recommendations were being submitted was inconsistent, and that issues arose with recommendations being submitted once the Oneida Business Committee was already in executive session. The proposed amendment will provide more guidance to Chairs of boards, committees, and commissions to ensure they know how to properly submit a recommendation to the Oneida Business Committee.

- **D.** *Oath of Office*. The proposed amendments provide that all appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternate time and location as determined by the Secretary. [1 O.C. 105.9-1]. Previously, the Law only allowed for an oath of office to be taken at an Oneida Business Committee meeting, although a person was allowed to appear by video conferencing equipment if granted permission by the Secretary.
  - Effect. The proposed amendments provide more flexibility as to when and where an oath of office can be taken. Many members of boards, committees, and commissions expressed that it was burdensome to only allow oaths of office to occur during an Oneida Business Committee meeting. This allows the Secretary to use his or her discretion to allow for an oath of office to be taken at an alternative time or place other than an Oneida Business Committee meeting.
- **E.** Requirement to Audio Record Meetings. The proposed amendments reinstate the requirement that a boards, committee, or commission audio record all meetings, and the requirement that the bylaws of a board, committee, or commission address how this will be accomplished. [1 O.C. 105.10-3(f)(5)]. The emergency amendments adopted through resolution BC-03-17-20-C removed this provision from the Law due to the COVID-19 pandemic and the uncertainty of whether a board, committee, or commission will have the capability to audio record meetings.
  - Effect. The proposed amendment simply return this provision back to the Law. The Legislative Operating Committee determined that requirement to audio record meetings is an important function. The Legislative Operating Committee is confident that boards, committees, and commissions have the ability to audio record meetings even if meetings have to be held remotely through telecommunications. For example, Microsoft Teams has the capability to record meetings that are held through the video call and call functions.
- **F.** Clarification for Responding to an Electronic Poll. The proposed amendments provide clarification that only a member of an entity can respond to an electronic poll, or "e-poll," of an entity. [1 O.C. 105.11-3]. Previously, the Law provided that a response from a member of an entity shall be valid if received from an official e-mail address of the entity.
  - *Effect*. The proposed amendment provides additional clarify that it is to be the member of a board, committee, or commission himself or herself, and therefore, the use of a proxy to respond to an epoll is not allowed.
- **G.** *Meetings Eligible for Stipends.* The proposed amendments eliminate the requirement that a member of a board, committee, or commission be *physically* present during the entirety of a meeting in order to be eligible to receive a meeting stipend, although the member is still required to be present for the entirety of the meeting. [1 O.C. 105.13-3]. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications. [1 O.C. 105.13-3]. The proposed amendments also provide that an entity shall demonstrate presence during an entire meeting by taking roll call on the record at both the beginning and conclusion of a meeting. [1 O.C. 105.13-3(c)].

Previously, the Law required that a member of a board, committee, or commission be physically present for the entirety of a meeting because meetings had to occur in person in order to be eligible for a stipend.

- Effect. The proposed amendments provide more flexibility to boards, committees, and commissions of the Nation in how they can hold meetings that are eligible for a stipend. Flexibility for how a meeting is held is especially important during times such as this COVID-19 pandemic. Holding meetings by telephone, video conferencing, or other telecommunications will help eliminate any unnecessary contact between individuals which could spread COVID-19, without disrupting the ability of a board, committee, and commission to conduct business and receive a stipend for the business they are conducting. Although the Legislative Operating Committee wants to provide boards, committees, or commissions with more flexibility, it is still important that members of a board, committee, or commission participate and be present for the entirety of a meeting, especially when meetings are not held in person. For that reason, the Legislative Operating Committee included the provision on how a board, committee, or commission can demonstrate presence during a meeting through taking roll call at the beginning and end of a meeting.
- **H.** Frequency of Meeting Stipends. The proposed amendments revise how many meetings a board, committee, or commission is eligible to receive a stipend for. The proposed amendments provide that a member of an appointed entity may be eligible for up to twelve (12) meeting stipends a year, while a member of an elected entity may be eligible for up to twenty-four (24) meeting stipends a year. [1 O.C. 105.13-3(a)-(b)]. Previously, the Law provided that an individual serving on an appointed entity shall be paid no more than one (1) meeting stipend per month, while an individual serving on an elected entity shall be paid no more than two (2) meeting stipends per month.
  - Effect. The proposed amendments do not change the overall number of meetings a member of a board, committee, or commission may be eligible to receive per year. Providing the limitation on number of meetings that are eligible for a stipend per year instead of per month provides boards, committees, and commissions with more flexibility in determining when stipend eligible meetings should be held.
- **I.** Joint Meetings Eligible for Stipends. The proposed amendments eliminate the requirement that a member of a board, committee, or commission be *physically* present during the entirety of a joint meeting with the Oneida Business Committee in order to be eligible to receive a joint meeting stipend. [1 O.C. 105.13-4]. The amendments also provide that joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications. [1 O.C. 105.13-4].
  - Effect. The proposed amendments provide more flexibility to boards, committees, and commissions of the Nation in how they can hold joint meetings with the Oneida Business Committee that are eligible for a stipend
  - The Oneida Business Committee adopted resolution BC-03-27-19-D titled, "Oneida Business Committee and Joint Meetings with Boards, Committees and Commissions Definitions and Impact" to set standard rules and understandings for joint meetings. Adoption of the proposed amendments result in no conflict or impact on this resolution.
- **J.** Stipends for Attendance at Conferences and Trainings. The proposed amendments provide that a member of a board, committee, or commission shall be eligible for a stipend for attending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution. [1 O,C. 105.13-8(a)]. The proposed amendments further provide that the amount of the stipend a member is eligible to receive for attendance at a conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a

conference or training. [1 O.C. 105.13-8(a)(1)]. Previously, the Law provided that a member shall be eligible for a stipend for each full day the member is present at a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.

- Effect. The proposed amendments provide clarification as to how a stipend for attendance at a conference or training will be determined. Previously, there were many questions as to how to interpret what a "full day" of attending a conference and training meant. Many members of boards, committees, and commissions expressed that requiring attendance at a conference or training be a full day was inequitable as it did not reflect the reality of many trainings and conferences being less than a full day. The proposed amendment is modeled after how stipends for participation in interviews are handled. This will provide not only clarification on how eligibility for a stipend for attending a conference or training will be determined, but also provide more flexibility to members of boards, committees, and commissions for what trainings or conferences they are eligible to receive a stipend for.
- **K.** *Ineligibility Due to Conflicts of Interest.* The proposed amendments to the Law provide that due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed or elected entity: political appointees; an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, or Intergovernmental Affairs and Communications; and an employee who serves as a direct report to the Oneida Business Committee. [1 O.C. 105.15-3]. Previously, the Law provided that political appointees could not serve on an appointed or elected entity due to the potential for a real or perceived conflict of interest to exist.
  - Effect. The proposed amendments expand the restriction to serve on a board, committee, or commission from political appointees to other employees of the Nation. The potential for a real or perceived conflict of interest to exist for an employee of the Internal Audit Department, Finance Administration, Law Office, Intergovernmental Affairs and Communications, or any employee who holds a position as a direct report to the Oneida Business Committee is due to the nature of employment in those areas. Those employees have access to confidential information which requires a higher level of professionalism and fiscal responsibilities than other areas. Therefore, it is in the best interest of the Nation to recognize the potential for a conflict of interest to exist and amend the Law to restrict employee related actions on this matter to better protect the Nation from a potential conflict of interest.
  - *Number of Employees Impacted.* At the time this legislative analysis was drafted, the following number of employees would be impacted as a result of this proposed amendment to the Law:
    - Internal Audit Department: nine (9) employees;
    - Oneida Law Office: eight (8) employees;
    - Finance Administration Office: three (3) employees;
    - Intergovernmental Affairs and Communications: seven (7) employees; and
    - Direct Reports: eight (8) employees including the following positions as identified in resolution BC-08-14-19-N:
      - Chief Counsel:
      - General Manager;
      - Gaming General Manager;
      - Intergovernmental Affairs and Communications Director;
      - Emergency Management Director;
      - Area Manager, Human Resources Division;

Area Manager, Retail-Profit; and

Business Compliance Analyst.

- Nothing in this Law limits the ability of any department of the Nation from placing their own restrictions and expectations within employment contracts, job descriptions, or standard operating procedures. As a result, there may be employees of the Nation who are already restricted from serving on a board, committee or commission outside of this Law.

#### **SECTION 6. EXISTING LEGISLATION**

- A. References to other Laws of the Nation. The following laws of the Nation are referenced in this Law:
  - *Election law*. The Election law governs the procedures for the conduct of orderly elections of the Nation, including pre-election activities. [1 O.C. 102.1-1].
    - The Boards, Committees, and Commissions law provides that applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. [1 O.C. 105.5-4].
    - The Boards, Committees, and Commissions law provides that all elected positions shall be nominated at a caucus called by the Oneida Election Board, or apply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment. [1 O.C. 105.8-1]. Additionally, this Law provides that all other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections. [1 O.C. 105.8-2].
  - Open Records and Open Meetings law. The Open Records and Open Meetings law advances the democratic principle of open government by providing access to information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees. [1 O.C. 107.1-1].
    - The Boards, Committees, and Commissions law provides that all removal or destruction of documents of an entity shall be made in accordance with the Nation's laws and policies governing open records and open meetings. [1 O.C. 105.14-2].
  - Computer Resources Ordinance. The Computer Resources Ordinance regulates the usage of computer resources owned and operated by the Nation. [2 O.C. 215.1-1].
    - The Boards, Committees, and Commissions law provides that a member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. [1 O.C. 105.14-3(b)].
  - Social Media Policy. The Social Media Policy regulates social media accounts, including a social networking web page, blog or microblog, that is administered on behalf of the Nation or an entity of the Nation. [2 O.C. 218.1-1].
    - The Boards, Committees, and Commissions law provides that a member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. [1 O.C. 105.14-3(b)].
  - Conflict of Interest law. The purpose of the Conflict of Interest law is to ensure that all employees, contractors, elected officials, officers, political appointees, appointed and elected members and all others who may have access to information or materials that are confidential or may be used by

competitors of the Nation's enterprises or interests be subject to specific limitations to which such information and materials may be used in order to protect the interests of the Nation. [2 O.C. 217.1-1].

The Boards, Committees, and Commissions law provides that all members of an entity are

required to adhere to the Nation's laws and policies governing conflicts of interest. [1 O.C. 105.15-1].

Removal law. The Removal law provides an orderly and fair process that governs the removal of persons elected to serve on boards, committees, and commissions of the Nation. [1 O.C. 104.1-1].

The Removal law provides the various grounds for removal [1 O.C. 104.4-1], as well as the removal process which consists of a petition [1 O.C. 104.5], preliminary review [1 O.C. 104.6], hearing at the Judiciary [1 O.C. 104.7], and ultimate decision by the General Tribal Council [1 O.C. 104.8].

■ The Boards, Committees, and Commissions law provides that any elected member of an entity found to be in violation of this Law may be subject to removal pursuant to any laws or policies of the Nation governing removal. [1 O.C. 105.18-1].

■ The Boards, Committees, and Commissions law also provides that a position in an entity shall be considered vacant upon removal whenever the removal is effective in accordance to any law or policy of the Nation regarding removal. [1 O.C. 105.6-2(b)].

**B.** References to Conflicts of Interest in Other Laws. The following laws of the Nation reference conflict of interest as it relates to employees and elected or appointed officials of the Nation. Employees and/or elected and appointed officials are already subject to comply with the following provisions within other laws:

• Conflict of Interest law. The Conflict of Interest law applies to "all agents, elected officials, officers, political appointees, contractors, appointed and or elected members." [2 O.C. 217.4-1].

  The Conflict of Interest law requires employees and elected or appointed officials to disclose any conflicts of interest.

Failure to disclose a conflict of interest may result in removal in accordance with the Removal law, penalties pursuant to laws of the Nation regarding penalties, or termination of employment. [2 O.C. 217.6-2 and 217.6-3].

 When an existing conflict of interest is disclosed, no employee, elected official, or appointed official may participate in the selection, award or administration of a contract, including contracts supported by federal award and/or any other prohibited activities identified in any other law, policy or rule of the Nation. [2 O.C. 217.7].

■ There is no conflict with the proposed amendments and compliance with the Conflicts of Interest law. Upon adoption of the proposed amendments, serving on a board, committee, or commission of the Nation while being employed in the Internal Audit Department, Law Office, Finance Administration Office, or Intergovernmental Affairs and Communications, or employed in a position that serves as a direct report to the Oneida Business Committee will become a "prohibited activity identified in a law of the Nation" in accordance with the Conflict of Interest law.

■ Code of Ethics law. The Code of Ethics law promotes the highest ethical conduct in all of its elected and appointed officials and employees and represents a minimum standard of conduct which is expected. [1 O.C. 103.1-1]. All government officials, including persons elected to serve on a board, committee or commission are subject to the Nation's Code of Ethics law.

independent and honorable political system and shall observe high standards of conduct... including, but not limited to:" [1 O.C. 103.3-3(a)].

• Encouraging separation between departments or entities of tribal government.

■ The Code of Ethics law provides that a government official shall create and maintain an

- Encouraging separation between departments or entities of tribal government, and should avoid contact or duty that violates such a separation.
- Avoid participation in action or decision making (except where participation is in accordance with the traditions of the Nation) that would present an appearance of conflict of interest or an actual conflict of interest.
- The Code of Ethics law provides that a government official should disqualify themselves when their action or inaction might reasonably be questioned, including, but not limited to personal bias..." [1 O.C. 103.3-5].
- The Code of Ethics law provides that a government official shall regulate their extra governmental activities to minimize the risk of conflict with duties of their office." [1 O.C. 103.3-6].
- The Code of Ethics law provides that government officials may be subject to either removal, if elected, or termination, if appointed, for a violation of any part of this ethics code as it applies to them." [1 O.C. 103.6-1].
- There is no conflict between the proposed amendments and compliance with the Code of Ethics law.
- Election law. The Election law states that "No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election." [1 O.C. 102.5-3].
  - This means that although the proposed amendments to the Boards, Committees, and Commissions law prohibit employees of the Internal Audit Department, Law Office, Finance Administration Office, Intergovernmental Affairs and Communications, or any person employed in a position that serves as a direct report to the Oneida Business Committee from serving on a board, committee, or commission of the Nation, those individuals may still be nominated for office, run in an election, and win election to a board, committee or commission. However, the winning candidate would have to eliminate their conflict of interest prior to taking office by resigning from their position of employment.
- C. Restrictions on Employees in Current Bylaws. Boards, committees and commissions may place additional qualifications for membership within their bylaws. Bylaws are a document that provides a framework for the operation and management of a board, committee or commission. Examples of these qualifications include age, residency, education, and experience. Some boards already place restrictions on whether employees of the Oneida Nation may serve on their entity. Below is a review of current restrictions on employees of the Nation. For a full review of qualifications for each entity, please see each entity's bylaws.

Table 2. Restrictions on Employees in Current Bylaws.

Board, Committee or Commission	Employees who may not serve on that entity:
Land Commission	Employees of the Nation's Audit Department, Finance Department, Law Office "or other department associated with items (a) – (j) in section 1-3 of the Land Commission bylaws:

	• the Real Property law,			
	<ul> <li>Leasing law,</li> </ul>			
	<ul> <li>Building Code,</li> </ul>			
	<ul> <li>Condominium Ordinance,</li> <li>Zoning and Shoreland Protection law</li> </ul>			
	Zoning and Shoreland Protection law,  The state of t			
	<ul> <li>Eviction and Termination law,</li> </ul>			
	<ul> <li>Mortgage and Foreclosure law,</li> </ul>			
	• the Cemetery law,			
	<ul> <li>and any other delegating law, policy, rule and/or resolution of the Nation</li> </ul>			
	Division Directors or Area Managers for the Oneida Nation,			
	Independent contractor for Land Management or any other			
	department of the Nation associated with items (a) – (j)			
Anna John Resident	Employees of Anna John Resident Centered Care			
Centered Care Community	Community.			
Board				
Oneida Community	Employees or contractors of any Oneida Nation Library			
Library Board	Branch.			
Oneida Environmental	Employees of the Oneida Environmental, Health, Safety and			
Resource Board (ERB)	Land Division			
Oneida Nation Arts Board	Employees of the Oneida Nation Arts Board.			
Oneida Personnel	Employees of the Oneida Nation.			
Commission				
Oneida Police Commission	Employees of the Oneida Police Department or individuals terminated from the Oneida Police Department.			
Oneida Land Claims	Shall not serve in the capacity of "consultant, contractor or			
Commission	attorney for the Land Claims Commission."			

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**D.** Restrictions on Employees in Current Laws. The following laws of the Nation already restrict certain employees of the Nation from serving on certain boards, committees and commissions of the Nation:

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Table 3. Restrictions on Employees in Other Laws of the Nation.

Law or Bylaw	Entity	Restrictions on Oneida Nation Employees
Oneida Law	Oneida Police	"Must not be an employee of the Oneida
Enforcement	Commission	Police Department" [3 O.C. 301.6-3(e)].
Ordinance		_
Oneida Nation	Oneida Gaming	"Commissioners shall perform duties on a
Gaming	Commission	full-time basis and may not, during tenure
Ordinance		in office, be engaged in any other profession
		or business activity" [5 O.C. 501.6-9].

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#### **SECTION 7. OTHER CONSIDERATIONS**

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**A.** Updates to the Stipend Resolution. The Law requires that the Oneida Business Committee set stipend amounts by resolution. [1 O.C. 105.13-2]. On September 26, 2018, the Oneida Business Committee adopted resolution BC-09-26-18-D titled, "Boards, Committees, and Commissions Law Stipends" which set forth the specific stipend amounts allowed to be paid to a member of a board, committee, or commission. On May 8, 2019, the Oneida Business Committee adopted resolution BC-05-08-19-B

- titled, "Amending Resolution BC-09-26-18-D Boards, Committees, and Commissions Law Stipends" to allow the Oneida Nation School Board to be eligible to receive a stipend for participating in interviews and/or job description prescreens. Then on March 17, 2020, the Oneida Business Committee adopted resolution BC-03-17-20-D titled, "Amending Resolution BC-05-18-19-B Boards, Committees, and Commissions Law Stipends" to address emergency amendments that were made to the Law. Based on the proposed amendments, revisions to resolution BC-03-17-20-D will have to be made to permanently reflect the new proposal on how to address the limitation of meeting stipends, as well as how stipends for conferences and trainings are determined.
  - Conclusion. The Legislative Operating Committee should consider bringing an amended stipend
    resolution for consideration when the Legislative Operating Committee presents the amendments
    to the Oneida Business Committee for consideration.
- **B.** *Fiscal Impact*. A fiscal impact statement of the proposed amendments to the Law has not yet been requested.
  - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation. [1 O.C. 109.6-1].
  - Oneida Business Committee resolution BC-09-25-19-A titled, "Interpreting 'Fiscal Impact Statement' in the Legislative Procedures Act," 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.

# ONEIDA NATION PUBLIC COMMENT PERIOD NOTICE Due to the COVID-19 Public Health Emergency Only Written Comments Will Be Accepted Until: MONDAY, JUNE 15, 2020

Find Public Meeting Materials at

Oneida-nsn.gov/government/register/public meetings

**Send Public Comments to** 

LOC@oneidanation.org

Ask Questions here LOC@oneidanation.org



# BOARDS, COMMITTEES, and COMMISSIONS LAW AMENDMENTS

The purpose of this law is to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

#### The Boards, Committees, and Commissions law amendments will:

- 1. Allow the Business Committee Support Office to repost a vacancy for an additional time period if insufficient applications are received, as long as notification is provided to the Oneida Business Committee;
- 2. Allow the Business Committee Support Office to request additional time from the Oneida Business Committee in compiling the applications, summary of qualifications, or results of any investigation;
- 3. Clarify a deadline for when a Chair of an entity has to submit a recommendation for an appointment to the entity for the Oneida Business Committee's consideration;
- 4. Allow for the oath of office to be taken at an alternative time and location than during a regular or special Oneida Business Committee meeting as determined by the Secretary;
- 5. Clarify that only a member of an entity shall respond to e-polls;
- 6. Eliminate the requirement that a member of an entity be *physically* present during the entirety of a meeting or joint meeting in order to be eligible to receive a meeting stipend, but still require that the member to be present and participate in the entire meeting through some means;
- 7. Provide that meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications;
- 8. Revise and clarify how the limitation on meeting stipends is calculated, as well as how stipends for conferences and trainings are determined; and
- 9. Specify that certain employment positions within the Nation are ineligible to serve on an entity due to the potential for a real or perceived conflict of interest to exist.

#### PUBLIC COMMENT PERIOD CLOSES MONDAY, JUNE 15, 2020

The Nation's COVID-19 Core Decision Making Team issued a declaration on March 27, 2020, titled "Suspension of Public Meetings under the Legislative Procedures Act." This declaration provides that the Legislative Procedures Act's requirement to hold a public meeting during the public comment period is suspended due to the COVID-19 Public Health State of Emergency. Although there will be no public meeting, the public comment period will still occur, and individuals can participate in the legislative process by submitting written comments, questions, or other input via e-mail to LOC@oneidanation.org.

## May 18, 2020, Legislative Operating Committee E-Poll Approval of the LOC's FY20 Second Quarter Report

E-POLL REQUEST: Approval of LOC's FY20 Second Quarter Report



#### **Good Morning Legislative Operating Committee,**

This e-mail serves as the e-poll for the approval of the Legislative Operating Committee's Fiscal Year 2020 Second Quarter Report.

#### **EXECUTIVE SUMMARY**

The Legislative Operating Committee is now prepared to approve its Fiscal Year 2020 Second Quarter Report so that it may be submitted to the Oneida Business Committee. This report details the accomplishments of the Legislative Operating Committee from January 2020 until March 2020.

An e-poll is necessary for this matter because the Legislative Operating Committee has canceled all meetings until June 2020 due to the COVID-19 pandemic, and immediate action is required by Legislative Operating Committee to approve these materials so that the FY20 Second Quarter Report can be submitted to the Oneida Business Committee by the May 19, 2020, submission deadline.

#### **REQUESTED ACTION**

Approve the Legislative Operating Committee's Fiscal Year 2020 Second Quarter Report.

#### **DEADLINE FOR RESPONSE**

May 18, 2020 at 3:00 p.m.

All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by Ernest Stevens III, David P. Jordan, Jennifer Webster, and Daniel Guzman King. Kirby Metoxen did not provide a response.

#### Re: E-POLL REQUEST: Approval of LOC's FY20 Second Quarter Report



Ernest L. Stevens

To Daniel P. Guzman; David P. Jordan; Jennifer A. Webster; Kirby W. Metoxen; LOC

Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Clorissa N. Santiago

i If there are problems with how this message is displayed, click here to view it in a web browser.

#### 

#### Approve

Sent from my Verizon, Samsung Galaxy smartphone

#### RE: E-POLL REQUEST: Approval of LOC's FY20 Second Quarter Report



David P. Jordan

To LOC; Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Clorissa N. Santiago



Approve

#### RE: E-POLL REQUEST: Approval of LOC's FY20 Second Quarter Report



Jennifer A. Webster

To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen
Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Clorissa N. Santiago



Approve

Sent from my Samsung Galaxy smartphone

#### RE: E-POLL REQUEST: Approval of LOC's FY20 Second Quarter Report



Daniel P. Guzman

To LOC; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster, Kirby W. Metoxen Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Clorissa N. Santiago ← Reply ← Reply All → Forward ・・・・

Mon 5/18/2020 1:02 PM

Approve



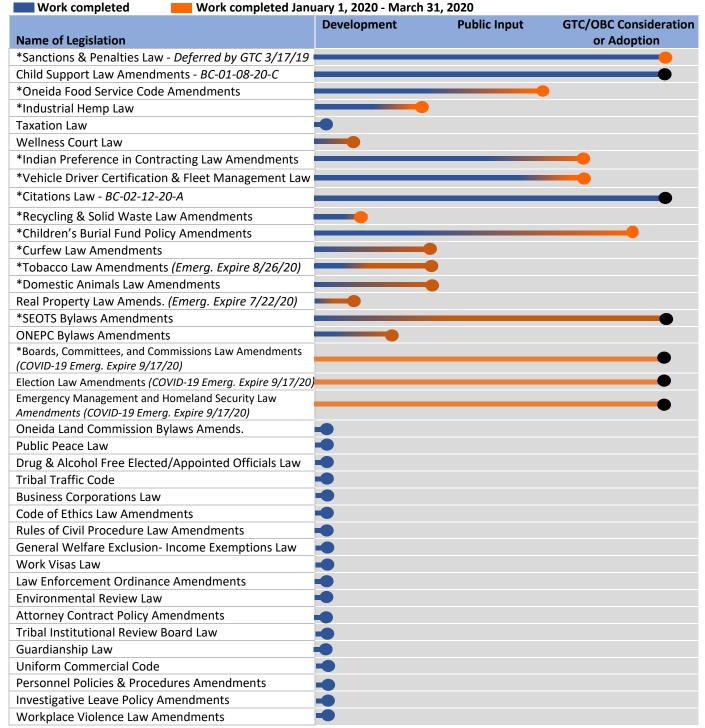
Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54215-0365
Oneida-Instrument



#### Legislative Operating Committee FY2020 Second Quarter Report

Current Active Files List – As of 3/31/2020

- \*An item that the LOC intends to finish by July 2020 (end of the 2017-2020 term)
- This item was completed and the LOC is no longer working on it



#### FY20 Second Quarter Executive Summary- COVID-19 Pandemic Response

The COVID-19 pandemic began in Wuhan, China and quickly spread to many other countries throughout the world including the United States. On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. On March 28, 2020, the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's Public Health State of Emergency declaration until May 12, 2020.

As the Nation began to respond to this public health crisis, it became clear that laws would require emergency amendments in order to maintain the public's health, safety and general welfare. The Legislative Operating Committee (LOC) assisted the Nation's COVID-19 Core Decision Making Team and the Oneida Business Committee on the following actions:

#### Boards, Committees, and Commissions Law Emergency Amendments

The Boards, Committees, and Commissions law governs boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. Emergency amendments to the Boards, Committees, and Commissions law were sought to:

- Eliminate the requirement that a member of a board, committee, or commission be physically
  present during the entirety of the meeting or joint meeting in order to be eligible to receive a meeting
  stipend;
- Provide that meetings and joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications;
- Revise how the limitation of stipend eligible meetings is calculated; and
- Eliminate the requirement for boards, committees, and commissions to audio record meetings.

The Oneida Business Committee adopted these emergency amendments on March 17, 2020, through resolution BC-03-17-20-C. The emergency amendments will expire on September 17, 2020, with an opportunity for a six (6) month extension.

### Resolution: BC-03-17-20-D- Amending Resolution BC-05-08-19-B Boards, Committees, and Commissions Law Stipends

As a result of the Oneida Business Committee's emergency amendments to the Boards, Committees, and Commissions law which revised how the limitation on the number of stipend eligible meetings was calculated, this stipend resolution was updated to be consistent with the law. This resolution now provides that:

 Members of an appointed entity are now eligible to receive up to twelve (12) meeting stipends per year – previously, a member of an appointed entity was limited to receiving up to one (1) meeting stipend per month; and • Members of an elected entity are now eligible to receive up to twenty-four (24) meeting stipends per year – previously, a member of an elected entity was limited to receiving up to two (2) meeting stipends per month.

#### **Election Law Emergency Amendments**

The Election law governs the procedures for orderly elections of the Nation. Emergency amendments to the Election law were sought to:

- Eliminate the caucus from the election process;
- Require an individual to submit an application in order to have his or her name placed on a ballot for an election;
- Eliminate the requirement for an individual to obtain at least ten (10) signatures of qualified voters when submitting an application to be placed on the ballot;
- Require that all applications be submitted to the Business Committee Support Office by the close of business on April 24, 2020;
- Reduce the number of Oneida Election Board members who are required to sign the election totals on machine counted ballots from six (6) to three (3); and
- Remove the provisions of the law regarding referendums.

The Oneida Business Committee adopted these emergency amendments on March 17, 2020, through resolution BC-03-17-20-B. The emergency amendments will expire on September 17, 2020, with an opportunity for a six (6) month extension.

#### **Emergency Management and Homeland Security Law Emergency Amendments**

The Emergency Management and Homeland Security law provides for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; provides for the direction of emergency management, response, and recovery on the Reservation, as well as coordination with other agencies, victims, businesses, and organizations; establishes the use of the National Incident Management System (NIMS); and designates authority and responsibilities for public health preparedness. Emergency amendments to the Emergency Management and Homeland Security law were sought to:

- Create the Nation's COVID-19 Core Decision Making Team;
- Identify what positions of the Nation would serve on the COVID-19 Core Decision Making Team;
- Describe the authority delegated to the COVID-19 Core Decision Making Team to declare exceptions to any law, policy, procedure, regulation, or standard operating procedure of the Nation;
- Provide for the duration of the authority for exceptions declared by the COVID-19 Core Decision Making Team; and
- Describe how the COVID-19 Core Decision Making Team will make its declarations.

The Oneida Business Committee adopted these emergency amendments on March 17, 2020, through resolution BC-03-17-20-E. The emergency amendments will expire on September 17, 2020, with an opportunity for a six (6) month extension.

**COVID-19** Core Decision Making Team Declaration: Emergency Management and Homeland Security Law Fine and Penalty Schedule

The Emergency Management and Homeland Security law authorizes the Oneida Nation Police Department to issue citations up to two hundred dollars (\$200.00) for violations of the law, but a detailed fine and penalty schedule is not provided.

The Legislative Reference Office provided the Nation's COVID-19 Core Decision Making Team a declaration titled, "Emergency Management and Homeland Security Law Fine and Penalty Schedule." This declaration sets forth a fine and penalty schedule with specific fine amounts to be used by the Oneida Police Department when issuing citations for violations of the Emergency Management and Homeland Security law. This declaration was approved by the COVID-19 Core Decision Making Team and posted to the Nation's COVID-19 web site in accordance with the declaration requirements on March 19, 2020.

# Resolution: BC-03-17-20-A- Adoption of Tier IV Budget Contingency Plan for the Remainder of Fiscal Year 2020 as a Result of Potential COVID-19 Pandemic Financial Impacts

Through this resolution the Oneida Business Committee adopted a Tier IV budget reductions from the Budget Contingency Plan (Tier IV 4% - Tribal Operations & OBC identify and preserve specific core services) beginning immediately in accordance with section 121.4-3 of the Budget Management and Control law and as supported by the March 12, 2020, Declaration of Public Health State of Emergency. The resolution identified budgeted actions that would be delayed until such time as the budget emergency resulting from the pandemic impacts are no longer impacting the Nation's finances. This resolution also provided that the Oneida Business Committee has determined that employees shall be compensated in the event of closures and other financial constraints as a result of the pandemic during the 30-day time period in the March 12, 2020, Declaration of Public Health Emergency, and policies or procedures will be adopted to address this effective with the pay period beginning March 22, 2020.

### **COVID-19** Core Decision Making Team Declaration: Suspension of Public Meetings under the Legislative Procedures Act

The Legislative Reference Office provided the Nation's COVID-19 Core Decision Making Team with a declaration titled, "Suspension of Public Meetings under the Legislative Procedures Act." This declaration suspends the Legislative Procedures Act's requirement to hold a public meeting during the public comment period. Individuals may still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation during the public comment period. An individual shall submit written comments to the Legislative Operating Committee via e-mail at <a href="LOC@oneidanation.org">LOC@oneidanation.org</a>. This declaration was approved by the COVID-19 Core Decision Making Team and posted to the Nation's COVID-19 web site in accordance with the declaration requirements on March 27, 2020.

### Resolution BC-03-26-20-A: Extension of March 12<sup>th</sup> Declaration of Public Health Emergency

This resolution extended the Nation's COVID-19 Public Health State of Emergency until May 12, 2020.

### FY20 Second Quarter Executive Summary- Non-COVID-19 Pandemic Related Matters

#### **Child Support Law Amendments**

The Child Support law establishes the legal responsibility of parents to provide financially for their children's general well-being; makes support payments more equitable by ensuring consistent treatment of persons in similar circumstances; makes support payments based on the real earning capability of parents; and improves the efficiency of child support establishment and enforcement.

The proposed amendments to the Child Support law include: create a process to suspend or modify child support orders for parents incarcerated for one hundred and eighty (180) days or more; update notice requirements and timelines for initiating an action by the Child Support Department as well as sending appointment letters, notices of delinquency, notices of enforcement action, and income withholding orders; clarify how the Family Court may redact addresses and identifying information from court documents to ensure the safety of a party; make updates to how child support obligations are calculated in certain special circumstances involving shared-placement parents, split-placement parents, and a serial family obligor; repeal Child Support Rule No. 1 - Deviation from Child Support and Rule No. 2 - Enforcement Tools and move the contents of the rules into the body of the law itself; and make additional updates and clarify language throughout the law.

During the FY20 Second Quarter the Oneida Business Committee adopted the proposed amendments to the Child Support law on January 8, 2020, through resolution BC-01-08-20-C.

#### **Real Property Law Emergency Amendments**

The Real Property law provides regulations and procedures for the transfer, control and management of the territory within the Reservation and all Tribal land; integrates these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the Reservation; and establishes licensing and certification requirements for the Nation's employees dealing with real property transactions.

Emergency amendments to the Real Property law were sought to address the delegation of rulemaking authority to the Oneida Land Commission, Land Management, and Comprehensive Housing Division. The emergency amendments to the Real Property law ensured that the homeownership and land acquisition strategies related to the HIP and THRIFTT programs were not jeopardized by allowing immediate updates to the program processing and required component that authorizes land acquisitions to be made via administrative rulemaking.

During the FY20 Second Quarter the Legislative Operating Committee decided to pursue emergency amendments to the Real Property law on January 15, 2020.

The Oneida Business Committee adopted the emergency amendments to the Real Property law on January 22, 2020, through the adoption of resolution BC-01-22-20-B. The emergency amendments to the Real Property law will expire on July 22, 2020, with one opportunity for a six (6) month extension.

The Legislative Operating Committee began the development of permanent amendments to the Real Property law in February 2020.

#### **Citations Law**

The Citations law was developed to provide a consistent process for handling citations of the Nation in order to ensure equal and fair treatment to all persons who come before the Judiciary to have their citations resolved.

During the FY20 Second Quarter the Legislative Operating Committee finalized the draft of the proposed Citations law and requested a fiscal impact statement to be completed on January 15, 2020. The Oneida Business Committee then adopted the proposed Citations law on February 12, 2020, through the adoption of resolution BC-02-12-20-A.

#### **Tobacco Law Emergency Amendments**

The Tobacco law regulates the sale, possession, and distribution of cigarettes within the Reservation. Emergency amendments to the Tobacco law were sought to increase the minimum age for sales of cigarettes and electronic cigarettes from eighteen (18) to twenty-one (21) years old in response to a change in the federal law.

During the FY20 Second Quarter the Legislative Operating Committee decided to pursue emergency amendments to the Tobacco law on February 5, 2020.

The Oneida Business Committee adopted the emergency amendments to the Tobacco law on February 26, 2020, through the adoption of resolution BC-02-26-20-A. The emergency amendments to the Tobacco law will expire on August 26, 2020, with one opportunity for a six (6) month extension.

The Legislative Operating Committee began the development of permanent amendments to the Real Property law in March 2020.

#### Boards, Committees, and Commissions Law Emergency Amendments

The Boards, Committees, and Commissions law governs boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

An emergency amendment to the Boards, Committees, and Commissions law was sought to restrict employees of the Nation's Internal Audit Department, Finance Administration Office, and Oneida Law Office from serving on a board, committee or commission of the Nation due to the potential for a real or perceived conflict of interest to exist.

During the FY20 Second Quarter the Legislative Operating Committee decided to pursue emergency amendments to the Boards, Committees, and Commissions law on February 19, 2020.

The Oneida Business Committee adopted the emergency amendments to the Boards, Committees, and Commissions on March 11, 2020, through the adoption of resolution BC-03-11-20-B. These emergency

January 2020 - March 2020

amendments were then superseded by the adoption of additional emergency amendments through BC-03-17-20-C.

#### **Children's Burial Fund Policy Amendments**

The Children's Burial Fund Policy provides financial assistance towards the funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in the Nation. The Children's Burial Fund Policy is being amended to remove outdated restrictions and to create more flexibility in using the funds. Potential amendments include: updating qualifications for the use of the Fund, clarifying caskets or coffin costs are payable if identified with an invoice, expressly prohibiting travel costs, and removing limitations on the use of the Fund to pay food expenses.

During the FY20 Second Quarter a public meeting on the Children's Burial Policy was held on February 13, 2020. Three (3) individuals provided oral comments during this public meeting. The public comment period was held open until February 20, 2020. Two (2) people submitted written comments during the public comment period. The Legislative Operating Committee reviewed and considered all public comments on March 4, 2020.

The Legislative Operating Committee then finalized the draft of proposed amendments to the Children's Burial Fund Policy and requested a fiscal impact statement be completed on March 18, 2020. The Legislative Operating Committee intends to bring Children's Burial Fund Policy amendments to the Oneida Business Committee for consideration on April 22, 2020.

#### **Vehicle Driver Certification and Fleet Management Law Amendments**

The Vehicle Driver Certification and Fleet Management law establishes standards that certify employees, officials and volunteers to drive a fleet vehicle of the Nation or drive a personal vehicle on official business, and regulates the use of all vehicles owned and leased by the Nation. The Vehicle Driver Certification and Fleet Management law is being amended to: revise the qualifications to become a certified driver of the Nation; revise and simplify the process for suspending a person's driver certification; clarify that other violations of this law that do not result in the suspension or revocation of a driver's license will be handled by disciplinary action instead of suspension of driver certification; revise the restriction on driving while using prescription or over the counter medications; require mileage reimbursement requests to be submitted within thirty (30) days of driving the miles or by the end of the fiscal year, whichever is sooner; ban the use of e-cigarettes in fleet vehicles; and clarify that weapons are banned in fleet vehicles and personal vehicles used for official business.

During the FY20 Second Quarter a public meeting on the proposed amendments to the Vehicle Driver Certification and Fleet Management law was held on January 23, 2020. Two (2) individuals provided oral comments during the public meeting. The public comment period was then held open until January 30, 2020. Two (2) individuals submitted written comments during the public comment period. The Legislative Operating Committee reviewed and considered all public comments on February 19, 2020.

The Legislative Operating Committee then finalized the draft of proposed amendments to the Vehicle Driver Certification and Fleet Management law and requested a fiscal impact statement be completed on March 4, 2020. The Legislative Operating Committee intends to bring Vehicle

Driver Certification and Fleet Management law amendments to the Oneida Business Committee for consideration on April 8, 2020.

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

The Indian Preference in Contracting law establishes an Indian Preference Office and increases 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. Proposed amendments to the Indian Preference in Contracting law include: updates to the definition of tribal corporation to include any corporation chartered and/or wholly owned by the Nation; an increase to the threshold for when Indian Preference applies to contracts; redefine joint ventures and permit joint ventures to qualify for Indian Preference on a project specific basis; set a new timeline for the Indian Preference Office to review contracts 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.

During the FY20 Second Quarter the Legislative Operating Committee reviewed and considered all public comments that were received regarding the proposed amendments to the Indian Preference in Contracting law on February 19, 2020.

The Legislative Operating Committee then finalized the draft of proposed amendments to the Indian Preference in Contracting law and requested a fiscal impact statement be completed on March 18, 2020. The Legislative Operating Committee intends to bring the Indian Preference in Contracting law amendments to the Oneida Business Committee for consideration on April 8, 2020.

#### **Oneida Food Service Code Amendments**

The Oneida Food Service Code ensures the safe food handling and sales by food vendors who sell their products for profit on property within the exterior boundaries of the Oneida Nation in Wisconsin through licensing, regulation, control and supervision of those vendors. Potential amendments to the Oneida Food Service Code include: add mobile food trucks within the category of permanent food service establishments; add a notice and other procedural requirements to the processing of applications for licensure to operate a food service business; create exemptions for cottage food sales and prepackaged restaurants; afford licensing fee waivers to protect food service businesses or prepackaged restaurants from duplicative payments that would be caused by overlapping jurisdictions; and allow the area manager the final determination on appeals of noncitation issued decisions unless one (1) of the three (3) express grounds exist to further appeal the decision.

During the FY20 Second Quarter a public meeting on the proposed amendments to the Oneida Food Service Code was held on February 6, 2020. No one present at the public meeting provided oral comments during the public meeting. The public comment period was then held open until February 13, 2020. One (1) individual submitted written comments during the public comment period. The Legislative Operating Committee reviewed and considered all public comments on March 4, 2020.

The Legislative Operating Committee then finalized the draft of proposed amendments to the

Oneida Food Service Code and requested a fiscal impact statement be completed on March 18, 2020. The Legislative Operating Committee intends to bring the Oneida Food Service Code amendments to the Oneida Business Committee for consideration during the FY20 Third Quarter.

#### **FY20 Second Quarter LOC Meetings**

All LOC meetings are open to the public and held on the first and third Wednesday of each month, at 9:00 a.m. in the Norbert Hill Center's Business Committee Conference Room. Table 2 illustrates the LOC meetings that occurred during the FY20 Second Quarter.

Table 2. Legislative Operating Committee Meetings in First Quarter

Legislative Operating Committee Meetings		
January 1, 2020	Regular LOC meeting cancelled	
January 15, 2020	Regular LOC meeting	
January 23, 2020	Regular LOC meeting	
February 5, 2020	Regular LOC meeting	
February 19, 2020	Regular LOC meeting	
March 4, 2020	Regular LOC meeting	
March 18, 2020	Regular LOC meeting	

#### **LOC Plans for Third Quarter**

During the FY20 Third Quarter the LOC will focus its legislative efforts on the following matters:

- 1. COVID-19 Pandemic response activities;
- 2. Adoption of the Indian Preference in Contracting Law Amendments;
- 3. Adoption of the Vehicle Driver Certification & Fleet Management Law Amendments;
- 4. Adoption of the Children's Burial Fund Policy Amendments;
- 5. Development of the Real Property Law Amendments;
- 6. Adoption of the Curfew Law Amendments;
- 7. Adoption of the Domestic Animals Law Amendments;
- 8. Adoption of the Oneida Food Service Code Amendments;
- 9. Development of the Tobacco Emergency Amendments;
- 10. Development of the Industrial Hemp law; and
- 11. Development of the Recycling and Solid Waste Disposal Amendments.

#### **Legislative Reference Office Update**

The Legislative Reference Office will focus on the LOC's FY20 Third Quarter legislative priorities. In addition, the Legislative Reference Office is working on:

- COVID-19 pandemic response activities;
- Moving the Nation's legislative history to a digital and searchable format; and
- Preparing for the 2020 General Election and subsequent transition.

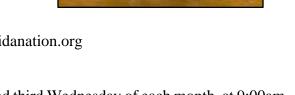
The Legislative Reference Office currently has two (2) vacant legislative analyst positions. The onset of the COVID-19 pandemic has had extensive impacts to the Nation. The Legislative Reference Office will work diligently to keep the legislative timelines on track. As a result of the

COVID-19 pandemic, the Legislative Reference Office Director was placed on furlough as of April 12, 2020.

#### **Legislative Operating Committee Contact Information**

Feel free to contact the LOC with any questions or comments;

- David Jordan, LOC Chairperson, djordan1@oneidanation.org
- Kirby Metoxen, LOC Vice Chairperson, kmetox@oneidanation.org
- Jennifer Webster, LOC member, jwebste1@oneidanation.org
- Daniel King-Guzman, LOC Member, dguzman@oneidanation.org
- Ernest Stevens III, LOC Member, esteven4@oneidanation.org
- LOC@oneidanation.org

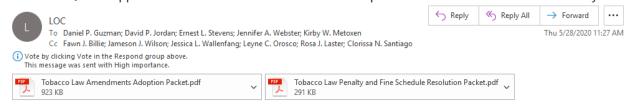


Legislative Operating Committee meetings are the first and third Wednesday of each month, at 9:00am, in the Norbert Hill Center. Meeting agendas and other materials are available at <a href="https://oneidansn.gov/government/business-committee/standing-committees/legislative-operating-committee/">https://oneidansn.gov/government/business-committee/standing-committees/legislative-operating-committee/</a>

#### Yaw^ko

# May 28, 2020, Legislative Operating Committee E-Poll Approval of the Tobacco Law Amendments Adoption Packet and the Tobacco Law Penalty and Fine Resolution

E-POLL REQUEST: Approval of the Tobacco Law Amendments Adoption Packet and the Tobacco Law Penalty an...



#### **Good Morning Legislative Operating Committee,**

This e-mail serves as the e-poll for the approval of the Tobacco law amendments adoption packet, and the "Tobacco Law Penalty and Fine Schedule" resolution.

#### **EXECUTIVE SUMMARY**

On February 26, 2020, the Oneida Business Committee adopted the emergency amendments to the Tobacco law through resolution BC-02-26-20-A which raised the Nation's minimum age for the sale of cigarettes and electronic cigarettes from eighteen (18) to twenty-one (21) years old based on President Trump's December 20, 2019, action to sign into law an amendment to the Federal Food, Drug, and Cosmetic Act to raise the minimum age of sale for tobacco products. These emergency amendments are set to expire on August 26, 2020.

The Legislative Operating Committee has since been developing permanent amendments to the Tobacco law. The adoption packet for the Tobacco law amendments is ready for approval by the Legislative Operating Committee so that it can be sent to the Oneida Business Committee to consider adoption at the June 10, 2020, Oneida Business Committee meeting. The purpose of the Tobacco law is to regulate the sale, possession, and distribution of cigarettes within the Reservation. [1 O.C. 115.1-1]. The proposed amendments to the Tobacco law will:

- Provide a definition for "tobacco products" [1 O.C. 115.3-1(h)];
- Permanently change the minimum age of sale from eighteen (18) to twenty-one (21) years old [1 O.C. 115.6-3];
- 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 [1 O.C. 115.6-3];
- 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 [1 O.C. 115.6-3];
- Clarify that the process and procedure contained in the Nation's Citations law will govern citations issued under this Law [1 O.C. 115.8-1(a)-(b)]; and
- 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 [1 O.C. 115.8-1(c)].

Additionally, the "Tobacco Law Penalty and Fine Schedule" resolution, which sets forth specific fine amounts to be issued through citations by the Oneida Police Department for violations of this law, is also ready for approval by the Legislative Operating Committee so it can be forwarded to the Oneida Business Committee for consideration alongside the amendments to the Tobacco law.

An e-poll is necessary for this matter because Legislative Operating Committee meetings have been canceled due to the COVID-19 pandemic, and immediate action is required by the Legislative Operating Committee to approve the Tobacco law amendments adoption packet and the "Tobacco Law Penalty and Fine Schedule" resolution so the materials may be forwarded to the Oneida Business Committee for consideration during the June 10, 2020, Oneida Business Committee meeting.

#### **REQUESTED ACTION**

Approve the Tobacco law amendments adoption packet and the "Tobacco Law Penalty and Fine Schedule" resolution and forward to the Oneida Business Committee for consideration.

#### **DEADLINE FOR RESPONSE**

May 28, 2020 at 3:30 p.m.

All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by Jennifer Webster, David Jordan, Kirby Metoxen, and Ernest Stevens III. Daniel Guzman King abstained from this e-poll.





# Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365

ONEIDA

TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson

DATE: June 10, 2020

RE: Tobacco Law Amendments

Please find the following attached backup documentation for your consideration of the proposed amendments to the Tobacco law:

1. Resolution: Amendments to the Tobacco Law

- 2. Statement of Effect: Amendments to the Tobacco Law
- 3. Tobacco Law Amendments Legislative Analysis
- 4. Tobacco Law Amendments (Redline)
- 5. Tobacco Law Amendments (Clean)
- 6. Tobacco Law Amendments Fiscal Impact Statement

#### Overview

On January 15, 2020, the Legislative Operating Committee (LOC) added the Tobacco law amendments ("the Law") to its Active Files List upon recommendation by the Oneida Law Office and Oneida Retail Enterprise for emergency amendments to be made based on President Trump's December 20, 2019, action to sign into law an amendment to the Federal Food, Drug, and Cosmetic Act which raised the legal age to purchase tobacco products from at least eighteen (18) to at least twenty-one (21) years old, effective immediately. On February 26, 2020, the Oneida Business Committee adopted the emergency amendments to the Law through resolution BC-02-26-20-A which raised the Nation's minimum age for the sale of cigarettes and electronic cigarettes from eighteen (18) to twenty-one (21). These emergency amendments are set to expire on August 26, 2020.

The Legislative Operating Committee has now prepared permanent amendments to the Tobacco law for the Oneida Business Committee's consideration. The purpose of the Tobacco law is to regulate the sale, possession and distribution of cigarettes within the Reservation. [1 O.C. 115.1-1]. This resolution adopts amendments to the Tobacco law which will:

- Provide a definition for "tobacco products" [1 O.C. 115.3-1(h)];
- Permanently change the minimum age of sale from eighteen (18) to twenty-one (21) years old [1 O.C. 115.6-3];
- 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 [1 O.C. 115.6-3];
- 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 [1 O.C. 115.6-3];
- Clarify that the process and procedure contained in the Nation's Citations law will govern citations issued under this Law [1 O.C. 115.8-1(a)-(b)]; and

 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 [1 O.C. 115.8-1(c)].

The Legislative Operating Committee developed the proposed amendments to the Tobacco law through collaboration with representatives from the Oneida Law Office, Oneida Retail Enterprise, and the Community Health Services Department.

A public meeting, in accordance with the Legislative Procedures Act, was not held for the proposed amendments to the Tobacco law due to the COVID-19 pandemic. In early 2020 the world was hit with a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts. On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. This Public Health State of Emergency was extended through May 12, 2020, through the adoption of resolution BC-03-28-20-A, and then further extended until June 11, 2020, through the adoption of resolution BC-05-06-20-A. On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibits all public gatherings of any number of people. Then on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

Although no public meeting for the proposed amendments to the Tobacco law was held in person, the public comment period was still held open until May 7, 2020, for the submission of written comments. No written comments were received during the public comment period.

#### **Requested Action**

Approve the Resolution: Amendments to the Tobacco Law



### **Oneida Nation**

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

### **BC** Resolution #

1		Amendments to the Tobacco Law			
1 2 3 4 5	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and			
6 7	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and			
8 9 10	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and			
11 12 13 14	WHEREAS,	the Tobacco law ('the Law") was adopted by the Oneida Business Committee through resolution BC-11-18-81-A, and then amended by resolutions BC-10-10-07-A, BC-04-09-14-F, and BC-01-25-17-B; and			
15 16 17	WHEREAS,	the purpose of the Law is to regulate the sale, possession and distribution of cigarettes within the Reservation; and			
18 19 20 21	WHEREAS,	the Oneida Business Committee adopted emergency amendments to this Law through resolution BC-02-26-20-A in accordance with the emergency adoption process set forth in the Legislative Procedures Act; and			
22 23 24 25 26 27 28	WHEREAS,	the emergency amendments raised the Nation's minimum age for the sale of cigarettes and electronic cigarettes from eighteen (18) to twenty-one (21) years old based on President Trump's December 20, 2019, action to sign into law an amendment to the Federal Food, Drug, and Cosmetic Act which raised the legal age to purchase tobacco products from at least eighteen (18) to at least twenty-one (21) years old, effective immediately; and			
29 30	WHEREAS,	the emergency amendments to the Law are set to expire on August 26, 2020; and			
31 32 33	WHEREAS,	the adoption of the emergency amendments on a permanent basis are necessary to remain compliant with the Federal Food, Drug, and Cosmetic Act's requirements; and			
34 35 36	WHEREAS,	additional permanent amendments to the Law were made and include the addition of a definition for tobacco products; and			
37 38 39 40	WHEREAS,	the permanent amendments 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 old; and			
41 42 43	WHEREAS,	the permanent amendments to the Law 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; and			

BC Resolution #\_\_\_\_ Amendments to the Tobacco Law Page 2 of 2

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- **WHEREAS**, 46
- the permanent amendments to the Law clarify that the process and procedure contained in the Nation's Citations law will govern citations issued under this Law; and

- WHEREAS,
- the permanent amendments to the Law 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; and

- WHEREAS,
- the Legislative Operating Committee worked collaboratively with representatives from the Oneida Law Office, Oneida Retail Enterprise, and the Community Health Services Department to develop the amendments to this Law; and

- WHEREAS,
- in accordance with the Legislative Procedures Act, a legislative analysis and fiscal impact statement were completed for the amendments to the Law; and

- WHEREAS,
- a public meeting on the proposed amendments to this Law was not held in accordance with the Legislative Procedures Act due to the COVID-19 pandemic; and

- WHEREAS,
- in the Spring of 2020 the world experienced the spread of the COVID-19 pandemic which resulted in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts; and

- WHEREAS,
- on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, which was then subsequently extended through June 11, 2020, through the adoption of resolutions BC-03-28-20-A and BC-05-06-20-A; and

- WHEREAS,
- on March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed; and

- WHEREAS,
- on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period; and

- WHEREAS,
- although a public meeting was not held for the proposed amendments to this Law, the public comment period for the amendments to this Law was held open until May 7, 2020; and

**NOW THEREFORE BE IT RESOLVED,** that the amendments to the Tobacco law are hereby adopted and shall be effective on June 24, 2020.



#### Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



#### **Statement of Effect**

Amendments to the Tobacco Law

#### Summary

This resolution adopts amendments to the Tobacco law.

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

Date: May 26, 2020

#### Analysis by the Legislative Reference Office

The Tobacco law ("the Law") was adopted by the Oneida Business Committee for the purpose of regulating the sale, possession, and distribution of cigarettes within the Reservation. [1 O.C. 115.1-1]. The Tobacco law was most recently amended on an emergency basis through the adoption of resolution BC-02-26-20-A for the purpose of bringing the Tobacco law in compliance with changes to the Federal Food, Drug, and Cosmetic Act which raised the legal age to purchase tobacco products from at least eighteen (18) to at least twenty-one (21) years old. These emergency amendments are set to expire on August 26, 2020.

This resolution seeks permanent amendments to the Tobacco law which will:

- Provide a definition for "tobacco products" [1 O.C. 115.3-1(h)];
- Permanently change the minimum age of sale from eighteen (18) to twenty-one (21) years old [1 O.C. 115.6-3];
- 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 [1 O.C. 115.6-3];
- 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 [1 O.C. 115.6-3];
- Clarify that the process and procedure contained in the Nation's Citations law will govern citations issued under this Law [1 O.C. 115.8-1(a)-(b)]; and
- 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 [1 O.C. 115.8-1(c)].

The Legislative Procedures Act ("the LPA") was adopted by the General Tribal Council for the purpose of providing a process for the adoption or amendment of laws of the Nation. [1 O.C. 109.1-1]. The LPA requires that for all proposed legislation both a legislative and fiscal analysis be developed. [1 O.C. 109.6 and 109.7]. The proposed amendments to the Tobacco law comply with these requirements.

The LPA also requires that there be an opportunity for public review during a public meeting and public comment period. [1 O.C. 109.8]. A public meeting for the Tobacco law amendments was not held due to the COVID-19 pandemic. In early 2020 the world experienced a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts. In accordance with the Emergency Management

and Homeland Security law, on March 12, 2020, Chairman Tehassi Hill signed a "*Declaration of Public Health State of Emergency*" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. [3 O.C. 302.8-1].

On March 17, 2020, the Oneida Business Committee adopted emergency amendments to the Emergency Management and Homeland Security law to create and delegate authority to a COVID-19 Core Decision Making Team ("COVID-19 Team"). [3 O.C. 302.10]. When a public health emergency has been declared, the COVID-19 Team has the authority to declare exceptions to the Nation's laws, policies, procedures, regulations, or standard operating procedures during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees. [3 O.C. 302.10-2]. These declarations remain in effect for the duration of the Public Health State of Emergency. [3 O.C. 302.10-3].

On March 24, 2020, the Nation's COVID-19 Team made a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed.

Then on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

On March 28, 2020, the Oneida Business Committee took action to extend the Public Health State of Emergency through May 12, 2020, through the adoption of resolution BC-03-28-20-A. Then on May 6, 2020, the Oneida Business Committee took action to further extend the Public Health State of Emergency through June 11, 2020, through the adoption of resolution BC-05-06-20-A.

Although a public meeting for the Tobacco law amendments was not held, the public comment period was still held open until May 7, 2020.

Adoption of this resolution complies with the process and procedures of the LPA as it has been modified by the COVID-19 Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration.

This resolution provides that the amendments to the Tobacco law would become effective on June 24, 2020, in accordance with the LPA. [1 O.C. 109.9-3].

#### Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws. Adoption of this resolution complies with the Legislative Procedures Act as it has been modified by the COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration.





## AMENDMENTS TO THE TOBACCO LAW LEGISLATIVE ANALYSIS

#### **SECTION 1. EXECUTIVE SUMMARY**

Analysis by the Legislative Reference Office					
Intent of the	<ul><li>Provide a definition for "tobacco products;"</li></ul>				
Amendments	• Permanently change the minimum age of sale from eighteen (18) to twenty-				
	one (21) years old;				
	<ul> <li>Clarify that all tobacco products, and not just cigarettes and electronic</li> </ul>				
	cigarettes, shall not be sold to any person under the age of twenty-one (21)				
	years;				
	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;				
	• Clarify that the process and procedure contained in the Nation's Citations law				
	will govern citations issued under this Law; and				
	Provide authority to the Oneida Business Committee to adopt through				
	resolution a fine and penalty schedule for citations issued as a result of a				
D	violation of this Law.				
Purpose	The purpose of this Law is to regulate the sale, possession and distribution of				
A 66 4 T TO 4°4°	cigarettes within the Reservation [1 O.C. 115.1-1].				
Affected Entities	Oneida Retail Enterprise, Oneida Judiciary, Oneida Police Department				
<b>Related Legislation</b>	Oneida Personnel Policies and Procedures, Citations law				
<b>Public Meeting</b>	A public comment period was held open until May 7, 2020. A public meeting was				
	not held in accordance with the Nation's COVID-19 Core Decision Making Team's				
	declaration titled, "Suspension of Public Meetings under the Legislative Procedures				
	Act."				
Fiscal Impact	A fiscal impact statement was provided by the Finance Department on May 26,				
	2020.				

#### SECTION 2. LEGISLATIVE DEVELOPMENT

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- A. *Background*. The Tobacco law ("the Law") regulates the sale, possession, and distribution of cigarettes within the Reservation. [1 O.C. 115.1-1]. The Oneida Business Committee originally adopted this Law on March 15, 1976. The Law was most recently amended on an emergency basis on February 26, 2020.
- B. *Emergency Amendments*. On February 26, 2020, the Oneida Business Committee adopted emergency amendments to the Law through resolution BC-02-26-20-A. The emergency amendment raised the minimum age for the sale of cigarettes and electronic cigarettes from eighteen (18) to twenty-one (21) years.
  - The Oneida Business Committee is delegated the authority to temporarily enact an emergency law where legislation is necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and the enactment or amendment of legislation is required sooner than would be possible by utilizing the standard legislative process. [1 O.C. 109.9-5].
  - An emergency amendment to the Law was pursued based on President Trump's December 20, 2019, action to sign into law an amendment to the Federal Food, Drug, and Cosmetic Act which raised the legal age to purchase tobacco products to at least twenty-one (21) years old, effective

- immediately. The Oneida Retail Enterprise began implementing this change on January 1, 2020.
  - The Oneida Business Committee determined emergency adoption of the amendment to the Law was necessary for the preservation of the public health and general welfare of the Reservation population because it ensures the Nation is in compliance with federal law. Additionally, the Oneida Business Committee found that observance of the requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest.
  - The emergency amendment to the Law will expire on August 26, 2020. The Legislative Procedures Act allows a one-time emergency law extension of up to six (6) months. [1 O.C. 109.9-5(b)].

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

- A. Representatives from the following departments of the Nation participated in the development of this Law and legislative analysis:
  - Oneida Retail Enterprise;
  - Community Health Services Department; and
  - Oneida Law Office.
- B. The following laws of the Nation were reviewed in drafting this analysis:
  - Oneida Personnel Policies and Procedures; and
  - Citations law.

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

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- A. Thus far, this Law has followed the process set forth in the Legislative Procedures Act.
  - The Tobacco law emergency amendments was added to the Legislative Operating Committee's Active Files List on January 15, 2020.
  - The Oneida Business Committee adopted the emergency amendments on February 26, 2020, through the adoption of resolution BC-02-26-20-A.
  - The emergency amendments will expire on August 26, 2020.
  - A public comment period for the proposed amendments was held open until May 7, 2010.
  - A fiscal impact statement was provided by the Finance Department on May 26m, 2020.
  - B. At the time this legislative analysis was developed the following work meetings had been held regarding the development of these amendments:
    - January 30, 2020: Work meeting with LOC and Oneida Law Office.
    - March 2, 2020: Work meeting with Oneida Retail Enterprise and Community Health Services Department.
    - March 4, 2020: Work meeting with LOC.
    - April 9, 2020: Work meeting with LOC.
    - May 7, 2020: Work meeting with LOC.
    - May 21, 2020: Work meeting with LOC.
  - C. *COVID-19 Pandemic's Effect on the Legislative Process*. A public meeting for the proposed amendments to this Law was not held due to the COVID-19 pandemic, but a public comment period was still held open.
    - On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
    - On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay

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- at home or at their place of residence, with certain exceptions allowed. This declaration prohibits all public gatherings of any number of people.
- Then on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.
- On March 28, 2020, the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's Public Health State of Emergency declaration until May 12, 2020.
- On May 6, 2020, the Oneida Business Committee adoption resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until June 11, 2020" which further extended the Nation's Public Health State of Emergency until June 11, 2020.
- Although a public meeting was not held on the proposed amendments to the Tobacco law, a public comment period was still scheduled. A notice for the Tobacco law public comment period, with an explanation that only written submissions of comments or questions would be accepted, was published in the April 3, 2020, Kalihwisaks edition and posted to the Oneida Register.
- The public comment period was held open until May 7, 2020. No written comments were received during the public comment period.

#### **SECTION 5. CONTENTS OF THE AMENDMENTS**

- A. Definition of Tobacco Products. The proposed amendments add a definition for "tobacco products" to the Law. [1 O.C. 115.3-1(h)]. Previously, the Law only defined and referenced "cigarettes" and "electronic cigarettes" and was silent as to other tobacco products. The Oneida Retail Enterprise uses the same minimum age for the sale of tobacco products as cigarettes and electronic cigarettes, the Law just did not reflect this practice.
  - Effect. The addition of the definition and reference to tobacco products better reflects the Oneida Retail Enterprise's current practice and informs the reader that tobacco products are treated in the same manner as cigarettes and electronic cigarettes.
- B. Minimum Age of Sale. The proposed amendments provide that cigarettes, electronic cigarettes, and/or other tobacco products shall not be sold to any person under the age of twenty-one (21). [1 O.C. 115.6-3]. Prior to the adoption of the emergency amendments, the Law only stated that cigarettes and electronic cigarettes shall not be sold to any person under the age of eighteen (18).
  - Effect. This proposed amendment permanently adopts the emergency amendment which raised the minimum age of sales of cigarettes and electronic cigarettes from eighteen (18) to twentyone (21). This amendment also clarifies that the minimum age for the sale of tobacco products is twenty-one (21). Although the current version of the Law does not reference tobacco products other than cigarettes and electronic cigarettes, this amendment reflects the Oneida Retail Enterprise's current practice.
- C. Sale by Authorized Employees Only. The proposed amendments provide that no person other than an authorized employee shall sell cigarettes, electronic cigarettes, and/or other tobacco products at an Oneida retail location. [1 O.C. 115.6-3]. Previously, the Law only referenced cigarettes and electronic cigarettes in this section.
  - Effect. This amendment clarifies that the restriction of sales to authorized employees applies to the sale of tobacco products at Oneida retail locations. Although the current version of the Law does not reference tobacco products other than cigarettes and electronic cigarettes, this amendment reflects the Oneida Retail Enterprise's current practice.

- D. Citations Issued for Violations of this Law. The proposed amendments provide that an individual who violates a provision of this Law may be issued a citation by the Oneida Police Department. [1 O.C. 115.8-1]. The Law goes on to provide that citations, which may include fines and other penalties, shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations. [1 O.C. 115.8-1(a)-(b)]. The proposed amendments also delegate 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. [1 O.C. 115.8-1(c)]. Previously, the Law provided that violators subject to the jurisdiction of the Nation shall be subject to a fine of not more than ten dollars (\$10) per pack of unstamped cigarettes to be issued by the Oneida Police Department and paid to the Nation. The Law also previously provided that all fines assessed 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.
  - Adoption of a Citations Law. In February 2020, the Oneida Business Committee adopted a Citations law for the purpose of providing a consistent process that governs all citations that fall under the jurisdiction of the Oneida Nation. [8 O.C. 807.1-1].
  - Effect. The proposed amendments better clarify that the process and procedure contained in the Nation's Citations law will govern citations issued under this Law. The proposed amendment's removal of language specific to fines and penalties from the Law to instead be placed into a resolution containing a fine and penalty schedule is also consistent with the Nation's recent legislative drafting practices.

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

- A. Reference to other Laws of the Nation. The following laws of the Nation are referenced in this Law:
  - Oneida Personnel Policies and Procedures. This Law provides that an employee who violates this Law shall be subject to disciplinary action in accordance with the Nation's laws and policies governing employment. [1 O.C. 115.8-2(b)].
    - The Oneida Personnel Policies and Procedures is the Nation's law which governs employment. The Oneida Personnel Policies and Procedures provides the process for handling complaints, disciplinary actions, and grievances. [Section V.D.].
    - A supervisor would have to follow the disciplinary action procedure contained in the Oneida Personnel Policies and Procedures to hold an employee accountable for a violation of this Law.
  - Citations law. This Law provides that 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.
    - The Citations law is the Nation's law governing citations. The Citations law provides how a citation action is started such as who has the authority to issue a citation, the requirements of the form of the citation, and how a citation is served and filed; stipulations for the settlement of a citation; and the citation hearing procedures. [8 O.C. 807].
    - Any citations issued by the Oneida Police Department for a violation of this Law must comply with the requirements and procedures of the Citations law.

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

- A. *Enforcement*. This Law is enforced in the following ways:
  - *Procedures and Policies*. The Oneida Retail Enterprise is the entity responsible for carrying out the process, procedures, and responsibilities of this Law.
  - Issuance of a Citation. The Oneida Police Department is authorized to issue a citation for a violation of this Law. [1 O.C. 115.8-1].

- Seizure of Unstamped Cigarettes. The Oneida Police Department is authorized to seize any cigarettes acquired, owned, possessed, sold, or distributed in violation of this Law. [1 O.C. 115.8-2(a)].
- Disciplinary Action. A supervisor may utilize disciplinary action in accordance with the Oneida Personnel Policies and Procedures for any employee who violates this Law. [1 O.C. 115.8-2(b)].

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

- A. *Timeframe for Permanent Adoption of Amendments*. The emergency amendments to this Law, as adopted by the Oneida Business Committee through resolution BC-02-26-20-A, will expire on August 26, 2020. The Legislative Procedures Act allows a one-time extension of up to an additional six (6) months. [1 O.C. 109.9-5(b)]. This means that the Legislative Operating Committee has until February 21, 2021, at the latest to adopt these permanent amendments to this Law before the emergency amendments expire.
- B. *Fine and Penalty Schedule*. This Law provides that 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. [1 O.C. 115.8-1(c)]. The fine and penalty schedule resolution for the Tobacco law is currently under development. The Legislative Operating Committee intends to bring this proposed fine and penalty schedule resolution to the Oneida Business Committee at the time these amendments are up for adoption.
- C. Fiscal Impact. A fiscal impact statement was provided by the Finance Department on May 26, 2020.
  - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation. [1 O.C. 109.6-1].
  - A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee. [1 O.C. 109.6-1(a and b)].

#### Title 1. Government and Finances - Chapter 115

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matters concerning tobacco

#### **TOBACCO**

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#### matters concerning tobacco

115.1.	Purpose	and	Policy	v

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 2 3 cigarettes within the Reservation.

4 115.1-2. *Policy*. It is the policy of the Nation to ensure that all cigarette sales on the Reservation 5 are conducted in a lawful manner.

#### 115.2. Adoption, Amendment, Repeal

8 115.2-1. 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, and BC-01-25-17-B-, and BC-9

11 115.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the 12 Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures

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14 115.2-3. Should a provision of this law or the application thereof to any person or circumstances

15 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. 16

115.2-4. In the event of a conflict between a provision of this law and a provision of another law, 17 18

the provisions of this law shall control.

19 115.2-5. 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.

- 38 (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.
  - (g) "Stamped Cigarettes" means cigarettes bearing valid Wisconsin tax stamps.
  - (h) "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

#### 115.4. Oneida Retail Locations

- 115.4-1. The Nation shall maintain Oneida retail locations within the Reservation as it deems necessary to provide adequate service to consumers of stamped cigarettes.
- 115.4-2. Each Oneida retail location established hereunder shall be managed and operated by the Oneida Nation.

#### 115.5. Purchase of, Title to and Possession of Tobacco Products

115.5-1. The Nation shall purchase stamped cigarettes from such suppliers as it may choose and shall take title and possession on delivery to an Oneida retail location on the Reservation (the. The title shall be subject to any purchase money security interest). Possession of the stamped cigarettes (, but not title), shall be transferred to the manager of the Oneida retail location to be held for sale to the consumers. The Nation shall retain title to stamped cigarettes until sold to a consumer.

#### 115.6. Restrictions on Sales

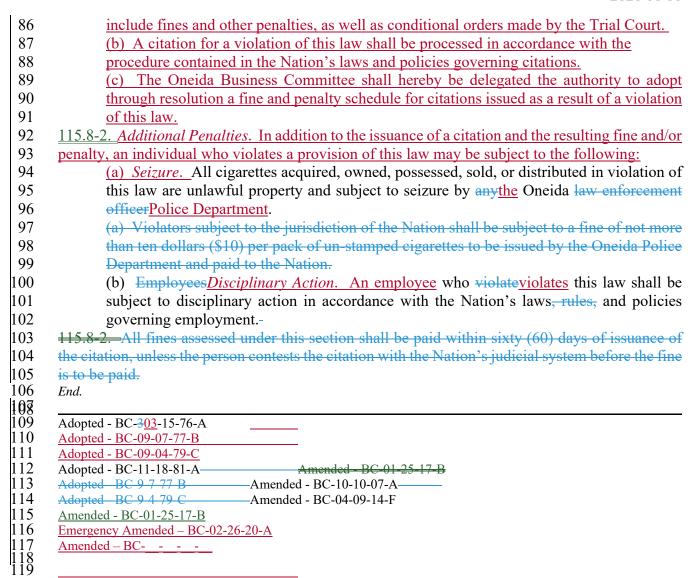
- 115.6-1. The Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal Cigarette tax stamp within the Reservation. Furthermore, only the Nation may claim the tax refunds on cigarettes sold on the Reservation as provided for under state law.
- 67 115.6-2. The Nation reserves the right to restrict sales, volume, pricing, and profit margin of stamped cigarettes sold at <u>aan</u> Oneida retail location.
  69 115.6-3. Cigarettes <u>and</u>, electronic cigarettes, and/or other tobacco products shall not be sold to
  - 115.6-3. Cigarettes—and, electronic cigarettes, and/or other tobacco products shall not be sold to any person under the age of eighteen (18twenty-one (21)). Cigarettes—and, electronic cigarettes, and/or other tobacco products for sale at an Oneida retail location shall be on display behind a counter. No person other than an authorized employee shall sell cigarettes—and, electronic cigarettes, and/or 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.

#### 115.7. Liability

115.7-1. The Nation shall be responsible for all risks to the stamped cigarettes and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary any person owning a purchase money security interest in the products to the extent his or her interest may appear.

#### 115.8 Violations

- 115.8-1. *Issuance of a Citation*. An individual who violates a provision of this law may be issued a citation by the Oneida Police Department.
  - (a) A citation for a violation of this law and/or any orders issued pursuant to this law may



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

115.1. Purpose and Policy115.2. 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

2 115.1-1. *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.

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#### 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-\_\_-\_
- 11 115.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the 12 Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures 13 Act.
- 14 115.2-3. Should a provision of this law or the application thereof to any person or circumstances 15 be held as invalid, such invalidity shall not affect other provisions of this law which are considered

16 to have legal force without the invalid portions.

- 17 115.2-4. 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.

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#### 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

- Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any land added thereto pursuant to federal law.
  - (g) "Stamped Cigarettes" means cigarettes bearing valid Wisconsin tax stamps.
  - (h) "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

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### 115.6. Restrictions on Sales

- 115.6-1. The Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal Cigarette tax stamp within the Reservation. Furthermore, only the Nation may claim the tax 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 stamped cigarettes sold at an Oneida retail location.
- 115.6-3. Cigarettes, electronic cigarettes, and/or other tobacco products shall not be sold to any person under the age of twenty-one (21). Cigarettes, electronic cigarettes, and/or other tobacco products for sale at an Oneida retail location shall be on display behind a counter. No person other than an authorized employee shall sell cigarettes, electronic cigarettes, and/or other tobacco products at an Oneida retail location.
  - 115.6-4. No person may sell or offer for sale unstamped cigarettes on the Reservation.

### 115.7. Liability

115.7-1. The Nation shall be responsible for all risks to the stamped cigarettes and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary any person owning a purchase money security interest in the products to the extent his or her interest may appear.

### 115.8 Violations

- 115.8-1. *Issuance of a Citation*. An individual who violates a provision of this law may be issued a citation by the Oneida Police Department.
  - (a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the 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 the Oneida Police Department.
  - (b) *Disciplinary Action*. An employee who violates this law shall be subject to disciplinary action in accordance with the Nation's laws and policies governing employment.

End.

Adopted - BC-03-15-76-A
102 Adopted - BC-09-07-77-B
103 Adopted - BC-09-04-79-C
104 Adopted - BC-11-18-81-A
105 Amended - BC-10-10-07-A
106 Amended - BC-04-09-14-F
107 Amended - BC-01-25-17-B
108 Emergency Amended - BC-02-26-20-A
109 Amended - BC-\_\_-\_\_\_\_

# FINANCE ADMINISTRATION Fiscal Impact Statement



### **MEMORANDUM**

TO: Lawrence Barton, Chief Financial Officer

FROM: RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

DATE: May 26, 2020

**RE:** Fiscal Impact of the Tobacco Law Amendment

I. Estimated Fiscal Impact Summary

Law: Tobacco Law	·	Draft 1	
Implementing Agency	Oneida Police Department Oneida Judiciary Oneida Retail Enterprises		
<b>Estimated time to comply</b>	10 days, in compliance with the Legislative Procedures Act		
<b>Estimated Impact</b>	<b>Current Fiscal Year</b>	10 Year Estimate	
<b>Total Estimated Fiscal Impact</b>	Indeterminate	Indeterminate	

### II. Background

### A. Legislative History

This law was adopted by the Oneida Business Committee by resolution BC 01-18-81A, amended by BC 10-10-07A, BC 04-09-14F, and BC 01-25-17C.

### B. Summary of Content

The amendment provides a definition of tobacco products, clarifies all tobacco products shall not be sold to any individual under the age of twenty-one (21); clarifies no person other than an authorized employee may sell tobacco products; clarifies the Nation's Citations Law will govern citations; and provides authority to the Oneida Business Committee to adopt a fine and penalty schedule for issued citations through a 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.

### IV. Executive Summary of Findings

- The proposed amendment includes a definition of tobacco products to reflect Oneida Retail Enterprises current practice.
- The proposed amendment establishes the minimum age of sale for cigarettes, electronic cigarettes, and/or other tobacco products as twenty-one (21) years.
- The proposed amendment provides that no person other than an authorized employee shall sell cigarettes, electronic cigarettes, and/or other tobacco products.
- The proposed amendment provides that an individual in violation of the law may be issued a citation to be paid within 60 days of issuance unless contested with the Oneida Nation judicial system.
- The Oneida Nation Police Department is authorized to seize any cigarettes acquired, owned, possessed, sold or distributed in violation of the law.

### V. Agency

There are no startup, personnel, office or documentation costs associated with this legislation. The amendments will become effective 10 days from adoption.

### VI. Financial Impact

The Tobacco Law includes a provision for the issuance of a citation to an individual in violation of the law. The impact of the citations is indeterminate as the number of resulting citations is an unknown variable.

### VII. Recommendation

Finance Department does not make a recommendation regarding 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 # \_\_\_\_\_ Tobacco Law Penalty and Fine Schedule

WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and
WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
WHEREAS,	the Tobacco law ('the Law") was adopted by the Oneida Business Committee through 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; and
WHEREAS,	the purpose of the Law is to regulate the sale, possession, and distribution of cigarettes within the Reservation; and
WHEREAS,	an individual who violates a provision of this Law may be issued a citation by the Oneida Police Department; and
WHEREAS,	a citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Trial Court; and

**WHEREAS,** the Law delegates 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; and

**NOW THEREFORE BE IT RESOLVED,** that the Oneida Business Committee hereby sets forth the following fine and penalty schedule in accordance with the Tobacco law:

FINE SCHEDULE				
Violation	Reference	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense	3 <sup>rd</sup> Offense and Up
Person sold or offered for sale unstamped cigarettes.	115.6-4	\$10 Per pack of unstamped cigarette	\$20 Per pack of unstamped cigarette	\$30 Per pack of unstamped cigarette
Employee sold or offered for sale cigarettes, electronic cigarettes, and/or tobacco products, to a person under the age of twenty-one (21) years.	115.6-3	\$50 Per item sold	\$100 Per item sold	\$200 Per item sold

BC Resolution #\_\_\_\_\_ Tobacco Law Penalty and Fine Schedule Page 2 of 2

**BE IT FURTHER RESOLVED,** in addition to the fines listed above, additional penalties may include seizure of all cigarettes acquired, owned, possessed, sold, or distributed in violation of this Law, as well as disciplinary action in accordance with the Nation's laws and policies governing employment if the violator is an employee.

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

**BE IT FURTHER RESOLVED**, the issuance of a citation for a third offense or more on the fine schedule shall require the mandatory appearance of the offender at the Trial Court's citation pre-hearing.

**BE IT FURTHER RESOLVED,** a violation of this law by a minor shall require the mandatory appearance of the offender and his or her parents, guardians, or legal custodians at the Tribal Court's citation pre-hearing.

**BE IT FURTHER RESOLVED,** the Oneida Police Department Officer issuing the citation shall have the discretion to require a mandatory appearance of the offender at the Trial Court's citation pre-hearing for any violation of this law if deemed appropriate.

**BE IT FINALLY RESOLVED**, the Oneida Business Committee hereby adopts this resolution which shall become effective on June 24, 2020.



### Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



### **Statement of Effect**

Tobacco Law Penalty and Fine Schedule

### **Summary**

This resolution adopts a penalty and fine schedule to be used when the Oneida Police Department issues a citation for a violation of the Tobacco law.

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

Date: May 26, 2020

### Analysis by the Legislative Reference Office

The Tobacco law was adopted by the Oneida Business Committee for the purpose of regulating the sale, possession, and distribution of cigarettes within the Reservation. [1 O.C. 115.1-1].

A person who violates a provision of the Tobacco law may be issued a citation by the Oneida Police Department. [1 O.C. 115.8-1]. The Tobacco law delegates 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. [1 O.C. 115.8-1(c)].

The resolution sets forth a fine and penalty schedule in accordance with the Tobacco law, and also addresses additional penalties that may be used in the enforcement of the Tobacco law, as well as mandatory appearances at the Nation's Trial Court's pre-hearing for violations of this law.

### Conclusion

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

# June 5, 2020, Legislative Operating Committee E-Poll Approval of the Boards, Committees, and Commissions Law Amendments Updated Public Comment Period

E-POLL REQUEST: Approval of the Boards, Committees, and Commissions Law Amendments Updated Public Co...



### Good Morning Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the Boards, Committees, and Commissions law amendments updated public comment period.

### **EXECUTIVE SUMMARY**

On May 12, 2020, the Legislative Operating Committee approved an e-poll to "approve the Boards, Committees, and Commissions law draft, legislative analysis, and public comment period notice, and set the public comment period for the Boards, Committees, and Commissions law amendments to be held open until June 15, 2020."

The public comment period notice was then sent to the Kalihwisaks to be published in the May 27, 2020, edition. Unfortunately, the Kalihwisaks failed to publish the public comment period notice for the Boards, Committees, and Commissions law amendments in both the May 27, 2020, and June 3, 2020, Kalihwisaks edition. Therefore, the public comment period which was scheduled to be held open until June 15, 2020, can no longer occur as there is not an opportunity for this public comment period notice to be published in the Kalihwisaks at least ten (10) business days prior to the public meeting or public comment period as required by the Legislative Procedures Act. [1 O.C. 109.8-2].

An updated public comment packet for the proposed amendments to the Boards, Committees, and Commissions law has been developed and is now ready for approval by the Legislative Operating Committee so that a public comment period can be held open until July 9, 2020. The public comment period notice will be sent to the Kalihwisaks for publication in the June 17, 2020, edition.

The Nation's COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration suspends the requirement to hold a public meeting during this Public Health State of Emergency, but still requires a public comment period be held to allow the community an opportunity to participate in the legislative process by providing written input on proposed legislation via e-mail, when it is unsafe to hold a public meetings in person during the public comment period.

An e-poll is necessary for this matter because Legislative Operating Committee meetings have been canceled due to the COVID-19 pandemic, and immediate action is required by the Legislative Operating Committee to approve these materials so that the updated public comment period notice can be submitted to the Kalihwisaks for inclusion in the June 17, 2020, Kalihwisaks edition.

#### **REQUESTED ACTION**

Approve the updated Boards, Committees, and Commissions law amendments public comment period packet, and set the public comment period for the Boards, Committees, and Commissions law amendments to be held open until July 9, 2020.

#### **DEADLINE FOR RESPONSE**

June 5, 2020 at 1:00 p.m.

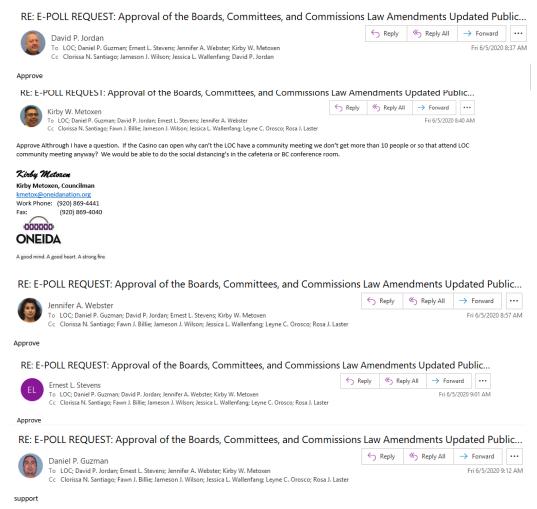
All supporting documentation has been attached to this email for your convenience.



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

### **E-POLL RESULTS:**

The e-poll was approved by David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, and Daniel Guzman King.



# ONEIDA NATION PUBLIC COMMENT PERIOD NOTICE Due to the COVID-19 Public Health Emergency Only Written Comments Will Be Accepted Until: THURSDAY JULY 9, 2020

Find Public Meeting Materials at

Oneida-nsn.gov/government/register/public meetings

**Send Public Comments to** 

LOC@oneidanation.org

Ask Questions here

LOC@oneidanation.org

## BOARDS, COMMITTEES, and COMMISSIONS LAW AMENDMENTS

The purpose of this law is to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

### The Boards, Committees, and Commissions law amendments will:

- 1. Allow the Business Committee Support Office to repost a vacancy for an additional time period if insufficient applications are received, as long as notification is provided to the Oneida Business Committee;
- 2. Allow the Business Committee Support Office to request additional time from the Oneida Business Committee in compiling the applications, summary of qualifications, or results of any investigation;
- 3. Clarify a deadline for when a Chair of an entity has to submit a recommendation for an appointment to the entity for the Oneida Business Committee's consideration;
- 4. Allow for the oath of office to be taken at an alternative time and location than during a regular or special Oneida Business Committee meeting as determined by the Secretary;
- 5. Clarify that only a member of an entity shall respond to e-polls;
- 6. Eliminate the requirement that a member of an entity be *physically* present during the entirety of a meeting or joint meeting in order to be eligible to receive a meeting stipend, but still require that the member to be present and participate in the entire meeting through some means;
- 7. Provide that meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications;
- 8. Revise and clarify how the limitation on meeting stipends is calculated, as well as how stipends for conferences and trainings are determined; and
- 9. Specify that certain employment positions within the Nation are ineligible to serve on an entity due to the potential for a real or perceived conflict of interest to exist.

### **PUBLIC COMMENT PERIOD CLOSES THURSDAY, JULY 9, 2020**

The Nation's COVID-19 Core Decision Making Team issued a declaration on March 27, 2020, titled "Suspension of Public Meetings under the Legislative Procedures Act." This declaration provides that the Legislative Procedures Act's requirement to hold a public meeting during the public comment period is suspended due to the COVID-19 Public Health State of Emergency. Although there will be no public meeting, the public comment period will still occur, and individuals can participate in the legislative process by submitting written comments, questions, or other input via e-mail to LOC@oneidanation.org.



# AMENDMENTS TO BOARDS, COMMITTEES, and COMMISSIONS LAW LEGISLATIVE ANALYSIS

### **SECTION 1. EXECUTIVE SUMMARY**

Analysis by the Legislative Reference Office			
	Analysis by the Legislative Reference Office		
Intent of the	Allow the Business Committee Support Office to repost a vacancy for an additional		
Proposed	time period if insufficient applications are received, as long as notification is provided		
Amendments	to the Oneida Business Committee;		
	Allow the Business Committee Support Office to request additional time from the		
	Oneida Business Committee in compiling the applications, summary of qualifications,		
	or results of any investigation;		
	• Clarify a deadline for when a Chair of a board, committee, or commission of the		
	Nation has to submit a recommendation for an appointment to the entity for the Oneida		
	Business Committee's consideration;		
	Allow for the oath of office to be taken at an alternative time and location than during		
	a regular or special Oneida Business Committee meeting as determined by the		
	Secretary;		
	Require that an entity audio record all meetings;		
	<ul> <li>Clarify that only a member of an entity shall respond to e-polls;</li> </ul>		
	Eliminate the requirement that a member of a board, committee, or commission be		
	physically present during the entirety of a meeting or joint meeting in order to be		
	eligible to receive a meeting stipend, but still require the member to be present and		
	participate for the entire meeting through some means;		
	Provide that meetings and joint meetings can occur in person, by telephone, through		
	videoconferencing, or through other telecommunications;		
	Revise how the limitation of stipend eligible meetings is calculated;		
	Clarify how eligibility for a conference or training stipend is calculated; and		
	• Specify that certain positions within the Nation are ineligible to serve on a board,		
	committee, or commission of the Nation due to the potential for a real or perceived		
	conflict of interest to exist.		
Purpose	To govern boards, committees, and commissions of the Nation, including the procedures		
	regarding the appointment and election of persons to boards, committees and		
	commissions, creation of bylaws, maintenance of official records, compensation, and		
	other items related to boards, committees and commissions. [1 O.C. 105.1-1]		
Affected	Oneida Election Board, Oneida Gaming Commission, Oneida Land Claims Commission,		
Entities	Oneida Land Commission, Oneida Nation Commission on Aging, Oneida Nation School		
	Board, Oneida Trust Enrollment Committee, Anna John Resident Centered Care		
	Community Board, Oneida Community Library Board, Oneida Environmental Resource		
	Board, Oneida Nation Arts Board, Oneida Personnel Commission, Oneida Police		
	Commission, Oneida Pow Wow Committee, Oneida Nation Veterans Affairs Committee,		
	Pardon and Forgiveness Screening Committee, Southeastern WI Oneida Tribal Services		
	Advisory Board		
Public	A public comment period will be held open until July 9, 2020. A public meeting will not		
Meeting	be held in accordance with the Nation's COVID-19 Core Decision Making Team's		
	declaration titled, "Suspension of Public Meetings under the Legislative Procedures Act."		
Fiscal Impact	A fiscal impact statement has not yet been developed.		

### SECTION 2. LEGISLATIVE DEVELOPMENT

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- **A.** *Background*. The Boards, Committees, and Commissions law ("the Law") was first adopted by the Oneida Business Committee on August 2, 1995, for the purpose of governing boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1]. The Law was last amended on a permanent basis thorough the adoption of resolution BC-09-26-18-C, and then amended on an emergency basis through the adoption of resolution BC-03-11-20-B and BC-03-17-20-C.
- 10 **B.** The Legislative Operating Committee is proposed amendments be made to this Law to permanently adopt emergency amendments that were recently made to the Law, as well as to address various considerations that arose during the one (1) year review of the Law.
  - C. Table 1 illustrates the various boards, committees, and commissions of the Nation this Law applies to. This Law does not apply to the Oneida Business Committee, standing committees of the Oneida Business Committee, corporate entities, or members of the Judiciary.

Table 1. Boards, Committees and Commissions of the Nation

able 1. Doarus, Committees and Commissions of the Nation		
ELECTED	APPOINTED	
<ul> <li>Oneida Election Board</li> </ul>	Anna John Resident Centered Care Community	
<ul> <li>Oneida Gaming Commission</li> </ul>	Board (AJRCC)	
<ul> <li>Oneida Land Claims Commission</li> </ul>	Oneida Community Library Board	
<ul> <li>Oneida Land Commission</li> </ul>	<ul> <li>Oneida Environmental Resource Board (ERB)</li> </ul>	
<ul> <li>Oneida Nation Commission on</li> </ul>	<ul> <li>Oneida Nation Arts Board</li> </ul>	
Aging (ONCOA)	<ul> <li>Oneida Personnel Commission</li> </ul>	
<ul> <li>Oneida Nation School Board</li> </ul>	<ul> <li>Oneida Police Commission</li> </ul>	
<ul> <li>Oneida Trust Enrollment</li> </ul>	<ul> <li>Oneida Pow Wow Committee</li> </ul>	
Committee	■ Oneida Nation Veterans Affairs Committee	
	(ONVAC)	
	<ul> <li>Pardon and Forgiveness Screening Committee</li> <li>Southeastern WI Oneida Tribal Services Advisory</li> </ul>	
	Board (SEOTS)	

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

- **A.** Representatives from the following departments or entities participated in the one (1) year review of the Law which was then used in development of amendments to this Law and legislative analysis:
  - Oneida Law Office;
  - Business Committee Support Office;
- Oneida Land Commission;
  - Oneida Trust Enrollment Committee;
- Oneida Nation Commission on Aging;
- Oneida Nation School Board;
  - Oneida Police Commission:
    - Oneida Personnel Commission; and
- 30 Oneida Nation Arts Board.

B. The following laws were reviewed in the drafting of this analysis: Election Law, Removal law, Code
 of Ethics, Conflict of Interest Policy, Oneida Nation Gaming Ordinance, Computer Resources
 Ordinance, Social Media Policy.

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### **SECTION 4. PROCESS**

- **A.** The amendments to this Law have followed the process set forth in the Legislative Procedures Act.
  - On February 12, 2020, the Oneida Business Committee adopted a motion "to request the Legislative Operating Committee to consider amendments to the Boards, Committees and Commissions law as agreed upon at the February 3, 2020, joint meeting with the Oneida Land Commission."
  - The LOC added the amendments to the Active Files List on February 19, 2020.
  - The Oneida Business Committee adopted emergency amendments to the Law on March 11, 2020, through the adoption of resolution BC-03-11-20-B, to address ineligibility due to a conflict of interest. These emergency amendments were set to expire on September 11, 2020.
  - The Oneida Business Committee adopted emergency amendments to the Law on March 17, 2020, through the adoption of resolution BC-03-17-20-C, to address how meetings are held, and limitations on stipends. These emergency amendments will expire on September 17, 2020.
- **B.** At the time this legislative analysis was developed the following work meetings had been held regarding the development of these amendments:
  - April 23, 2020: LOC work meeting.
  - April 30, 2020: LOC work meeting.
  - May 7, 2020: LOC work meeting.
    - June 2, 2020: LOC work meeting.
    - June 4, 2020: LOC work meeting.
- 55 C. *COVID-19 Pandemic's Effect on the Legislative Process*. A public meeting for the proposed amendments to this Law will not be held due to the COVID-19 pandemic.
  - On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
  - On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibits all public gatherings of any number of people.
  - Then on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.
  - On March 28, 2020, the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's Public Health State of Emergency declaration until May 12, 2020.

- On April 21, 2020, the COVID-19 Core Decision Making Team issued an "*Updated Safer at Home*" declaration which allowed for gaming and golf operations to resume.
  - On May 6, 2020, the Oneida Business Committee adopted resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until June 11, 2020" which further extended the Nation's Public Health State of Emergency until June 11, 2020.
  - On May 19, 2020, the COVID-19 Core Decision Making Team issued a "Safer at Home Declaration, Amendment, Open for Business" which directs that individuals within the Oneida Reservation should continue to stay at home, businesses can re-open under certain safer business practices, and social distancing should be practiced by all persons.
  - On June 10, 2020, the Oneida Business Committee will consider the adoption of a resolution that would further extend the Nation's Public Health State of Emergency until July 12, 2020.
  - Although a public meeting will not be held on the proposed amendments to the Boards, Committees, and Commissions law, a public comment period will still be scheduled and held open in accordance with the Legislative Procedures Act and the COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration.

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

- **A.** Reposting for Insufficient Applications. The proposed amendments to the Law allow the Business Committee Support Office to repost a vacancy for an additional time period when insufficient applications are received after the deadline date has passed for appointed positions. [1 O.C. 105.5-5]. The Business Committee Support Office is required to provide the Oneida Business Committee notification that a position will be reposted. [1 O.C. 105.5-5(a)]. Previously, if an insufficient number of applications were received after the deadline date has passed for appointed positions, it was the Oneida Business Committee who could elect to repost the vacancy for an additional time period.
  - Effect. The proposed amendments make the process for reposting a vacancy for an additional time period when insufficient applications are received more efficient because the Business Committee Support Office can take this action immediately, as long as notification is provided to the Oneida Business Committee, instead of having to take the request to the Oneida Business Committee and wait for official action to be taken by the Oneida Business Committee as to whether to repost.
- **B.** Appointment Selection Process. The Law provides that within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made. [1 O.C. 105.7-1(a)(1)-(2)]. The proposed amendments to the Law provide that if delays in compiling the applications, summary of qualifications, or results of any investigations exist, the Business Committee Support Office shall request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2). [1 O.C. 105.7-1(a)(3)].
  - Effect. The proposed amendments to the Law provide flexibility to the Business Committee Support Office to request additional time to complete the compilation of materials and submission onto the next executive session portion of an Oneida Business Committee meeting if delays exist.

The Business Committee Support Office identified that during the first year of this provision being in effect a situation arose where results of a drug test were not available during the twenty-one (21) day time-period. The Business Committee Support Office wants to ensure that if there are any delays in receiving results of a background investigation or drug test, additional time can be requested so that the Business Committee Support Office can ensure that all available relevant information is shared with the Oneida Business Committee and the entity's Chairperson.

- C. Deadline for Recommendation for Appointment by the Chair of an Entity. The proposed amendments to the Law provide that the Chairperson of an entity may review the application materials and submit to the Business Committee Support Office a recommendation to the Oneida Business Committee of an applicant for appointment. [1 O.C. 105.7-1(b)(1)]. The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida Business Committee meeting in which the appointment is intended to be made. [1 O.C. 105.7-1(b)(1)(A)]. Previously, the Law simply stated that the entity's Chairperson may have until the executive session to review the application materials and provide the Oneida Business Committee a recommendation of an applicant for appointment.
  - Effect. The proposed amendments to the Law provide more clarification as to a specific deadline and method for recommendations to be submitted. The Business Committee Support Office provided that how recommendations were being submitted was inconsistent, and that issues arose with recommendations being submitted once the Oneida Business Committee was already in executive session. The proposed amendment will provide more guidance to Chairs of boards, committees, and commissions to ensure they know how to properly submit a recommendation to the Oneida Business Committee.
- **D.** *Oath of Office*. The proposed amendments provide that all appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternate time and location as determined by the Secretary. [1 O.C. 105.9-1]. Previously, the Law only allowed for an oath of office to be taken at an Oneida Business Committee meeting, although a person was allowed to appear by video conferencing equipment if granted permission by the Secretary.
  - Effect. The proposed amendments provide more flexibility as to when and where an oath of office can be taken. Many members of boards, committees, and commissions expressed that it was burdensome to only allow oaths of office to occur during an Oneida Business Committee meeting. This allows the Secretary to use his or her discretion to allow for an oath of office to be taken at an alternative time or place other than an Oneida Business Committee meeting.
- **E.** Requirement to Audio Record Meetings. The proposed amendments reinstate the requirement that a boards, committee, or commission audio record all meetings, and the requirement that the bylaws of a board, committee, or commission address how this will be accomplished. [1 O.C. 105.10-3(f)(5)]. The emergency amendments adopted through resolution BC-03-17-20-C removed this provision from the Law due to the COVID-19 pandemic and the uncertainty of whether a board, committee, or commission will have the capability to audio record meetings.
  - Effect. The proposed amendment simply return this provision back to the Law. The Legislative Operating Committee determined that requirement to audio record meetings is an important function. The Legislative Operating Committee is confident that boards, committees, and commissions have the ability to audio record meetings even if meetings have to be held remotely through telecommunications. For example, Microsoft Teams has the capability to record meetings that are held through the video call and call functions.

F. Clarification for Responding to an Electronic Poll. The proposed amendments provide clarification that only a member of an entity can respond to an electronic poll, or "e-poll," of an entity. [1 O.C. 105.11-3]. Previously, the Law provided that a response from a member of an entity shall be valid if received from an official e-mail address of the entity.

- Effect. The proposed amendment provides additional clarify that it is to be the member of a board, committee, or commission himself or herself, and therefore, the use of a proxy to respond to an epoll is not allowed.
- **G.** *Meetings Eligible for Stipends.* The proposed amendments eliminate the requirement that a member of a board, committee, or commission be *physically* present during the entirety of a meeting in order to be eligible to receive a meeting stipend, although the member is still required to be present for the entirety of the meeting. [1 O.C. 105.13-3]. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications. [1 O.C. 105.13-3]. The proposed amendments also provide that an entity shall demonstrate presence during an entire meeting by taking roll call on the record at both the beginning and conclusion of a meeting. [1 O.C. 105.13-3(c)]. Previously, the Law required that a member of a board, committee, or commission be physically present for the entirety of a meeting because meetings had to occur in person in order to be eligible for a stipend.
  - Effect. The proposed amendments provide more flexibility to boards, committees, and commissions of the Nation in how they can hold meetings that are eligible for a stipend. Flexibility for how a meeting is held is especially important during times such as this COVID-19 pandemic. Holding meetings by telephone, video conferencing, or other telecommunications will help eliminate any unnecessary contact between individuals which could spread COVID-19, without disrupting the ability of a board, committee, and commission to conduct business and receive a stipend for the business they are conducting. Although the Legislative Operating Committee wants to provide boards, committees, or commissions with more flexibility, it is still important that members of a board, committee, or commission participate and be present for the entirety of a meeting, especially when meetings are not held in person. For that reason, the Legislative Operating Committee included the provision on how a board, committee, or commission can demonstrate presence during a meeting through taking roll call at the beginning and end of a meeting.
- **H.** *Frequency of Meeting Stipends.* The proposed amendments revise how many meetings a board, committee, or commission is eligible to receive a stipend for. The proposed amendments provide that a member of an appointed entity may be eligible for up to twelve (12) meeting stipends a year, while a member of an elected entity may be eligible for up to twenty-four (24) meeting stipends a year. [1 O.C. 105.13-3(a)-(b)]. Previously, the Law provided that an individual serving on an appointed entity shall be paid no more than one (1) meeting stipend per month, while an individual serving on an elected entity shall be paid no more than two (2) meeting stipends per month.
  - Effect. The proposed amendments do not change the overall number of meetings a member of a board, committee, or commission may be eligible to receive per year. Providing the limitation on number of meetings that are eligible for a stipend per year instead of per month provides boards, committees, and commissions with more flexibility in determining when stipend eligible meetings should be held.
- **I.** Joint Meetings Eligible for Stipends. The proposed amendments eliminate the requirement that a member of a board, committee, or commission be *physically* present during the entirety of a joint meeting with the Oneida Business Committee in order to be eligible to receive a joint meeting stipend.

[1 O.C. 105.13-4]. The amendments also provide that joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications. [1 O.C. 105.13-4].

- Effect. The proposed amendments provide more flexibility to boards, committees, and commissions of the Nation in how they can hold joint meetings with the Oneida Business Committee that are eligible for a stipend
- The Oneida Business Committee adopted resolution BC-03-27-19-D titled, "Oneida Business Committee and Joint Meetings with Boards, Committees and Commissions Definitions and Impact" to set standard rules and understandings for joint meetings. Adoption of the proposed amendments result in no conflict or impact on this resolution.
- **J.** Stipends for Attendance at Conferences and Trainings. The proposed amendments provide that a member of a board, committee, or commission shall be eligible for a stipend for attending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution. [1 O,C. 105.13-8(a)]. The proposed amendments further provide that the amount of the stipend a member is eligible to receive for attendance at a conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a conference or training. [1 O.C. 105.13-8(a)(1)]. Previously, the Law provided that a member shall be eligible for a stipend for each full day the member is present at a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
  - Effect. The proposed amendments provide clarification as to how a stipend for attendance at a conference or training will be determined. Previously, there were many questions as to how to interpret what a "full day" of attending a conference and training meant. Many members of boards, committees, and commissions expressed that requiring attendance at a conference or training be a full day was inequitable as it did not reflect the reality of many trainings and conferences being less than a full day. The proposed amendment is modeled after how stipends for participation in interviews are handled. This will provide not only clarification on how eligibility for a stipend for attending a conference or training will be determined, but also provide more flexibility to members of boards, committees, and commissions for what trainings or conferences they are eligible to receive a stipend for.
- **K.** *Ineligibility Due to Conflicts of Interest*. The proposed amendments to the Law provide that due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed or elected entity: political appointees; an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, or Intergovernmental Affairs and Communications; and an employee who serves as a direct report to the Oneida Business Committee. [1 O.C. 105.15-3]. Previously, the Law provided that political appointees could not serve on an appointed or elected entity due to the potential for a real or perceived conflict of interest to exist.
  - Effect. The proposed amendments expand the restriction to serve on a board, committee, or commission from political appointees to other employees of the Nation. The potential for a real or perceived conflict of interest to exist for an employee of the Internal Audit Department, Finance Administration, Law Office, Intergovernmental Affairs and Communications, or any employee who holds a position as a direct report to the Oneida Business Committee is due to the nature of employment in those areas. Those employees have access to confidential information which requires a higher level of professionalism and fiscal responsibilities than other areas. Therefore, it is in the best interest of the Nation to recognize the potential for a conflict of interest to exist and

- amend the Law to restrict employee related actions on this matter to better protect the Nation from a potential conflict of interest.
  - *Number of Employees Impacted.* At the time this legislative analysis was drafted, the following number of employees would be impacted as a result of this proposed amendment to the Law:
    - Internal Audit Department: nine (9) employees;
    - Oneida Law Office: eight (8) employees;
    - Finance Administration Office: three (3) employees;
    - Intergovernmental Affairs and Communications: seven (7) employees; and
    - Direct Reports: eight (8) employees including the following positions as identified in resolution BC-08-14-19-N:
      - Chief Counsel;

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- General Manager;
- Gaming General Manager;
- Intergovernmental Affairs and Communications Director;
- Emergency Management Director;
- Area Manager, Human Resources Division;
- Area Manager, Retail-Profit; and
- Business Compliance Analyst.
- Nothing in this Law limits the ability of any department of the Nation from placing their own restrictions and expectations within employment contracts, job descriptions, or standard operating procedures. As a result, there may be employees of the Nation who are already restricted from serving on a board, committee or commission outside of this Law.

### **SECTION 6. EXISTING LEGISLATION**

- **A.** References to other Laws of the Nation. The following laws of the Nation are referenced in this Law:
  - *Election law*. The Election law governs the procedures for the conduct of orderly elections of the Nation, including pre-election activities. [1 O.C. 102.1-1].
    - The Boards, Committees, and Commissions law provides that applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. [1 O.C. 105.5-4].
    - The Boards, Committees, and Commissions law provides that all elected positions shall be nominated at a caucus called by the Oneida Election Board, or apply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment. [1 O.C. 105.8-1]. Additionally, this Law provides that all other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections. [1 O.C. 105.8-2].
  - Open Records and Open Meetings law. The Open Records and Open Meetings law advances the democratic principle of open government by providing access to information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees. [1 O.C. 107.1-1].
    - The Boards, Committees, and Commissions law provides that all removal or destruction of documents of an entity shall be made in accordance with the Nation's laws and policies governing open records and open meetings. [1 O.C. 105.14-2].

293 • Computer Resources Ordinance. The Computer Resources Ordinance regulates the usage of computer resources owned and operated by the Nation. [2 O.C. 215.1-1].

- The Boards, Committees, and Commissions law provides that a member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. [1 O.C. 105.14-3(b)].
- Social Media Policy. The Social Media Policy regulates social media accounts, including a social networking web page, blog or microblog, that is administered on behalf of the Nation or an entity of the Nation. [2 O.C. 218.1-1].
  - The Boards, Committees, and Commissions law provides that a member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. [1 O.C. 105.14-3(b)].
- Conflict of Interest law. The purpose of the Conflict of Interest law is to ensure that all employees, contractors, elected officials, officers, political appointees, appointed and elected members and all others who may have access to information or materials that are confidential or may be used by competitors of the Nation's enterprises or interests be subject to specific limitations to which such information and materials may be used in order to protect the interests of the Nation. [2 O.C. 217.1-1].
  - The Boards, Committees, and Commissions law provides that all members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest. [1 O.C. 105.15-1].
- Removal law. The Removal law provides an orderly and fair process that governs the removal of persons elected to serve on boards, committees, and commissions of the Nation. [1 O.C. 104.1-1]. The Removal law provides the various grounds for removal [1 O.C. 104.4-1], as well as the removal process which consists of a petition [1 O.C. 104.5], preliminary review [1 O.C. 104.6], hearing at the Judiciary [1 O.C. 104.7], and ultimate decision by the General Tribal Council [1 O.C. 104.8].
  - The Boards, Committees, and Commissions law provides that any elected member of an entity found to be in violation of this Law may be subject to removal pursuant to any laws or policies of the Nation governing removal. [1 O.C. 105.18-1].
  - The Boards, Committees, and Commissions law also provides that a position in an entity shall be considered vacant upon removal whenever the removal is effective in accordance to any law or policy of the Nation regarding removal. [1 O.C. 105.6-2(b)].
- **B.** References to Conflicts of Interest in Other Laws. The following laws of the Nation reference conflict of interest as it relates to employees and elected or appointed officials of the Nation. Employees and/or elected and appointed officials are already subject to comply with the following provisions within other laws:
  - Conflict of Interest law. The Conflict of Interest law applies to "all agents, elected officials, officers, political appointees, contractors, appointed and or elected members." [2 O.C. 217.4-1].
    - The Conflict of Interest law requires employees and elected or appointed officials to disclose any conflicts of interest.
      - Failure to disclose a conflict of interest may result in removal in accordance with the Removal law, penalties pursuant to laws of the Nation regarding penalties, or termination of employment. [2 O.C. 217.6-2 and 217.6-3].

- When an existing conflict of interest is disclosed, no employee, elected official, or appointed official may participate in the selection, award or administration of a contract, including contracts supported by federal award and/or any other prohibited activities identified in any other law, policy or rule of the Nation. [2 O.C. 217.7].
- There is no conflict with the proposed amendments and compliance with the Conflicts of Interest law. Upon adoption of the proposed amendments, serving on a board, committee, or commission of the Nation while being employed in the Internal Audit Department, Law Office, Finance Administration Office, or Intergovernmental Affairs and Communications, or employed in a position that serves as a direct report to the Oneida Business Committee will become a "prohibited activity identified in a law of the Nation" in accordance with the Conflict of Interest law.
- Code of Ethics law. The Code of Ethics law promotes the highest ethical conduct in all of its elected and appointed officials and employees and represents a minimum standard of conduct which is expected. [1 O.C. 103.1-1]. All government officials, including persons elected to serve on a board, committee or commission are subject to the Nation's Code of Ethics law.
  - The Code of Ethics law provides that a government official shall create and maintain an independent and honorable political system and shall observe high standards of conduct... including, but not limited to:" [1 O.C. 103.3-3(a)].
    - Encouraging separation between departments or entities of tribal government, and should avoid contact or duty that violates such a separation.
    - Avoid participation in action or decision making (except where participation
      is in accordance with the traditions of the Nation) that would present an
      appearance of conflict of interest or an actual conflict of interest.
  - The Code of Ethics law provides that a government official should disqualify themselves when their action or inaction might reasonably be questioned, including, but not limited to personal bias..." [1 O.C. 103.3-5].
  - The Code of Ethics law provides that a government official shall regulate their extra governmental activities to minimize the risk of conflict with duties of their office." [1 O.C. 103.3-6].
  - The Code of Ethics law provides that government officials may be subject to either removal, if elected, or termination, if appointed, for a violation of any part of this ethics code as it applies to them." [1 O.C. 103.6-1].
  - There is no conflict between the proposed amendments and compliance with the Code of Ethics law.
- *Election law*. The Election law states that "No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election." [1 O.C. 102.5-3].
  - This means that although the proposed amendments to the Boards, Committees, and Commissions law prohibit employees of the Internal Audit Department, Law Office, Finance Administration Office, Intergovernmental Affairs and Communications, or any person employed in a position that serves as a direct report to the Oneida Business Committee from serving on a board, committee, or commission of the Nation, those

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individuals may still be nominated for office, run in an election, and win election to a board, committee or commission. However, the winning candidate would have to eliminate their conflict of interest prior to taking office by resigning from their position of employment.

C. Restrictions on Employees in Current Bylaws. Boards, committees and commissions may place additional qualifications for membership within their bylaws. Bylaws are a document that provides a framework for the operation and management of a board, committee or commission. Examples of these qualifications include age, residency, education, and experience. Some boards already place restrictions on whether employees of the Oneida Nation may serve on their entity. Below is a review of current restrictions on employees of the Nation. For a full review of qualifications for each entity, please see each entity's bylaws.

Table 2. Restrictions on Employees in Current Bylaws

<b>Board, Committee or</b>	Employees who may not serve on that entity:	
Commission		
Land Commission	Employees of the Nation's Audit Department, Finance Department, Law Office "or other department associated with items (a) – (j) in section 1-3 of the Land Commission bylaws:  • the Real Property law, • Leasing law, • Building Code, • Condominium Ordinance, • Zoning and Shoreland Protection law, • Eviction and Termination law, • Mortgage and Foreclosure law, • the Cemetery law, • the Cemetery law, • and any other delegating law, policy, rule and/or resolution of the Nation Division Directors or Area Managers for the Oneida Nation, Independent contractor for Land Management or any other department of the Nation associated with items (a) – (j)	
Anna John Resident	Employees of Anna John Resident Centered Care	
Centered Care Community	Community.	
Board		
Oneida Community	Employees or contractors of any Oneida Nation Library	
Library Board	Branch.	
Oneida Environmental	Employees of the Oneida Environmental, Health, Safety and	
Resource Board (ERB)	Land Division	
Oneida Nation Arts Board	Employees of the Oneida Nation Arts Board.	
Oneida Personnel	Employees of the Oneida Nation.	
Commission		
Oneida Police Commission	Employees of the Oneida Police Department or individuals terminated from the Oneida Police Department.	
Oneida Land Claims	Shall not serve in the capacity of "consultant, contractor or	
Commission	attorney for the Land Claims Commission."	

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**D.** Restrictions on Employees in Current Laws. The following laws of the Nation already restrict certain employees of the Nation from serving on certain boards, committees and commissions of the Nation:

Table 3. Restrictions on Employees in Other Laws of the Nation.

Law or Bylaw	Entity	Restrictions on Oneida Nation Employees
Oneida Law	Oneida Police	"Must not be an employee of the Oneida
Enforcement	Commission	Police Department" [3 O.C. 301.6-3(e)].
Ordinance		
Oneida Nation	Oneida Gaming	"Commissioners shall perform duties on a
Gaming	Commission	full-time basis and may not, during tenure
Ordinance		in office, be engaged in any other profession
		or business activity" [5 O.C. 501.6-9].

### **SECTION 7. OTHER CONSIDERATIONS**

- A. Updates to the Stipend Resolution. The Law requires that the Oneida Business Committee set stipend amounts by resolution. [1 O.C. 105.13-2]. On September 26, 2018, the Oneida Business Committee adopted resolution BC-09-26-18-D titled, "Boards, Committees, and Commissions Law Stipends" which set forth the specific stipend amounts allowed to be paid to a member of a board, committee, or commission. On May 8, 2019, the Oneida Business Committee adopted resolution BC-05-08-19-B titled, "Amending Resolution BC-09-26-18-D Boards, Committees, and Commissions Law Stipends" to allow the Oneida Nation School Board to be eligible to receive a stipend for participating in interviews and/or job description prescreens. Then on March 17, 2020, the Oneida Business Committee adopted resolution BC-03-17-20-D titled, "Amending Resolution BC-05-18-19-B Boards, Committees, and Commissions Law Stipends" to address emergency amendments that were made to the Law. Based on the proposed amendments, revisions to resolution BC-03-17-20-D will have to be made to permanently reflect the new proposal on how to address the limitation of meeting stipends, as well as how stipends for conferences and trainings are determined.
  - Conclusion. The Legislative Operating Committee should consider bringing an amended stipend
    resolution for consideration when the Legislative Operating Committee presents the proposed
    amendments to the Oneida Business Committee for consideration.
- **B.** Suspension of all Non-Emergent Expenses and Stipends and Activity by Certain Boards, Committees, and Commissions. On March 19, 2020, the Nation's COVID-19 Core Decision Making Team issued a declaration titled, "Suspension of all Non-Emergent Expenses and Stipends and Activity by Certain Boards, Committees, and Commissions." This declaration identified that the Nation needed to preserve cash flow to provide funds for regular wages to employees throughout the emergency declaration period, and that activities of boards, committees, and commissions could create contact and spread of COVID-19 through meetings and gatherings. This declaration then suspended all budget expenditures and stipends for certain boards, committees, and commissions of the Nation, as well as discontinued meetings for certain boards, committees, and commissions. For those boards, committees, and commissions of the Nation not specifically identified, the declaration recommended that meetings be discontinued or held remotely.
  - The boards, committees, and commissions of the Nation who had all budget expenditures and stipends suspended by this declaration included:
    - Oneida Community Library Board;
    - Oneida Environmental Resources Board;
    - Oneida Nation Arts Board;
    - Oneida Nation Veterans Affairs Committee;
    - Oneida Personnel Commission:

• Oneida Pow Wow Committee;

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- Pardon and Forgiveness Screening Committee;
- Southeast Wisconsin Oneida Tribal Social Services Advisory Board;
- Finance Committee, Public Member;
  - Audit Committee, Public Member;
    - Oneida Land Claims Commission; and
    - Oneida Nation Commission on Aging.
  - The boards, committees, and commissions of the Nation who had all meetings discontinued by this declaration included:
    - Oneida Community Library Board;
    - Oneida Environmental Resources Board;
    - Oneida Nation Arts Board;
      - Oneida Nation Veterans Affairs Committee;
  - Oneida Personnel Commission;
    - Oneida Pow Wow Committee;
      - Pardon and Forgiveness Screening Committee;
  - Southeast Wisconsin Oneida Tribal Social Services Advisory Board;
    - Oneida Land Claims Commission; and
    - Oneida Nation Commission on Aging.
    - *Conclusion*. The Legislative Operating Committee should be informed that this declaration was issued by the Nation's COVID-19 Core Decision Making Team.
  - C. Boards, Committees and Commissions in Temporary Closure Status. On April 4, 2020, the Oneida Business Committee adopted resolution BC-04-08-20-B titled, "Placing Listed Boards, Committees, and Commissions in Temporary Closure Status." Based on the Nation's Public Health State of Emergency and the necessity to enter into Tier V Budget Contingency measures through resolution BC-04-08-20-C, the Oneida Business Committee reviewed the list of boards, committees and commissions and determined that certain boards, committees, or commissions continuing to operate, generating expenses would affect the overall financial status of the Nation, and therefore those entities should be placed on temporary closure to preserve funding for necessary governmental services and activities. This resolution places certain identified boards, committees, and commissions into temporary closure for the remainder of Fiscal Year 2020 and during any continuing resolution for Fiscal Year 2021, also identifies that posting of vacancies shall be discontinued for the remainder of Fiscal Year 2020 and during any continuing resolution for Fiscal Year 2021.
    - The boards, committees, and commissions of the Nation that were placed on temporary closure include:
      - Oneida Community Library Board;
      - Oneida Environmental Resources Board;
      - Oneida Nation Arts Board:
      - Oneida Nation Veterans Affairs Committee;
  - Oneida Personnel Commission;
- Oneida Pow Wow Committee;
  - Pardon and Forgiveness Screening Committee;
- Southeast Wisconsin Oneida Tribal Social Services Advisory Board;
- Oneida Land Claims Commission; and

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- Oneida Nation Commission on Aging.
- Conclusion. The Legislative Operating Committee should be informed that there are boards, committees, and commissions that are currently in temporary closure status based on the financial impacts of the COVID-19 pandemic.
- **D.** *Fiscal Impact*. A fiscal impact statement of the proposed amendments to the Law has not yet been requested. Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation. [1 O.C. 109.6-1].
  - Oneida Business Committee resolution BC-09-25-19-A titled, "Interpreting 'Fiscal Impact Statement' in the Legislative Procedures Act," 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.
  - *Conclusion*. The Legislative Operating Committee shall request, upon final approval of draft legislation, a fiscal impact statement from the Finance Department.

### Draft 1 (Redline to Last Permanent Draft) – Public Comment Draft 2020 07 09

### Title 1. Government and Finances – Chapter 105 BOARDS, COMMITTEES AND COMMISSIONS

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### **BOARDS, COMMITTEES, AND COMMISSIONS**

105.1. Purpose and Policy	105.10. Bylaws
105.2. Adoption, Amendment, Repeal	105.11 Electronic Polling
105.3. Definitions	105.12. Reporting Requirements
105.4. Creation of an Entity	105.13. Stipends, Reimbursement and Compensation
105.5. Applications	105.14. Confidential Information
105.6. Vacancies	105.15. Conflicts of Interest
105.7. Appointment to an Entity	105.16. Use of the Nation's Assets
105.8. Election to an Entity	105.17. Dissolution of an Entity
105.9. Oath of Office	105.18. Enforcement

### 105.1. Purpose and Policy

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105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

- (a) This law shall not apply to the Oneida Business Committee, or Standing Committees of the Oneida Business Committee.
- (b) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.
- 105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

### 105.2. Adoption, Amendment, Repeal

17 105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-14-97-F 18 and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, and BC-09-26-18-C- and amended 19 by BC- - - - .

- 105.2-2. This law may be amended or repealed by the Oneida Business Committee or the General
   Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 22 105.2-3. Should a provision of this law or the application thereof to any person or circumstances 23 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
- to have legal force without the invalid portions.
- 105.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 27 105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

### **29 105.3. Definitions**

105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Application" means the form by which a person seeks to be appointed to fill a vacancy on an entity.
- (b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.
- (c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
- (d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.
- (e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.
- (f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.
- (g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.
- (h(h) "Direct report" means a position which requires direct contact and supervision by the Oneida Business Committee because of the position, the duties, or the services provided. Direct reports shall be identified by the Oneida Business Committee through resolution
- (i) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.
- (ij) "E-poll" means an electronic poll, which is the act of delivering an e-mail to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.
- (jk) "Joint meeting" means a meeting with the Oneida Business Committee.
- (kl) "Nation" means the Oneida Nation.
- (1)—Am) "Per Diem=" means the payment made by the Nation to offset the costs of being on travel on behalf of the Oneida Nation.
- (mn) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member's daily activities and operations.
- (no) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance

included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

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(o) Ap) "Stipend≅" means the amount paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation.

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(pq) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.

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(qr) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by clear and convincing evidence.

88 89 (FS) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be longterm.

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(st) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

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### 105.4. Creation of an Entity

105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.

98 105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all 99 powers and responsibilities delegated to the entity.

100 105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of 101 the entity.

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### 105.5. Applications

105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

107 108 (a) All applications shall include:

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(1) a statement explaining the attendance requirements of section 105.12-3; and (2) a section regarding disclosures of conflicts of interest.

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(b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.

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105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date.

118 105.5-3. Within eight (8) days after the posted deadline for filing applications, the Business 119

Committee Support Office shall notify all persons who have filed an application of the date his or

- her application was received and if his or her application met the deadline to be considered for the election or appointment.
- 122 105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. Applications for appointed positions shall be verified by the Business
- 124 Committee Support Office as needed or as required in the bylaws of the entity.
- 125 105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Oneida Business Committee Support Office may elect to:repost for an additional time period.
  - (a) include within The Business Committee Support Office shall notify the pool of appointed persons late applications, or
    - (b) repostOneida Business Committee if a position will be reposted for an additional time period.
    - (b) In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.
    - (c) The Oneida Business Committee may elect to include within the pool of appointed persons late applications.

### 105.6. Vacancies

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- 105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.
- 105.6-2. A position on an entity shall be considered vacant in the following situations:
  - (a) *End of Term.* A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.
    - (1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.
  - (b) Removal. Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.
  - (c) Termination of Appointment. A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.
  - (d) Resignation. A resignation is effective upon:
    - (1) Deliverance of a letter to the Business Committee Support Office and to the Chairperson of the entity, or designee; or-
    - (2) Acceptance by motion of the entity of a verbal resignation.
  - (e) New Positions. Vacancies on new entities are effective upon adoption of bylaws.
- 105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.
- 161 105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the
- 162 Secretary. The Secretary shall request and receive approval from the Oneida Business Committee
- to post the notice of vacancy. The Business Committee Support Office shall post notice of

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- (a) End of Term. Automatically sixty (60) days prior to completion of the term.
- (b) *Removal*. No later than the next Oneida Business Committee meeting following the effective date of the removal.
- (c) Resignation. No later than the next Oneida Business Committee meeting following the Business Committee Support Office's receipt of notice of an effective resignation from the entity.
- (d) New Positions. Upon one of the following conditions:
  - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
  - (2) upon date specified when creating the entity.
- (e) *Termination of appointment*. No later than the next Oneida Business Committee meeting following the effective date of the termination.
- 105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

### 105.7. Appointment to an Entity

- 105.7-1. Appointment Selection. The following procedures shall be used to determine how the applicant for an appointed position is selected:
  - (a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
    - (1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and
    - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made-; or
    - (3) if delays in compiling the applications, summary of qualifications, or results of any investigations exist, request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2).
  - (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
    - (1) The entity's Chairperson may have until the executive session to review the application materials and providesubmit to the Business Committee Support Office a recommendation to the Oneida Business Committee a recommendation of an applicant for appointment.
      - (A) The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida Business Committee meeting in which the appointment is intended to be

made.

- (c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:
  - (1) chooseselect an applicant for appointment, or
  - (2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.
- (d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.
- (e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:
  - (1) accept the selected applicant and vote to appoint the individual to the vacant position, or
  - (2) reject the selected applicant and vote to oppose the appointment of the individual.
- (f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.
- 105.7-2. *Notification of Appointment*. Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.
  - (a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.
  - (b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: A The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."
- 105.7-3. *Declination of Appointment*. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.
  - (a) An individual may decline an appointment to an entity in the following ways:
    - (1) Delivery of ana letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or
    - (2) The failure to take the oath of office within thirty (30) days of being selected

for appointment by the Oneida Business Committee.

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(b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined in section 105.7-1 to select another applicant for appointment.

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105.7-4. *Termination of Appointment*. An appointed member of an entity serves at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.

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(a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.

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(b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

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### 105.8. Election to an Entity

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105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or petitionapply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.

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(a) When the Election Board notifies a petitioneran applicant or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: A: The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income..."

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105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

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### 105.9. Oath of Office

105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternate time and location as determined by the Secretary. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.

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(a) The When taking an oath at an Oneida Business Committee meeting, the appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.

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105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.

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105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall

- be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded to the new member of the entity and the entity.
- 105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will
- carry out the duties and responsibilities as a member of the [entity name], and all recommendations shall be made in the best interest of the Oneida Nation as a whole.
  - 105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware of their duty to the Nation and as members of the entity.

### 105.10. Bylaws

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- 105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.
  - (a) All existing entities <u>mustshall</u> comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law.
  - (b) Bylaws <u>mustshall</u> contain at least the minimum information required by law, although more information is not prohibited.
  - (c) *Exception*. Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities mustshall have, at minimum, mission or goal statements for completion of the task.
- 105.10-2. Articles. Bylaws shall contain, at a minimum, the following Articles:
  - (a) Article I. Authority.
  - (b) Article II. Officers.
  - (c) Article III. Meetings.
  - (d) Article IV. Expectations.
  - (e) Article V. Stipends and Compensation.
  - (f) Article VI. Records and Reporting.
  - (g) Article VII. Amendments.
- 105.10-3. Sections. Articles shall be divided into "sections" as set out.
  - (a) "Article I. Authority" shall consist of the following:
    - (1) *Name*. The full name of the entity shall be stated, along with any short name that will be officially used.
    - (2) *Establishment*. This section shall state the citation and name, if any, of the creation document.
    - (3) *Authority*. This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.
    - (4) Office. There shall be listed the official office or post box of the entity.
    - (5) *Membership*. The following information shall be in this section:
      - (A) Number of members on the entity;
    - (B) If members on the entity are elected or appointed, and how a member

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(i) In order to qualify for membership on an entity, a person shall

344	meet the minimum age requirements set forth for status as a
345	qualified voter of the Nation, unless a law, policy, or directive sets
346	forth a minimum age requirement.
347	(6) Termination or Removal. This section shall identify causes for termination or
348	removal, if any, in addition to those already identified in laws and/or policies of the
349	Nation.
350	(7) Trainings and Conferences. This section shall describe any trainings and/or
351	conferences that the entity deems necessary for members to responsibly serve the
352	entity, if any.
353	(b) "Article II. Officers" shall consist of the following:
354	(1) Chairperson and Vice-Chairperson. This section creates the chairperson and
355	vice-chairperson positions of the entity. Other officer positions may also be created
356	here.
357	(2) Responsibilities of the Chairperson. Because of the importance of this position,
358	all duties and responsibilities of the chairperson, as well as limitations of the
359	chairperson shall be specifically listed here.
360	(3) Responsibilities of the Vice-Chairperson. Because of the importance of this
361	position, all duties and responsibilities of the vice-chairperson, as well as
362	limitations of the vice-chairperson shall be specifically listed here.
363	(4) Responsibilities of Additional Officers. There may be additional sections as
364	needed for every officer position created in subsection one (1) above. These
365	sections shall state all duties and responsibilities of the officer, as well as any
366	limitations of the officer.
367	(5) Selection of Officers. This section shall identify how a member of the entity
368	shall be selected for an official officer position in the entity.
369	(6) Budgetary Sign-Off Authority and Travel. This section shall identify the
370	entity's varying levels of budgetary sign-off authority, the members that are
371	authorized to sign-off at each level, and how the entity shall handle approving travel
372	on behalf of the entity.
373	(A) An entity shall follow the Nation's policies and procedures regarding
374	purchasing and sign-off authority.
375	(B) An entity shall approve a member's request to travel on behalf of the
376	entity by majority vote at a regular or emergency meeting of the entity.
377	(7) <i>Personnel</i> . This section shall state the entity's authority for hiring personnel,
378	if any, and the duties of such personnel.
379	(c) "Article III. Meetings" shall consist of the following:
380	(1) Regular meetings. This section shall identify when and where regular meetings
381	shall be held, and how the entity shall provide notice of the meeting agenda,
382	documents, and minutes.
383	(2) <i>Emergency meetings</i> . This section shall identify what constitutes an emergency
	1 O.C. 105 – Page 9

is elected or appointed;

(C) How vacancies are filled; and

(D) Qualifications for membership on the entity.

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384 meeting, how emergency meetings shall be called, and how the entity shall provide notice of the emergency meeting. 385 (A) All bylaws shall include a provision requiring that within seventy-two 386 387 (72) hours after an emergency meeting, the entity shall provide the Nation's Secretary with notice of the meeting, the reason for the emergency meeting. 388 and an explanation of why the matter could not wait for a regular meeting. 389 390 (3) Joint Meetings. This section shall identify if joint meetings shall be held, the 391 frequency and location of joint meetings, and how the entity shall provide notice of 392 the meeting agenda, documents, and minutes. 393 (4) Quorum. This section shall identify how many members of an entity create a 394 quorum. 395 (5) Order of Business. This section sets out how the agenda will be set up. 396 (6) Voting. This section shall identify voting requirements, such as, but not limited 397 to: 398 (A) the percentages that shall be needed to pass different items; 399 (B) if, and when, the chairperson is allowed to vote; (C) if the use of an e-poll is permissible; and 400 (D) if the use of and e-poll is permissible, who will serve as the 401 402 Chairperson's designee for the responsibility of conducting an e-poll, if a 403 designee is utilized. 404 (d) "Article IV. Expectations" shall consist of the following information: 405 (1) Behavior of Members. This section shall identify the behavioral expectations 406 and requirements of a member of the entity, and identify how the entity shall 407 enforce these behavioral expectations. 408 (2) Prohibition of Violence. This section shall prohibit any violent intentional act 409 committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property, and 410 set forth any further expectations regarding the prohibition of violence. 411 (3) Drug and Alcohol Use. This section shall prohibit the use of alcohol and 412 prohibited drugs for a member of an entity when acting in their official capacity, 413 and set forth any further expectations regarding the use of prohibited drugs and 414 415 416 (4) Social Media. This section shall identify expectations for the use of social 417 media in regards to official business of the entity. 418 (5) Conflict of Interest. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest 419 and how they are handled, as well as requirements related to prohibited activities 420 421 resulting from disclosed conflicts of interest, and means by which a party can 422 alleviate or mitigate the conflict of interest. (e) "Article V. Stipends and Compensation" shall consist of the following information: 423 424 (1) Stipends. This section shall include a comprehensive list of all stipends 425 members are eligible to receive and the requirements for collecting each stipend, if 426 any in addition to those contained in this law. 427 (2) Compensation. This section shall include details regarding all other forms of

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105.11. Electronic Polling

- 105.11-1. An entity may utilize an e-poll when approval of an action may be required before the next available meeting agenda of the entity.
  - 105.11-2. Conducting an E-Poll. The Chairperson of the entity, or designee, shall e-mail the epoll to all members of the entity. Requests for an e-poll shall be sent only from an official e-mail address of the entity. The e-poll's message shall include the following information:
    - (a) The e-mail subject line shall begin with "E-poll Request:" and include a short title describing the purpose of the request.
    - (b) The body of the e-poll shall contain the following elements:
      - be presented at the next available meeting of the entity;

such compensation, if any in addition to those contained in this law. (f) "Article VI. Records and Reporting" shall consist of the following information:

compensation members are eligible to receive and the requirements for collecting

- (1) Agenda Items. Agenda items shall be maintained in a consistent format as identified by this section.
- (2) Minutes. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the Business Committee Support Office.
- (3) Attachments. Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented. This section shall identify how records of attachments shall be kept.
- (4) Oneida Business Committee Liaison. Entities shall regularly communicate with the Oneida Business Committee member who is their designated liaison. This section shall identify a format and frequency for communication which may be as the liaison and entity agree to, but not less than that required in any law or policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. The purpose of the liaison relationship is to uphold the ability of the liaison to act as a support to that entity.
- (5) Audio Recordings. An entity shall audio record all meetings. This section shall state how the entity shall audio record meetings, and how the entity shall maintain the audio records.
  - (A) Exception. Audio recordings of executive session portions of a meeting shall not be required.

(1) Amendments to Bylaws. This section shall describe how amendments to the bylaws are made. Any amendments to bylaws shall conform to the requirements of this and any other policy of the Nation. Amendments to bylaws shall be approved by the Oneida Business Committee, in addition to the General Tribal Council when applicable, prior to implementation.

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- (2) A proposed motion which shall be in bold and identified in a separate paragraph 473 by the words "Requested Action;"
  - (3) All attachments in \*.pdf format, which are necessary to understand the request being made; and
  - (4) A deadline date for a response to be returned regarding the results of the electronic poll which shall be in bold and identified in a separate paragraph by the words "Deadline for Response."
    - (A) E-poll requests shall be open for response not less than one (1) hour and no more than twenty-four (24) hours.
    - (B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.
  - 105.11-3. Response to an E-Poll. Only the member of an entity shall respond to an e-poll. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.
    - (a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.
    - (b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.
    - (c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.
    - (d) The Chairperson, or designee, shall monitor all responses and deadline dates for responses.
  - 105.11-4. Entering an E-Poll in the Record. Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:
    - (a) Original e-poll request and all supporting documentation;
    - (b) A summary of the e-poll results identifying each member of the entity and his or her response; and
    - (c) A copy of any comment by a member of the entity if comments are made beyond a vote.

### 105.12. Reporting Requirements

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- 105.12-1. Minutes. All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.
  - (a) Actions taken by an entity are valid upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.
  - (b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.
  - (c) No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.

- 516 105.12-2. *Standard Operating Procedures*. All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on
- 518 file.

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- 519 105.12-3. Quarterly Reports to the Oneida Business Committee. Entities shall provide quarterly
- 520 reports to the Oneida Business Committee in accordance with the quarterly reporting schedule
- 521 approved by the Oneida Business Committee. All quarterly reports shall be approved by official
- entity action before they are submitted. The quarterly reports shall not contain any information
- 523 that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the
- entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda
- item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and
- 526 contain the following information:
  - (a) *Contact Information*. The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.
  - (b) *Meetings*. When and how often the entity is holding meetings and whether any emergency meetings have been held.
    - (1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.
  - (c) Accomplishments. Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.
  - (d) Goals. Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.
  - (e) *Budget*. The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.
  - (f) Requests. Details of any requests to the Oneida Business Committee.
  - (g) Other. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.
  - 105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.
    - (a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.
    - (b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.
  - 105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

#### 105.13. Stipends, Reimbursement and Compensation

105.13-1. Stipends and reimbursement for expenses shall follow the procedures as set out in this section and according to procedures for payment as set out by the Nation, unless otherwise declined

by the entity through its bylaws, or declined by a member.

- 105.13-2. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending the resolution. Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards. 105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than one (1twelve (12)) meeting stipends per monthyear.
  - (b) *Meeting Stipends for an Elected Entity*. An individual serving on an elected entity shall be paid no more than two (2twenty-four (24) meeting stipends per monthyear.
  - (c) Demonstrating Presence During a Meeting. An entity shall demonstrate presence during an entire meeting by taking roll call on the record at both the beginning and conclusion of a meeting.
- 105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting. *Joint meetings can occur in person*, by telephone, through videoconferencing, or through other telecommunications.
  - (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
    - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
- 105.13-5. *Oneida Judiciary Hearings*. A member of an entity shall receive a Judiciary hearing stipend if the member's attendance at the Judiciary hearing is required by official subpoena.
- 105.13-6. *Hearings of an Entity*. A member of an entity that maintains hearing authority may obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.
- 105.13-7. Other Stipends. The Oneida Business Committee shall determine if, and when, any other stipends are appropriate to compensate members of entities for their official actions. All possible stipends shall be included in the Oneida Business Committee resolution which sets stipend amounts.
- 105.13-8. *Conferences and Training*. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:
  - (a) A member shall be eligible for a stipend for each full day the member is present at the attending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
    - (1) The amount of the stipend a member is eligible to receive for attendance at a

conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a conference or training.

- (b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.(c) No stipend payments shall be made for those days spent traveling to and from the

conference or training.

105.13-9. *Business Expenses*. All members of entities shall be eligible for reimbursement for

normal business expenses naturally related to membership in the entity.

105.13-10. *Task Force and Ad Hoc Subcommittees*. Members of task force, ad hoc committees

 and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

#### 105.14. Confidential Information

105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order to protect the interest of the Nation and ensure that no persons engaged in by the Nation, nor their relatives or associates, benefit from the use of confidential information.

 (a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.

 (b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Nation and the entity.

(c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.

(d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.

105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and <u>canshall</u> only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents <u>mustshall</u> be made in accordance with the Nation's laws and policies <u>regardinggoverning</u> open records and open meetings.

105.14-3. *Official Oneida Nation E-mail Address*. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.

(a) If a member is also an employee of the Nation, he or she shall receive a separate e-

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- mail address from his or her regular work e-mail address.
  - (b) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
  - (c) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.
  - (d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

#### 105.15. Conflicts of Interest

- 105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.
- 105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises, and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.
  - (a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action <a href="must\_shall">must\_shall</a> be taken by the Nation regarding the status of the official.
- 105.15-3. <u>Ineligibility Due to Conflicts of Interest.</u> Due to the potential for a real or perceived conflict of interest to exist, <u>political appointees the following individuals</u> shall not <u>be eligible to</u> serve on an appointed or elected entity:
  - (a) political appointees;
  - (b) an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, or Intergovernmental Affairs and Communications; and
  - (c) an employee who serves as a direct report to the Oneida Business Committee.

#### 105.16. Use of the Nation's Assets

- 105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.
- 105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:
  - (a) all transactions are executed in accordance with management's authorization; and
  - (b) access to assets is permitted only in accordance with management's authorization; and
  - (c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.
- 105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

#### 105.17. Dissolution of an Entity

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- 105.17-1. *Dissolution of a Task Force or Ad Hoc Committee*. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.
- 696 105.17-2. *Dissolution of an Entity*. All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee.
- 698 105.17-3. *Notice of Dissolution*. Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida Business Committee shall provide the entity written notice of the dissolution.
  - 105.17-4. *Management of Records and Materials*. All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.
    - (a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

#### 105.18. Enforcement

105.18-1. Any member of an entity found to be in violation of this law may be subject to:

- (a) sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;
- (b) removal pursuant to any laws or policies of the Nation's governing removal, if the individual is a member of an elected entity; or
- (c) termination of appointment by the Oneida Business Committee, if the individual is a member of an appointed entity.

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- Adopted BC-08-02-95-A
- 724 Amended BC-05-14-97-F
- 725 Emergency Amendments Amended BC-04-12-06-JJ
- Amended BC-09-27-06-E (permanent adoption of emergency amendments)
- $727 \qquad Amended-BC-09-22-10-C$
- 728 Amended BC-09-26-18-C
- 729 Emergency Amended BC-03-11-20-B
- 730 Emergency Amended BC-03-17-20-C
- 731 <u>Amended BC- - -</u>

# Title 1. Government and Finances – Chapter 105 Laotiyanl<hsla>sh&ha k<tyohkway<=t&=se>

# Their laws of the groups we have

# **BOARDS, COMMITTEES, AND COMMISSIONS**

105.1. Purpose and Policy	105.10. Bylaws
105.2. Adoption, Amendment, Repeal	105.11 Electronic Polling
105.3. Definitions	105.12. Reporting Requirements
105.4. Creation of an Entity	105.13. Stipends, Reimbursement and Compensation
105.5. Applications	105.14. Confidential Information
105.6. Vacancies	105.15. Conflicts of Interest
105.7. Appointment to an Entity	105.16. Use of the Nation's Assets
105.8. Election to an Entity	105.17. Dissolution of an Entity
105.9. Oath of Office	105.18. Enforcement

# 105.1. Purpose and Policy

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105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

- (a) This law shall not apply to the Oneida Business Committee, or standing committees of the Oneida Business Committee.
- (b) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.
- 105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

# 105.2. Adoption, Amendment, Repeal

- 105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C and amended by BC- - - .
- 20 105.2-2. This law may be amended or repealed by the Oneida Business Committee or the General 21 Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 105.2-3. Should a provision of this law or the application thereof to any person or circumstances 22
- 23 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
- 24 to have legal force without the invalid portions.
- 25 105.2-4. In the event of a conflict between a provision of this law and a provision of another law, 26 the provisions of this law shall control.
- 27 105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### 105.3. Definitions

- 105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Application" means the form by which a person seeks to be appointed to fill a vacancy

on an entity.

- (b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.
- (c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
- (d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.
- (e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.
- (f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.
- (g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.
- (h) "Direct report" means a position which requires direct contact and supervision by the Oneida Business Committee because of the position, the duties, or the services provided. Direct reports shall be identified by the Oneida Business Committee through resolution
- (i) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.
- (j) "E-poll" means an electronic poll, which is the act of delivering an e-mail to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.
- (k) "Joint meeting" means a meeting with the Oneida Business Committee.
- (1) "Nation" means the Oneida Nation.
- (m) "Per Diem" means the payment made by the Nation to offset the costs of being on travel on behalf of the Oneida Nation.
- (n) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member's daily activities and operations.
- (o) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used

in an unauthorized or unlawful manner.

- (p) "Stipend" means the amount paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation.
- (q) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.
- (r) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by clear and convincing evidence.
- (s) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.
- (t) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

#### 105.4. Creation of an Entity

- 105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.
- 105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.
- 99 105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

#### 105.5. Applications

- 105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.
  - (a) All applications shall include:
    - (1) a statement explaining the attendance requirements of section 105.12-3; and
    - (2) a section regarding disclosures of conflicts of interest.
  - (b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.
- 105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date.
- 117 105.5-3. Within eight (8) days after the posted deadline for filing applications, the Business
- 118 Committee Support Office shall notify all persons who have filed an application of the date his or
- her application was received and if his or her application met the deadline to be considered for the election or appointment.

- 121 105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. Applications for appointed positions shall be verified by the Business Committee Support Office as needed or as required in the bylaws of the entity.
  - 105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Business Committee Support Office may repost for an additional time period.
    - (a) The Business Committee Support Office shall notify the Oneida Business Committee if a position will be reposted for an additional time period.
    - (b) In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.
    - (c) The Oneida Business Committee may elect to include within the pool of appointed persons late applications.

#### 105.6. Vacancies

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- 105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.
- 105.6-2. A position on an entity shall be considered vacant in the following situations:
  - (a) *End of Term.* A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.
    - (1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.
  - (b) *Removal*. Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.
  - (c) Termination of Appointment. A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.
  - (d) *Resignation*. A resignation is effective upon:
    - (1) Deliverance of a letter to the Business Committee Support Office and to the Chairperson of the entity, or designee; or
    - (2) Acceptance by motion of the entity of a verbal resignation.
  - (e) New Positions. Vacancies on new entities are effective upon adoption of bylaws.
- 105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.
- 105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The Business Committee Support Office shall post notice of vacancies at the following times:
  - (a) End of Term. Automatically sixty (60) days prior to completion of the term.
  - (b) *Removal*. No later than the next Oneida Business Committee meeting following the effective date of the removal.

- (c) Resignation. No later than the next Oneida Business Committee meeting following the Business Committee Support Office's receipt of notice of an effective resignation from the entity.
- (d) New Positions. Upon one of the following conditions:
  - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
  - (2) upon date specified when creating the entity.
- (e) *Termination of appointment*. No later than the next Oneida Business Committee meeting following the effective date of the termination.
- 105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

# 105.7. Appointment to an Entity

- 105.7-1. *Appointment Selection*. The following procedures shall be used to determine how the applicant for an appointed position is selected:
  - (a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
    - (1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and
    - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made; or
    - (3) if delays in compiling the applications, summary of qualifications, or results of any investigations exist, request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2).
  - (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
    - (1) The entity's Chairperson may review the application materials and submit to the Business Committee Support Office a recommendation to the Oneida Business Committee of an applicant for appointment.
      - (A) The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida Business Committee meeting in which the appointment is intended to be made.
  - (c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:
    - (1) select an applicant for appointment, or

(2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.

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- (d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.

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(e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:

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(1) accept the selected applicant and vote to appoint the individual to the vacant position, or

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(2) reject the selected applicant and vote to oppose the appointment of the individual.

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(f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.

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105.7-2. *Notification of Appointment*. Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.

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(a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.

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(b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: "The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

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105.7-3. *Declination of Appointment*. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.

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(a) An individual may decline an appointment to an entity in the following ways:

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(1) Delivery of a letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or

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(2) The failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee.

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(b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined in section 105.7-1 to select another applicant for appointment.

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105.7-4. Termination of Appointment. An appointed member of an entity serves at the discretion

of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.

- (a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.
- (b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

#### 105.8. Election to an Entity

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- 105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or apply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.
  - (a) When the Election Board notifies an applicant or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: "The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."
- 105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

#### 105.9. Oath of Office

- 105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternate time and location as determined by the Secretary. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.
  - (a) When taking an oath at an Oneida Business Committee meeting, the appointed or elected member shall appear in person to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.
- 105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.
- 105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded to the new member of the entity and the entity.
- to the new member of the entity and the entity.

  105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is
  pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws
  and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation
  Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people
- with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will
- 295 carry out the duties and responsibilities as a member of the [entity name], and all recommendations
- shall be made in the best interest of the Oneida Nation as a whole.

105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware of their duty to the Nation and as members of the entity.

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#### 105.10. Bylaws

- 105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.
  - (a) All existing entities shall comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law.
  - (b) Bylaws shall contain at least the minimum information required by law, although more information is not prohibited.
  - (c) *Exception*. Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities shall have, at minimum, mission or goal statements for completion of the task.
- 105.10-2. Articles. Bylaws shall contain, at a minimum, the following Articles:
  - (a) Article I. Authority.
  - (b) Article II. Officers.
  - (c) Article III. Meetings.
  - (d) Article IV. Expectations.
  - (e) Article V. Stipends and Compensation.
  - (f) Article VI. Records and Reporting.
  - (g) Article VII. Amendments.
- 105.10-3. Sections. Articles shall be divided into "sections" as set out.
  - (a) "Article I. Authority" shall consist of the following:
    - (1) *Name*. The full name of the entity shall be stated, along with any short name that will be officially used.
    - (2) *Establishment*. This section shall state the citation and name, if any, of the creation document.
    - (3) *Authority*. This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.
    - (4) Office. There shall be listed the official office or post box of the entity.
    - (5) *Membership*. The following information shall be in this section:
      - (A) Number of members on the entity;
      - (B) If members on the entity are elected or appointed, and how a member is elected or appointed;
      - (C) How vacancies are filled; and
      - (D) Qualifications for membership on the entity.
        - (i) In order to qualify for membership on an entity, a person shall meet the minimum age requirements set forth for status as a qualified voter of the Nation, unless a law, policy, or directive sets forth a minimum age requirement.
    - (6) Termination or Removal. This section shall identify causes for termination or removal, if any, in addition to those already identified in laws and/or policies of the

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- (7) *Trainings and Conferences*. This section shall describe any trainings and/or conferences that the entity deems necessary for members to responsibly serve the entity, if any.
- (b) "Article II. Officers" shall consist of the following:
  - (1) Chairperson and Vice-Chairperson. This section creates the chairperson and vice-chairperson positions of the entity. Other officer positions may also be created here.
  - (2) Responsibilities of the Chairperson. Because of the importance of this position, all duties and responsibilities of the chairperson, as well as limitations of the chairperson shall be specifically listed here.
  - (3) Responsibilities of the Vice-Chairperson. Because of the importance of this position, all duties and responsibilities of the vice-chairperson, as well as limitations of the vice-chairperson shall be specifically listed here.
  - (4) Responsibilities of Additional Officers. There may be additional sections as needed for every officer position created in subsection one (1) above. These sections shall state all duties and responsibilities of the officer, as well as any limitations of the officer.
  - (5) Selection of Officers. This section shall identify how a member of the entity shall be selected for an official officer position in the entity.
  - (6) Budgetary Sign-Off Authority and Travel. This section shall identify the entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and how the entity shall handle approving travel on behalf of the entity.
    - (A) An entity shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.
    - (B) An entity shall approve a member's request to travel on behalf of the entity by majority vote at a regular or emergency meeting of the entity.
  - (7) *Personnel*. This section shall state the entity's authority for hiring personnel, if any, and the duties of such personnel.
- (c) "Article III. Meetings" shall consist of the following:
  - (1) Regular meetings. This section shall identify when and where regular meetings shall be held, and how the entity shall provide notice of the meeting agenda, documents, and minutes.
  - (2) *Emergency meetings*. This section shall identify what constitutes an emergency meeting, how emergency meetings shall be called, and how the entity shall provide notice of the emergency meeting.
    - (A) All bylaws shall include a provision requiring that within seventy-two (72) hours after an emergency meeting, the entity shall provide the Nation's Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular meeting.
  - (3) *Joint Meetings*. This section shall identify if joint meetings shall be held, the frequency and location of joint meetings, and how the entity shall provide notice of the meeting agenda, documents, and minutes.

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- (4) Quorum. This section shall identify how many members of an entity create a quorum.
- (5) Order of Business. This section sets out how the agenda will be set up.
- (6) *Voting*. This section shall identify voting requirements, such as, but not limited to:
  - (A) the percentages that shall be needed to pass different items;
  - (B) if, and when, the chairperson is allowed to vote;
  - (C) if the use of an e-poll is permissible; and
  - (D) if the use of and e-poll is permissible, who will serve as the Chairperson's designee for the responsibility of conducting an e-poll, if a designee is utilized.
- (d) "Article IV. Expectations" shall consist of the following information:
  - (1) Behavior of Members. This section shall identify the behavioral expectations and requirements of a member of the entity, and identify how the entity shall enforce these behavioral expectations.
  - (2) *Prohibition of Violence*. This section shall prohibit any violent intentional act committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property, and set forth any further expectations regarding the prohibition of violence.
  - (3) Drug and Alcohol Use. This section shall prohibit the use of alcohol and prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and alcohol.
  - (4) Social Media. This section shall identify expectations for the use of social media in regards to official business of the entity.
  - (5) Conflict of Interest. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities resulting from disclosed conflicts of interest, and means by which a party can alleviate or mitigate the conflict of interest.
- (e) "Article V. Stipends and Compensation" shall consist of the following information:
  - (1) *Stipends*. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.
  - (2) Compensation. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.
- (f) "Article VI. Records and Reporting" shall consist of the following information:
  - (1) Agenda Items. Agenda items shall be maintained in a consistent format as identified by this section.
  - (2) *Minutes*. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the

429	Business Committee Support Office.
430	(3) Attachments. Handouts, reports, memoranda, and the like may be attached to
431	the minutes and agenda, or may be kept separately, provided that all materials can
432	be identified to the meeting in which they were presented. This section shall
433	identify how records of attachments shall be kept.
434	(4) Oneida Business Committee Liaison. Entities shall regularly communicate with
435	the Oneida Business Committee member who is their designated liaison. This
436	section shall identify a format and frequency for communication which may be as
437	the liaison and entity agree to, but not less than that required in any law or policy
438	on reporting developed by the Oneida Business Committee or Oneida General
439	Tribal Council. The purpose of the liaison relationship is to uphold the ability of
440	the liaison to act as a support to that entity.
441	(5) Audio Recordings. An entity shall audio record all meetings. This section shall
442	state how the entity shall audio record meetings, and how the entity shall maintain
443	the audio records.
444	(A) Exception. Audio recordings of executive session portions of a meeting
445	shall not be required.
446	(g) "Article VII. Amendments" consists of:
447	(1) Amendments to Bylaws. This section shall describe how amendments to the
448	bylaws are made. Any amendments to bylaws shall conform to the requirements
449	of this and any other policy of the Nation. Amendments to bylaws shall be
450	approved by the Oneida Business Committee, in addition to the General Tribal
451	Council when applicable, prior to implementation.
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453	105.11. Electronic Polling
454	105.11-1. An entity may utilize an e-poll when approval of an action may be required before the
455	next available meeting agenda of the entity.
456	105.11-2. Conducting an E-Poll. The Chairperson of the entity, or designee, shall e-mail the e-
457	poll to all members of the entity. Requests for an e-poll shall be sent only from an official e-mail
458	address of the entity. The e-poll's message shall include the following information:
459	(a) The e-mail subject line shall begin with "E-poll Request:" and include a short title
460	describing the purpose of the request.
461	(b) The body of the e-poll shall contain the following elements:
462	(1) An executive summary of the reason for the request and why the request cannot
463	be presented at the next available meeting of the entity;
464	(2) A proposed motion which shall be in bold and identified in a separate paragraph
465	by the words "Requested Action;"
466	(3) All attachments in *.pdf format, which are necessary to understand the request
467	being made; and
468	(4) A deadline date for a response to be returned regarding the results of the
469	electronic poll which shall be in bold and identified in a separate paragraph by the
470	words "Deadline for Response."
471	(A) E-poll requests shall be open for response not less than one (1) hour
472	and no more than twenty-four (24) hours.

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(B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.

105.11-3. Response to an E-Poll. Only the member of an entity shall respond to an e-poll. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.

(a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.

(b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.

 (c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.

 (d) The Chairperson, or designee, shall monitor all responses and deadline dates for responses.5.11-4. Entering an E-Poll in the Record. Both approved and denied e-poll requests shall be

 105.11-4. *Entering an E-Poll in the Record*. Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:

(a) Original e-poll request and all supporting documentation;

(b) A summary of the e-poll results identifying each member of the entity and his or her response; and

 (c) A copy of any comment by a member of the entity if comments are made beyond a vote.

# **105.12.** Reporting Requirements

105.12-1. *Minutes*. All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.

 (a) Actions taken by an entity are valid upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.

 (b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.(c) No action or approval of minutes is required by the Oneida Business Committee on

 minutes submitted by an entity unless specifically required by the bylaws of that entity. 105.12-2. *Standard Operating Procedures*. All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.

105.12-3. Quarterly Reports to the Oneida Business Committee. Entities shall provide quarterly reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda

- item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:
  - (a) *Contact Information*. The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.
  - (b) *Meetings*. When and how often the entity is holding meetings and whether any emergency meetings have been held.
    - (1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.
  - (c) Accomplishments. Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.
  - (d) Goals. Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.
  - (e) *Budget*. The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.
  - (f) Requests. Details of any requests to the Oneida Business Committee.
  - (g) Other. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.
- 105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.
  - (a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.
  - (b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.
- 105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

#### 105.13. Stipends, Reimbursement and Compensation

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- 550 105.13-1. Stipends and reimbursement for expenses shall follow the procedures as set out in this 551 section and according to procedures for payment as set out by the Nation, unless otherwise declined 552 by the entity through its bylaws, or declined by a member.
- 553 105.13-2. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida 554 Business Committee shall periodically review the amounts provided for stipends and, based on the 555 availability of funds, shall adjust those amounts accordingly by amending the resolution. Stipends
- are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards.
- 557 105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly
- adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the
- stipend is present for the entire meeting. Meetings can occur in person, by telephone, through

videoconferencing, or through other telecommunications.

- (a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than twelve (12) meeting stipends per year.
- (b) *Meeting Stipends for an Elected Entity*. An individual serving on an elected entity shall be paid no more than twenty-four (24) meeting stipends per year.
- (c) Demonstrating Presence During a Meeting. An entity shall demonstrate presence during an entire meeting by taking roll call on the record at both the beginning and conclusion of a meeting.
- 105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
    - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
- 105.13-5. *Oneida Judiciary Hearings*. A member of an entity shall receive a Judiciary hearing stipend if the member's attendance at the Judiciary hearing is required by official subpoena.
- 105.13-6. Hearings of an Entity. A member of an entity that maintains hearing authority may obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.
- 105.13-7. Other Stipends. The Oneida Business Committee shall determine if, and when, any other stipends are appropriate to compensate members of entities for their official actions. All possible stipends shall be included in the Oneida Business Committee resolution which sets stipend amounts.
- 105.13-8. *Conferences and Training*. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:
  - (a) A member shall be eligible for a stipend for attending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
    - (1) The amount of the stipend a member is eligible to receive for attendance at a conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a conference or training.
  - (b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.
  - (c) No stipend payments shall be made for those days spent traveling to and from the conference or training.
- 105.13-9. *Business Expenses*. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.
- 604 105.13-10. Task Force and Ad Hoc Subcommittees. Members of task force, ad hoc committees

and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

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#### 105.14. Confidential Information

- 105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order to protect the interest of the Nation and ensure that no persons engaged in by the Nation, nor their relatives or associates, benefit from the use of confidential information.
  - (a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.
  - (b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Nation and the entity.
  - (c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.
  - (d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.
- 105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and shall only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents shall be made in accordance with the Nation's laws and policies governing open records and open meetings.
- 105.14-3. *Official Oneida Nation E-mail Address*. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
  - (a) If a member is also an employee of the Nation, he or she shall receive a separate email address from his or her regular work e-mail address.
  - (b) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
  - (c) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.
  - (d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

#### 649 **105.15.** Conflicts of Interest

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- 650 105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.
- 652 105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as 653 soon as the conflict arises and update a conflict of interest disclosure form with the Nation's 654 Secretary on an annual basis.
  - (a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action shall be taken by the Nation regarding the status of the official.
  - 105.15-3. *Ineligibility Due to Conflicts of Interest*. Due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed or elected entity:
    - (a) political appointees;
    - (b) an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, or Intergovernmental Affairs and Communications; and
    - (c) an employee who serves as a direct report to the Oneida Business Committee.

#### 105.16. Use of the Nation's Assets

- 105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.
- 105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:
  - (a) all transactions are executed in accordance with management's authorization; and
  - (b) access to assets is permitted only in accordance with management's authorization; and
  - (c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.
- 105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

#### 105.17. Dissolution of an Entity

- 105.17-1. *Dissolution of a Task Force or Ad Hoc Committee*. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.
- 686 105.17-2. *Dissolution of an Entity*. All other entities of the Nation shall be dissolved only by 687 motion of the Oneida General Tribal Council or the Oneida Business Committee.
- 688 105.17-3. Notice of Dissolution. Within five (5) business days of the Oneida General Tribal
- 689 Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida
- Business Committee shall provide the entity written notice of the dissolution.
- 691 105.17-4. Management of Records and Materials. All chairpersons and secretaries of dissolved
- entities shall be responsible for closing out open business of the entity and forwarding all materials

# Draft 1 – Public Comment Draft 2020 07 09

and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.

(a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

#### 105.18. Enforcement

- 105.18-1. Any member of an entity found to be in violation of this law may be subject to:
  - (a) sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;
  - (b) removal pursuant to any laws or policies of the Nation's governing removal, if the individual is a member of an elected entity; or
  - (c) termination of appointment by the Oneida Business Committee, if the individual is a member of an appointed entity.

End.

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       Adopted - BC-08-02-95-A
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       Amended - BC-05-14-97-F
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       Emergency Amended - BC-04-12-06-JJ
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       Amended - BC-09-27-06-E (permanent adoption of emergency amendments)
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       Amended – BC-09-22-10-C
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       Amended - BC-09-26-18-C
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       Emergency Amended – BC-03-11-20-B
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       Emergency Amended – BC-03-17-20-C
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       Amended – BC- - - -
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# June 10, 2020 Legislative Operating Committee E-Poll Approval of the Industrial Hemp Law Public Comment Period Notice Packet



#### Good Afternoon Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the Industrial Hemp law public comment period notice packet and sets the public comment period for the Industrial Hemp law to be held open until July 9, 2020. Please note: Due to issues with my remote software capabilities, you will have to respond with a written "approval" "denial" or "abstention".

#### **EXECUTIVE SUMMARY**

The public comment period notice packet for the Industrial Hemp law ("Law"), which consists of the proposed draft, legislative analysis and public comment period notice, is ready for approval by the Legislative Operating Committee, so that it can be sent to the Kalihwisaks for publication in its June 17, 2020 edition.

The purpose of the Industrial Hemp law is to authorize the production of hemp within the Reservation of the Oneida Nation and to exercise the Nation's inherent sovereign authority by granting the Oneida Nation primary regulatory authority over the production of hemp within the jurisdiction of the Nation. The Law will set forth criteria that all persons and business entities under the jurisdiction of the Nation who wish to participate in the production of hemp must follow, which includes, but is not limited to:

- Mandatory licensing and the process for licensure;
- A definition of what constitutes an acceptable hemp THC level for the processing and distribution of hemp plants;
- Sampling and testing requirements to accurately determine whether a hemp crop exceeds the acceptable hemp THC level;
- Requirements for the destruction and reporting of hemp crops that exceed the acceptable hemp THC level;
- Reporting requirements for the Nation to track hemp production within the Reservation and ensure that hemp is being produced in accordance with the Law; and
- Enforcement mechanisms for the Nation to detect and respond to noncompliance with the Law.

The Nation's COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration suspends the requirement to hold a public meeting

during this Public Health State of Emergency, but still requires a public comment period be held to allow the community an opportunity to participate in the legislative process by providing written input on proposed legislation via e-mail, when it is unsafe to hold a public meetings in person during the public comment period.

An e-poll is necessary for this matter because Legislative Operating Committee meetings have been canceled due to the COVID-19 pandemic, and immediate action is required by the Legislative Operating Committee to approve these materials so that the public comment period notice can be submitted to the Kalihwisaks for inclusion in the June 17, 2020, Kalihwisaks edition.

#### REQUESTED ACTION

Approve the Industrial Hemp law public comment period notice packet, and set the public comment period for the Industrial Hemp law public comment period to be held open until July 9, 2020.

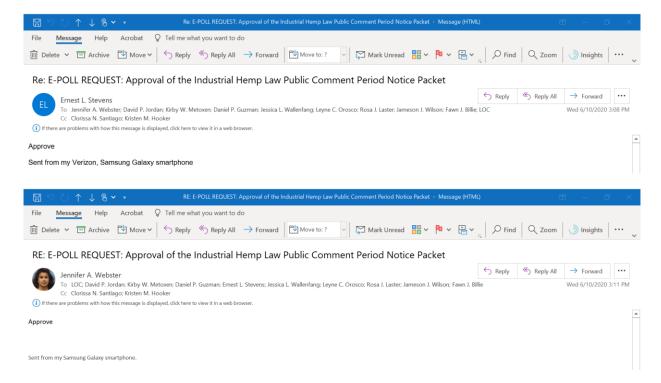
#### **DEADLINE FOR RESPONSE**

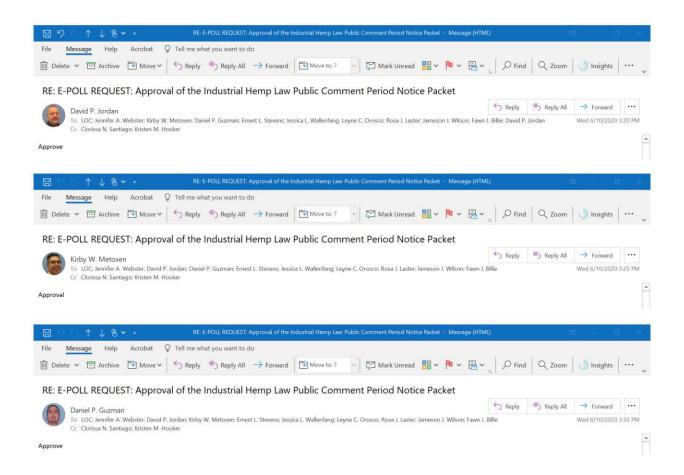
June 11, 2020 at 9:00 a.m.

All supporting documentation has been attached to this email for your convenience.

#### **E-POLL RESULTS:**

The e-poll was approved by Ernest Stevens III, Jennifer Webster, David P. Jordan, Kirby Metoxen and Daniel Guzman King.





# ONEIDA NATION PUBLIC COMMENT PERIOD NOTICE Due to the COVID-19 Public Health Emergency Only Written Comments Will Be Accepted Until: THURSDAY JULY 9, 2020

Find Public Meeting Materials at

Oneida-nsn.gov/government/register/public meetings

**Send Public Comments to** 

LOC@oneidanation.org

**Ask Questions here** 

LOC@oneidanation.org

# **INDUSTRIAL HEMP LAW**

The purpose of the Industrial Hemp law is to authorize the production of hemp within the Reservation of the Oneida Nation and to exercise the Nation's inherent sovereignty by granting the Oneida Nation primary regulatory authority over the production of hemp within the jurisdiction of the Nation.

The Industrial Hemp law will set forth criteria that all persons and business entities under the jurisdiction of the Nation who wish to participate in the production of hemp must follow, including, but not limited to:

- 1. Mandatory licensing and the process for licensure;
- 2. A definition of what constitutes an acceptable hemp THC level for the processing and distribution of hemp plants;
- 3. Sampling and testing requirements to accurately determine whether a hemp crop exceeds the acceptable hemp THC level;
- 4. Requirements for the destruction and reporting of hemp crops that exceed the acceptable hemp THC level;
- 5. Reporting requirements for the Nation to track hemp production within the Reservation and ensure that hemp is being produced in accordance with the Industrial Hemp law; and
- 6. Enforcement mechanisms for the Nation to detect and respond to noncompliance with the Industrial Hemp law.

# **PUBLIC COMMENT PERIOD CLOSES THURSDAY, JULY 9, 2020**

The Nation's COVID-19 Core Decision Making Team issued a declaration on March 27, 2020, titled "Suspension of Public Meetings under the Legislative Procedures Act." This declaration provides that the Legislative Procedures Act's requirement to hold a public meeting during the public comment period is suspended due to the COVID-19 Public Health State of Emergency. Although there will be no public meeting, the public comment period will still occur, and individuals can participate in the legislative process by submitting written comments, questions, or other input via e-mail to LOC@oneidanation.org.



# INDUSTRIAL HEMP LAW LEGISLATIVE ANALYSIS

#### **SECTION 1. EXECUTIVE SUMMARY**

Analysis by the Legislative Reference Office				
Intent of the Proposed Law	To authorize hemp production within the boundaries of the Reservation and to grant the Oneida Nation primary regulatory authority over hemp production by setting forth criteria that all persons under the jurisdiction of the Nation who wish to participate in the production of hemp must follow, including, but not limited to: <ul> <li>Mandatory licensing and the process for licensure;</li> <li>A definition of what constitutes an acceptable hemp THC level for the processing and distribution of hemp plants;</li> <li>Sampling and testing requirements to accurately determine whether a hemp crop exceeds the acceptable hemp THC level;</li> <li>Requirements for the destruction and reporting of hemp crops that exceed the acceptable hemp THC level;</li> <li>Reporting requirements for the Nation to track hemp production within the</li> </ul>			
	Reservation and ensure that hemp is being produced in accordance with the Law; and  Enforcement mechanisms for the Nation to detect and respond to non-compliance with the Law.			
Purpose	• To authorize the production of hemp within the Reservation of the Oneida Nation [5 O.C. 508.1-1(a)];  To great the Oneida Nation primary records to my outhority over the production of			
	• To grant the Oneida Nation primary regulatory authority over the production of hemp within the jurisdiction of the Nation [5 O.C. 508.1-1(b)];			
	<ul> <li>To assert the Nation's inherent sovereign authority by creating a hemp production plan that regulates hemp as an agricultural commodity consistent with the Nation's, as well as the federal, law [5 O.C. 508.1-1(c)]; and</li> <li>To promote the Nation's hemp industry to the maximum extent permitted by law [5 O.C. 508.1-1(d)].</li> </ul>			
Affected Entities	Any person under the jurisdiction of the Nation who wishes to produce hemp; the Environmental, Health, Safety and Land Division; the Oneida Police Department; and the Nation's Judiciary.			
Related Legislation	Rules of Civil Procedure; Rules of Appellate Procedure.			
<b>Public Meeting</b>	A public comment period will be held open until July 9, 2020. A public meeting will not be held in accordance with the Nation's COVID-19 Core Decision Making Team's declaration titled, "Suspension of Public Meetings under the Legislative Procedures Act."			
Fiscal Impact	A fiscal impact statement has not yet been requested.			
riscai impact	A risear impact statement has not yet been requested.			

#### **SECTION 2. INDUSTRIAL HEMP**

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- **A.** Industrial hemp ("hemp") is a highly versatile crop that belongs to the cannabis sativa plant species. There are three main parts of the hemp plant that are harvested to produce over 25,000 products today:
  - <u>Stalk</u> the stalk is harvested for its fiber, which can be used to make such products as rope, textiles, yarn, paper, construction materials, plastics and car parts;

<sup>&</sup>lt;sup>1</sup> Ryan LeCloux, "Regulating Wisconsin's Hemp Industry," Wisconsin Policy Project, vol. 2, no. 9 (August 2019).

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- Seeds the seeds are harvested for use in such products as cooking oil, dietary supplements, hygienic products (e.g. shampoo and lotion) and medicinal/pharmaceutical products; and
- Hemp Flower the hemp flower is harvested for cannabidiol ("CBD"), which is a nonpsychoactive chemical compound that has been purported to possess medicinal and therapeutic benefits.<sup>2</sup>
- B. Industrial Hemp v. Marijuana. Like hemp, marijuana belongs to the cannabis sativa plant species, and thus, botanically, the two plants are the same. Legally, however, the plants vary based on the level of delta-9 tetrahydrocannabinol ("THC") they contain. THC is the chemical in cannabis that provides the psychoactive effect and hemp has a significantly lower THC concentration level (typically, less than one (1) percent) when compared to marijuana, which has an average THC concentration between ten (10) percent and thirty (30) percent.<sup>4</sup>
  - A THC concentration of around one (1) percent is the generally accepted threshold for the plant to have a psychoactive effect that people associate with the "high" sensation.<sup>5</sup>
  - Under federal law, hemp is defined as having a THC concentration of not more than 0.3 percent on a dry weight basis, which is the same definition that the Nation has used in this Law to produce hemp in accordance with the 2018 Federal Farm Bill.<sup>6</sup>

# **SECTION 3. HISTORY OF INDUSTRIAL HEMP (PRE-1970'S)**

A. Hemp Production in the United States. The United States "has a rich history of growing hemp for industrial and agricultural purposes, dating back to the colonial period." Hemp was brought to the American colonies in 1645 as a source of fiber to make cloth, paper, canvas and rope.<sup>8</sup> It was a significant in producing the ropes and canvas necessary for ships.<sup>9</sup>

In 1937, however, the federal government passed the Marijuana Tax Act, which taxed all forms of marijuana, including hemp, and put in place restrictions that made it significantly more difficult to grow hemp. 10 The restrictions were briefly loosened during WWII due to a shortage of imported fibers and an increased domestic demand for fibers that resulted from the war. 11 In response, the federal government created a program called "Hemp for Victory" to promote the production of hemp in the United States. 12 Hemp fiber became pivotal in producing much needed war materials, such as thread for shoes, as well as rope and other materials for building ships and calking vessels. 13

After the war, U.S. hemp production declined significantly when the federal government resumed the strict regulations that it put in place through enactment of the Marijuana Tax Act. Then, in 1970, the

<sup>&</sup>lt;sup>2</sup> *Id*.

<sup>&</sup>lt;sup>3</sup> *Id*.

<sup>&</sup>lt;sup>4</sup> Id (citing Renee Johnson, "Hemp as and Agricultural Commodity," Congressional Research Service (June 22,

<sup>&</sup>lt;sup>5</sup> Id (citing Renee Johnson, "Defining Hemp: A Fact Sheet," Congressional Research Service (March 22, 2019)).

<sup>&</sup>lt;sup>6</sup> 7 U.S.C. s. 5940(a)(2).

<sup>&</sup>lt;sup>7</sup> Ryan LeCloux, "Regulating Wisconsin's Hemp Industry," Wisconsin Policy Project, vol. 2, no. 9 (August 2019).

<sup>&</sup>lt;sup>8</sup> Id (citing Economic Research Service, "Industrial Hemp in the United States: Status and Market Potential," U.S. Department of Agriculture (January 2000)).

<sup>&</sup>lt;sup>9</sup> Id (citing Carey Reed, "8 Things You Didn't Know about Hemp," PBS NewsHour (October 17, 2015)).

<sup>&</sup>lt;sup>10</sup> Id (citing Gerald J. McKenna, "The current Status of Medical Marijuana in the United States," Hawaii Journal of Medicine & Public Health 73, no. 4 (April 2014)).

<sup>&</sup>lt;sup>11</sup> Id (citing Carey Reed, "8 Things You Didn't Know about Hemp," PBS NewsHour (October 17, 2015)).

<sup>&</sup>lt;sup>12</sup> Id (citing Deb Kozel, "Industrial Hemp Update," Iowa Legislative Services Agency (February 1, 2019)).

<sup>&</sup>lt;sup>13</sup> Id (citing Albert Hazen Wright, "Wisconsin's Hemp Industry," Wisconsin Bulletin 293, Madison: Agricultural Experiment Station of the University of Wisconsin (1918)).

hemp industry was outlawed entirely when the federal government passed the Controlled Substances Act, identifying marijuana, which included hemp, as a Schedule I drug.

**B.** *Hemp Production in the State of Wisconsin*. The State of Wisconsin harvested its first hemp crop in 1908.<sup>14</sup> Wisconsin proved well-suited for the hemp cultivation due to its humid and temperate climate, as well as its fertile soil.<sup>15</sup> In 1917, a scientist in Madison, Wisconsin invented a machine that could harvest and process hemp more efficiently.<sup>16</sup> Soon thereafter, hemp mills were built to process hemp stalks into fiber, making Wisconsin the nation's hemp fiber hub and, by 1920, the country's top producer of hemp.<sup>17</sup> Wisconsin remained the country's top producer of hemp until the 1950's.<sup>18</sup>

# **SECTION 4. HISTORY OF INDUSTRIAL HEMP (POST 1970'S TO THE PRESENT)**

- **A.** 2014 Farm Bill. In 2014, Congress passed the Agricultural Act of 2014, also known as the 2014 Farm Bill, legalizing the production of hemp for the first time since 1970.<sup>19</sup> The 2014 Farm Bill allowed states to create agricultural pilot programs to study the growth, cultivation and marketing of industrial hemp. However, it did not change hemp's classification as a Schedule I drug, and thus, hemp remained illegal for all other purposes, meaning:
  - Hemp products could be sold only for purposes of marketing research;
  - Hemp products could not be sold in states that did not have hemp pilot programs;
  - Hemp seeds and plants could not be transported over state lines;
  - Individuals had to be registered with the U.S. Drug Enforcement Agency to import viable cannabis seeds; and
  - Rules for controlled substances still applied to products containing hemp, which meant they couldn't be manufactured or distributed without U.S. Food and Drug Administration's approval.

In 2017, the State of Wisconsin established a hemp pilot program in accordance with the 2014 Farm Bill, officially launching its program in time for the 2018 growing season.<sup>20</sup> The state's pilot program required state licensure for participants of the program, registration fees, a research plan through a university or state department of agriculture, background checks, testing of crops for acceptable THC levels and other regulatory provisions.<sup>21</sup>

The 2014 Farm Bill did not designate Indian tribes as "states" for the purpose of producing industrial hemp under their own pilot programs. Therefore, tribes desiring to participate in a pilot program had to do so by obtaining a license through the department delegated authority by the state to administer its pilot program.<sup>22</sup> In Wisconsin, that department was the Department of Agriculture, Trade and Consumer Protection ("DATCP").

The Oneida Nation participated in the Wisconsin Hemp Pilot Research Project in 2019 by obtaining a license through DATCP. The major project components included licensure, registration fees, reporting, recordkeeping, inspections, testing, and destruction requirements for plants that exceeded a THC

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<sup>&</sup>lt;sup>14</sup> Id.

<sup>&</sup>lt;sup>15</sup> Id (citing Jerry Apps, "Wisconsin Agriculture: A History," Wisconsin Historical Society Press (2015)).

<sup>&</sup>lt;sup>16</sup> *Id*.

<sup>&</sup>lt;sup>17</sup> Id.

<sup>&</sup>lt;sup>18</sup> *Id*.

<sup>&</sup>lt;sup>19</sup> Agricultural Act of 2014, Pub. L. 113-79, section 7606.

<sup>&</sup>lt;sup>20</sup> 2017 WI Act 100.

<sup>21</sup> Id

<sup>&</sup>lt;sup>22</sup> USDA Clarifies Industrial Hemp Production for Indian Tribes. USDA: Agricultural Marketing Service. Ams.usda.gov. March 2020.

- concentration level of 0.3 percent.<sup>23</sup> The Nation's goals for participating in the program were to learn about different hemp varieties, various end-use products, growth characteristics, labor requirements, post-harvest processing, and marketability.
- **B.** 2018 Farm Bill. In 2018, Congress enacted the 2018 Farm Bill, which made substantial changes to the way the federal government regulated hemp under the 2014 Farm Bill.<sup>24</sup> Most significantly, it removed hemp from the controlled substances list and granted Indian tribes regulatory authority over hemp production within its jurisdiction.<sup>25</sup> Under the 2018 Farm Bill:
  - Hemp is defined as the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a THC concentration of not more than 0.3 percent on a dry weight basis;
  - The United States Department of Agriculture ("USDA") is required to establish a permanent federal hemp program that would act to phase out state pilot programs created under the 2014 Farm Bill by terminating them one (1) year after the USDA releases regulations to govern hemp production under 2018 Farm Bill's federal program;
  - Tribes and states are authorized to establish their own hemp production programs in lieu of the USDA's program so long as they submit a plan for approval to the USDA that includes the specific requirements set forth in the 2018 Farm Bill, as well as USDA regulations promulgated in accordance therewith; and
  - Tribes and states are not allowed to prohibit the transportation of hemp or hemp products across their boundary lines even if they do not have a hemp program.<sup>26</sup>
- **C.** *The Proposed Legislation.* It the policy of the Nation to protect the health, security and general welfare of the community. The Nation finds that hemp is a valuable agricultural crop and commodity and that through proper regulation, hemp can be put to its highest and best use, thereby providing jobs and revenue for essential governmental programs and services that will benefit the Nation and its members.
  - This legislation was carried over from the 2014-2017 term and placed onto the Active Files List again on September 6, 2017 for the 2017-2020 term.
  - The proposed legislation will create a framework and a licensing program for the Oneida Nation to regulate hemp and hemp growers on the Oneida Reservation, which will be submitted to the USDA for approval in accordance with the 2018 Farm Bill.

#### **SECTION 5. CONSULTATION AND OUTREACH**

- **A.** *Hemp Team.* In 2018, the Oneida Business Committee adopted resolution BC-04-25-18-J, which supported the Nation's participation in Wisconsin's Industrial Hemp Pilot Program and ultimately created the Nation's hemp team that is composed of members from the following areas within the Oneida Nation:
  - The Community & Economic Development Division;
  - The Environmental, Health, Safety and Land Division ("EHSLD");
  - The Environmental Resources Board; and
  - The Community Development Planning Committee ("CDPC").

The LRO, as well as members of the LOC, met often with the Hemp Team and relied on their experience and expertise when drafting the proposed legislation.

<sup>&</sup>lt;sup>23</sup> Hemp Pilot Research Program. WI. Department of Agriculture, Trade, and Consumer Protection. Datcp.wi.gov/Pages/ProgramsServices/Hemp. March 2020

<sup>&</sup>lt;sup>24</sup> Agricultural Improvement Act of 2018, Pub. L. 115-334, section 11106.

<sup>&</sup>lt;sup>25</sup> Id.

<sup>&</sup>lt;sup>26</sup> Id.

#### 122 B. Outside Resources.

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- The LRO staff attorney, as well as members of the LOC, participated in several conference calls with the USDA and attended various USDA sponsored trainings to stay up to date on the most current regulatory information regarding the 2018 Farm Bill and the USDA regulations promulgated thereunder.
- The LRO staff attorney, as well as members of the LOC, attended two (2) meetings held by the Wisconsin Tribal Conservation Advisory Council ("WTCAC") to learn more about hemp and the strategies/practices of other tribes pursuing legislation and regulatory programs under the 2018 Farm Bill.

#### **SECTION 6. PROCESS**

- **A.** Thus far, the development of this Law has followed the process set forth in the Legislative Procedures Act ("LPA").
- **B.** This legislation was carried over from the 2014-2017 term and placed onto the Active Files List again on September 6, 2017 for the 2017-2020 term.
  - C. The following work meetings were held regarding the development of this Law and legislative analysis:
  - August 1, 2018: Work meeting with LOC.
  - August 28, 2018: Work meeting with CDPC.
    - October 25, 2018: Work meeting with LOC.
    - December 5, 2018: Work meeting with LOC.
    - February 5, 2019: Work meeting with Hemp Team.
      - April 11, 2019: Work meeting with LOC.
  - July 2, 2019: Work meeting with Hemp Team.
    - July 9, 2019: Work meeting with Hemp Team.
  - July 15, 2019: Work meeting with LOC.
  - September 11, 2019: Work meeting with Hemp Team.
    - October 24, 2019: Work meeting with Hemp Team.
  - November 14, 2019: Work meeting with Hemp Team.
    - December 23, 2019: Work meeting with Hemp Team.
- January 30, 2020: Work meeting with LOC.
  - February 14, 2020: Work meeting with Hemp Team.
- February 21, 2020: Work meeting with Hemp Team.
  - March 12, 2020: Work meeting with Hemp Team.
  - April 8, 2020: Work meeting with LOC.
- April 15, 2020: Work meeting with LOC.
  - April 16, 2020: Work meeting with LOC.
  - April 23, 2020: Work meeting with LOC.
  - April 28, 2020: Work meeting with LOC.
  - May 7, 2020: Work meeting with LOC.
  - May 15, 2020: Work meeting with LOC.
  - **D.** *COVID-19 Pandemic's Effect on the Legislative Process*. A public meeting for the proposed Law will not be held due to the COVID-19 pandemic.
    - On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

- On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibits all public gatherings of any number of people.
  - Then on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.
  - On March 28, 2020, the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's Public Health State of Emergency declaration until May 12, 2020.
  - On April 21, 2020, the COVID-19 Core Decision Making Team issued an "*Updated Safer at Home*" declaration which allowed for gaming and golf operations to resume.
  - On May 6, 2020, the Oneida Business Committee adopted resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until June 11, 2020" which further extended the Nation's Public Health State of Emergency until June 11, 2020.
  - On May 19, 2020, the COVID-19 Core Decision Making Team issued a "Safer at Home Declaration, Amendment, Open for Business" which directs that individuals within the Oneida Reservation should continue to stay at home, businesses can re-open under certain safer business practices, and social distancing should be practiced by all persons.
  - On June 10, 2020, the Oneida Business Committee adopted resolution BC-06-10-20-A titled, *Extension of Declaration of Public Health State of Emergency Until July 12, 2020*" which further extended the Nation's Public Health State of Emergency until July 12, 2020.
  - Although a public meeting will not be held on the proposed Industrial Hemp law, a public comment period will still be scheduled and held open in accordance with the Legislative Procedures Act and the COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration.

#### **SECTION 7. CONTENTS OF THE LEGISLATION**

- **A.** *Application.* This Law regulates the production of hemp within the boundaries of the Oneida Nation and applies to all persons under the jurisdiction of the Nation that intend to engage, whether directly or indirectly, in the production of hemp. [5 O.C. 508.4-1].
  - The Law provides that persons doing business with the Nation or persons engaged in commercial dealings, leases, licenses, easements or other transactions related to hemp production within the exterior boundaries of the Reservation have voluntarily and explicitly consented to the jurisdiction of the Nation and are subject to regulation by the Nation. [5 O.C. 508.4-1].
- **B.** *Effectiveness.* Per the requirements of the 2018 Farm Bill and USDA regulations created thereunder, this Law shall not become effective until approved by the USDA. [5 O.C. 508.4-1].
  - Before the legislation is submitted to the USDA for approval, the 2018 Farm Bill further requires
    that the Oneida Business Committee certify in writing that the Nation is capable and prepared to
    implement the Law immediately upon said approval.
- **C.** *Compliance*. All hemp produced within the jurisdiction of the Nation must meet the requirements of this Law and any applicable portions of the 2018 Farm Bill, which includes the USDA regulations promulgated in accordance therewith. [5 O.C. 508.4-2]. Such compliance includes, but is not limited to:
  - That persons intending to produce hemp or participate in the production of hemp may only do so upon receipt of a valid license from EHSLD. [5 O.C. 508.6].

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- The license application process requires that persons:
  - Fill out the application form created by EHSLD;
  - Provide proof of ownership of the land and/or property where hemp will be produced; or proof of permission to use another's property for purposes of the same;
  - Provide EHSLD with a description of the intended use of the hemp crop, the intended method of cultivation and whether the applicant intends to use any pesticides, herbicides or other potentially hazardous materials during the cultivation process;
  - Acknowledge, through execution of the application, that they are agreeing to abide by all rules and regulations governing the Nation's plan and certifying that the information they provided in and submitted with the application is accurate and truthful;
    - The Law provides that applicants found to have materially falsified any information provided in or along with their application shall be deemed ineligible for licensure. [5 O.C. 508.6-3].
  - Provide a criminal history report through the U.S. Federal Bureau of Investigations that was completed no greater than sixty (60) days before the application submission date:
    - The Law provides that applicants with a state or felony conviction relating to a controlled substance will be deemed ineligible to receive a license for a period of ten (10) years from the date of their conviction unless the applicant had been lawfully producing hemp under the 2014 Farm Bill before December 20, 2018 and had been convicted before that date. [5 O.C. 508.6-3].
  - o Pay the licensing fee set pursuant to the fee schedule that was created by EHSLD and approved by the Oneida Business Committee through resolution; and
  - o Provide any further information, disclosure or consent that EHSLD requires under a standard operating procedure. [5 O.C. 508.6-2].
- That, once licensed, steps are taken to ensure hemp crops do not exceed the acceptable hemp THC level, which the Law defines as "when the application of the measurement of uncertainty (MU) to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range of not more than 0.3%." [5 O.C. 508.3-1]. Such steps include, but are not limited to:
  - From EHSLD:
    - o That it provides prospective applicants with information necessary to produce hemp in compliance with the Law [5 O.C. 508.5];
    - o That it collects and maintains, for at least seven (7) years, specific information on each license it issues, including:
      - The producer's contact information;
      - The locations of the producer's growing sites; and
      - Information relating to the producer's acreage; crop sampling, testing and results; and destruction of non-compliant plants [5 O.C. 508.7-1].
    - o That it conducts inspections and investigates complaints [5 O.C. 508.5];
    - o That it samples and tests hemp crops pursuant to the protocol set forth in the Law to determine whether they exceed the acceptable THC concentration level and, if they do, that it destroys the non-compliant plants in accordance with the 2018 Farm Bill [5 O.C. 508.8]; and
      - The Law provides that EHSLD may collect samples, facilitate testing and oversee destruction of non-compliant plants using representatives of the

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- Nation (so long as they are not the actual producers) or by outsourcing to an appropriate individual or entity of EHSLD's choosing [5 O.C. 508.8].
- The sampling, testing and destruction protocols set forth in the Law are per the requirements of the 2018 Farm Bill and USDA regulations promulgated thereunder. However, the Law carves out flexibility for the Nation to use alternative protocols at such time that the federal guidelines allow for it [5 O.C. 508.8].
- That it enforces the Law through appropriate means, including the issuance of corrective actions and mandatory reporting to the USDA for non-compliance that has a culpable mental state greater than negligence [5 O.C. 508.7-1].
- From Producers (License Holders):
  - That they maintain, as well as share, information in accordance with the EHSLD's standard operating procedure for a period of at least seven (7) years and that they retain such information in a manner that can be easily accessible upon request of EHSLD [5 O.C. 508.7-2];
  - That they grant EHSLD or designees of EHSLD complete access to their growing sites to conduct inspections, sampling and, if necessary, destruction of non-compliant plants [5 O.C. 508.7-2];
  - That, upon issuance of a license, they report their hemp crop acreage report to the Farm Service Agency using the requisite forms and send copies to EHSLD [5 O.C. 508.7-2];
  - o That they report any changes in their status to EHSLD, including any recent felony convictions related to a controlled substance or a violent crime, within the time period set forth within the Law so that EHSLD can respond appropriately [5 O.C. 508.7-2]; and
  - That they comply with any EHSLD corrective action plan that was issued for non-compliance [5 O.C. 508.11].
- **D.** Sampling, Testing and Destruction. The 2018 Farm Bill and accompanying USDA regulations set forth specific protocols that must be followed for collecting samples of each hemp crop, for testing those samples and, if a sample tests above the acceptable THC concentration level, for destroying the entire crop associated with that sample. To ensure compliance with the 2018 Farm Bill and accompanying USDA regulations, this Law has adopted these protocols in their entirety, but carved out flexibility for the Nation to adopt different protocols in the event the federal government decides to loosen some of its current sampling, testing and destruction requirements. [5 O.C. 508.8-1].

#### E. Enforcement and Appeals.

- *Violations*. The Law provides that violators of the Law shall not, as a result of the violation, be subject to any criminal enforcement action by the Tribal, Federal, State or local government. [5 O.C. 508.11]. It then divides violations into the following two (2) categories:
  - Negligent violations, which include, but are not limited to:
    - o A failure to provide a legal description of land on which the producer produces hemp:
    - A failure to obtain a license from EHSLD to produce hemp;
    - The production of hemp with a concentration exceeding the acceptable hemp THC level.
      - The Law affords some flexibility with respect to hemp that is produced with a THC concentration in excess of 0.3 percent, but not more than 0.5 percent, in that it does not consider this to be a negligent violation so long as the producer made reasonable efforts to grow hemp, but still requires that the crop be destroyed.

- defines as acting intentionally, knowingly, willfully, or recklessly. [5 O.C. 508.11]. Enforcement.
- If EHSLD finds that a negligent violation occurred, the Law requires it to establish a corrective action plan that includes, at a minimum:

o A plan to correct the violation;

 A reasonable date by which producers shall correct the negligent violation; and A requirement that producers periodically report to EHSLD on their compliance with the Nation's plan for a period of not less than the next two (2) years from the date of the negligent violation.

Violations made with a culpable mental state greater than negligence, which the Law

- Producers found to have negligently violated this Law three (3) times within a five (5) year period shall be ineligible to produce hemp for a period of at least five (5) years from the date of the third violation. [5 O.C. 508.11].

■ If EHSLD determines that a producer violation was committed with a culpable mental state greater than negligence, the Law requires that it immediately report the producer to the U.S. Attorney General, USDA and the Nation's chief law enforcement officer or chief law enforcement officer of the State charged with receiving such information. [5 O.C. 508.11].

• Appeals. The Law allows for appeals of decisions of EHSLD to be filed with the Judiciary in accordance with the Nation's governing laws. [5 O.C. 508.12].

# **SECTION 8. OTHER CONSIDERATIONS**

**A.** Certification by Oneida Business Committee. Under the 2018 Farm Bill and accompanying USDA regulations, in the event the OBC decides to adopt this Law, it will have to include a certification to the USDA that it is ready and capable of implementing the Law as soon as approved by the USDA.

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

 Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation. [Legislative Procedures Act 1 O.C. 109.6-1].
 A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating

 Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee. [Legislative Procedures Act 1 O.C. 109.6-1(a) and (b)].

#### Title 5. Business - Chapter 508

[Oneida Language]
[Oneida Translation]
INDUSTRIAL HEMP

508.1.	Purpose and Policy	508.7.	Required Recordkeeping and Reporting
508.2.	Adoption, Amendment, Repeal	508.8.	Sampling and Testing
508.3.	Definitions	508.9.	Destruction of Noncompliant Plants
508.4.	Application	508.10.	Compliance
508.5.	Authority	508.11.	Enforcement
508.6.	Licensing Requirements	508.12.	Appeals

#### **508.1.** Purpose and Policy

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508.1-1. *Purpose*. The purpose of this law is to:

- (a) Authorize the production of hemp within Reservation of the Oneida Nation;
- (b) Grant the Oneida Nation primary regulatory authority over the production of hemp within the jurisdiction of the Nation;
- (c) Assert the Nation's inherent sovereign authority by creating a hemp production plan that regulates hemp as an agricultural commodity consistent with the Nation's, as well as the federal, laws; and
- (d) Promote the Nation's hemp industry to the maximum extent permitted by law.
- 508.1-2. *Policy*. The Agricultural Improvement Act of 2018, commonly referred to as the 2018 Farm Bill, provides an opportunity for Indian Nations to engage in hemp production through the submission of a hemp production plan for approval to the United States Department of Agriculture. The Farm Bill recognizes that Indian Nations, not the federal government, can and should assume primary regulatory authority over hemp production within their jurisdictions. It is the policy of the Nation to exercise its inherent sovereign authority through self-governance. It is further the policy of the Nation to protect the health, security and general welfare of the community. The Nation finds that hemp is a valuable agricultural crop and commodity and that through proper regulation, hemp can be put to its highest and best use, thereby providing jobs and revenue for essential governmental programs and services that will benefit the Nation and its members.

#### 508.2. Adoption, Amendment, Repeal

- 22 508.2-1. This law was adopted by Oneida Business Committee by resolution BC-\_\_-\_\_.
- 23 508.2-2. This law may be amended or repealed by the Oneida Business Committee and/or
- 24 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 25 508.2-3. 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
- 27 to have legal force without the invalid portions.
- 508.2-4. 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.
- 30 508.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

#### 508.3. Definitions

- 508.3-1. 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) "Acceptable hemp THC level" means when the application of the measurement of uncertainty ("MU") to the reported delta-9 tetrahydrocannabinol content concentration

level on a dry weight basis produces a distribution or range of not more than 0.3 percent.

- (b) "Applicant" means a person who applies to the Nation for a license to participate in the Nation's hemp production plan established by this law.
  - (c) "Cannabis" means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species and refers to any form of the plant whereby the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.
  - (d) "Controlled Substances Act" means the act, codified in 21 U.S.C. 801, *et seq.*, establishing the U.S. federal drug policy for regulating the manufacture, importation, exportation, possession, use and distribution of certain substances.
  - (e) "Conviction" means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned or expunged.
  - (f) "Corrective action plan" means a plan established by the Division for a producer to correct a negligent violation or other form of non-compliance with the Nation's hemp production plan and/or this law.
  - (g) "Criminal History Report" means the U.S. Federal Bureau of Investigation's Identity History Summary.
  - (h) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully or recklessly.
  - (i) "Decarboxylated" means the completion of the chemical reaction that converts THC-acid ("THC-A") into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-A.
  - (j) "Decarboxylation" means the removal or elimination of carboxyl group from a molecule or organic compound.
  - (k) "Delta-9 tetrahydrocannabinol, delta-9-THC or THC" means the primary psychoactive component of cannabis. For purposes of the Nation's plan, delta-9-THC and THC are interchangeable.
  - (1) "Division" means the Oneida Environmental, Health, Safety and Land Division.
  - (m) "Drug Enforcement Administration or DEA" means the federal law enforcement agency under the U.S. Department of Justice that is the lead agency for domestic enforcement of the Controlled Substances Act.
  - (n) "Dry weight basis" means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract or other derivative) after excluding moisture from the item.
  - (o) "Expunged" means when a conviction is removed from an individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions.
  - (p) "Farm Bill" means the Agricultural Improvement Act of 2018, Pub. L. 115-334, December 20, 2018, 132 Stat. 4490, as may be amended from time-to-time hereafter, along

- with the Interim Final Rule for the establishment of a domestic hemp production program issued by the U.S. Department of Agriculture on October 29, 2019 and as may be finalized and further amended from time-to-time hereafter.
- (q) "Farm Service Agency or FSA" means the USDA agency charged with assisting in information collection on land being used for hemp production.
  - (r) "Gas chromatography or GC" means a type of chromatography in analytical chemistry used to separate, identify and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.
  - (s) "Geospatial location" means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.
  - (t) "Handle" means to harvest or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing and, where cannabis plants exceed the acceptable hemp THC level, shall also mean to dispose of those plants.
  - (u) "Hemp" means the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.
  - (v) "High-performance liquid chromatography or HPLC" means a type of chromatography technique in analytical chemistry used to separate, identify and quantify each component in a mixture.
  - (w) "Information sharing system" means the database mandated under the Farm Bill which allows USDA to share information collected under tribal, state and USDA plans with tribal, federal, state, and local law enforcement.
  - (x) "Key participant" means a sole proprietor, partner in a partnership, or person with executive managerial control in a corporation such as a chief executive officer, chief operating officer and chief financial officer, but not non-executive managers such as farm, field or shift managers.
  - (y) "Law enforcement agency" means any tribal, federal, state or local law enforcement agency.
  - (z) "Lot" means a contiguous area in a field, greenhouse or indoor growing structure containing the same variety or strain of cannabis throughout the area.
  - (aa) "Marijuana" means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.
  - (bb) "Measurement of uncertainty or MU" means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.
  - (cc) "Nation" means the Oneida Nation.
  - (dd) "Nation's plan" means the criteria and regulations set forth in this law to govern the production of hemp within the jurisdiction of Nation and serves as the "plan" as required by the Farm Bill to be submitted to and approval by the USDA for the Nation to assume primary regulatory authority over the production of hemp within its jurisdiction.
  - (ee) "Negligence" means a failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth in this law.

- (ff) "Person" means a natural person, corporation, cooperative, consortium, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust partnership, limited liability partnership, association or other form of legal business entity, including another governmental entity.
- (gg) "Phytocannabinoid" means cannabinoid chemical compounds found in the cannabis plant, two of which are delta-9-THC and cannabidiol ("CBD").
  - (hh) "Postdecarboxylation" means in the context of testing methodologies for THC concentration levels in hemp a value determined after the process of decarboxylation that determines the total potential delta-9-THC content derived from the sum of the THC and THC-A content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, gas chromatography, through which THC-A is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The postdecarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THC-A intact, and requires a conversion calculation of that THC-A to calculate total potential THC in any given sample.
  - (ii) "Produce or production" means to cultivate, process, handle or store hemp plants for market in the United States.
  - (jj) "Producer" means a person licensed by the Division to produce hemp under the Nation's plan.
  - (kk) "Reservation" means all land within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
  - (ll) "Reverse distributor" means a person who is registered with the DEA to dispose of marijuana under the Controlled Substances Act.
  - (mm) "USDA" means the United States Department of Agriculture.

## 508.4. Application

- 508.4-1. This law regulates the production of hemp within the jurisdiction of the Nation and shall be effective upon approval from the USDA as the Nation's plan under the Farm Bill.
  - (a) In furtherance of the Nation's inherent authority and the regulatory objectives set forth in the Farm Bill, the Nation finds that persons doing business with the Nation or persons engaged in commercial dealings, leases, licenses, easements or other transactions related to hemp production within the exterior boundaries of the Reservation have voluntarily and explicitly consented to the jurisdiction of the Nation and are subject to regulation by the Nation.
  - (b) Consistent with sections 508.1-1 and 508.1-2, this law shall be liberally construed to the greatest extent authorized under the Farm Bill to fulfill the purpose and policy for which it was adopted.
- 508.4-2. All hemp production within the jurisdiction of the Nation must meet the requirements of this law and any applicable portions of the Farm Bill.
  - (a) The regulations and penalties imposed by this law extend to any person engaged in activities related in any way, directly or indirectly, to hemp production, whether licensed

or not.

- 508.4-3. Nothing in this law shall be construed to prohibit hemp or hemp products, produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113), from being transported or shipped through the Reservation.
- 508.4-4. Nothing in this law limits, modifies or waives the need for a person to obtain any other license or permit required by any other applicable law of the Nation to operate a business or other entity within the Reservation or to comply with any other applicable law of the Nation, including, but not limited to, the Nation's environmental and land use laws.

## 508.5. Authority

- 508.5-1. *General*. This law is enacted under the inherent sovereign authority of the Oneida Nation to regulate hemp as an agricultural commodity in compliance with the Farm Bill.
  - (a) By enacting this law, the Nation does not waive its sovereign immunity or consent to suit in any court, whether the court is tribal, federal, or state, and the enactment of this law shall not be construed to be a waiver of the sovereign immunity of the Nation, its offices, departments, agents, subsidiaries, corporations or enterprises nor a consent to suit against the Nation in any court.
- 508.5-2. *Authority of the Division*. The Division is hereby delegated the authority to regulate and oversee hemp production under the Nation's plan and shall have all powers necessary to fulfill the requirements of this law. At a minimum, the Division shall have the authority and responsibility to:
  - (a) Provide prospective producers with information necessary to participate in the Nation's plan, to include, but not be limited to:
    - (1) How to determine prospective geospatial locations;
    - (2) How to obtain and properly submit a criminal history report; and
    - (3) How to share requisite information with the Farm Service Agency.
  - (b) Issue licenses to produce hemp and make all decisions relating thereto;
  - (c) Conduct inspections and investigate complaints;
  - (d) Develop standard operating procedures, protocols and forms necessary to administer this law;
  - (e) Enforce this law through appropriate means, including, but not limited to, ensuring that producers licensed through the Nation are operating in compliance with the Farm Bill.

## **508.6.** Licensing Requirements

- 508.6-1. *License Required*. Any person engaging in or intending to engage in hemp production within the jurisdiction of the Nation shall only do so pursuant to a valid license issued by the Division in accordance with this law.
  - (a) *Valid License*. For purposes of this law, a valid license means the license is unexpired, unsuspended and unrevoked.
    - (1) A license may not be transferred or assigned absent prior approval from the Division, which, at a minimum, shall be contingent upon:
      - (A) The license not being subject to a pending revocation or suspension under section 508.11 of this law; and

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209	(B) The transferee or assignee undergoing and being approved for licensure
210	pursuant to the application process set forth in section 508.6-2 of this law.
211	(b) License Period. All licenses shall be valid for a period of three (3) year from the date
212	of issuance unless otherwise revoked at an earlier date pursuant to this law or any other
213	applicable law of the Nation.
214	508.6-2. <i>Application Process</i> . Any person under the jurisdiction of the Nation who wishes to
215	engage in the production of hemp shall apply to the Division in accordance with this section.
216	(a) Applicants must submit a complete application to the Division pursuant to the process
217	set forth in the standard operating procedure adopted by the Division before the application
218	will be accepted or considered. The application process shall require, at a minimum, that
219	the applicant provide/submit the following:
220	(1) The applicant's full name, address, telephone number and, if available, email
221	address;
222	(A) If the applicant represents a business or other entity where the business/
223	entity will be the producer, the applicant shall be required to provide the
224	business/entity's:
225	(i) Full business/entity name;
226	(ii) Principal business/entity location address;
227	(iii) Key participants' full name and title;
228	(iv) EIN number or, if no EIN number, Social Security Number; and
229	(v) Email address, if available.
230	(2) The street address (if possible), legal description and geospatial location for
231	each field, greenhouse, building or site where hemp will be cultivated, handled,
232	processed or stored;
233	(3) Proof of ownership of the land and/or property where hemp will be produced;
234	or proof of permission from the land/property owner to utilize the land and/or
235	property where hemp will be produced for hemp production;
236	(4) A description of the intended output (e.g. raw hemp or some other hemp
237	product), method of cultivation (e.g. organic, natural or genetically modified) and
238	any pesticides, herbicides or other potentially hazardous materials the applicant
239	intends to use;
240	(5) An acknowledgment that by signing the application, the applicant is agreeing
241	to abide by all rules and regulations governing the Nation's plan and is further
242	certifying that the information provided in and submitted with the application is
243	accurate and truthful;
244	(6) A criminal history report that was completed no greater than sixty (60) days
245	before the application submission date;
246	(A) For businesses/entities, a criminal history report shall be completed for
247	each of the key participants.
248	(7) The licensing fee set pursuant to the fee schedule created by the Division and
249	approved by the Oneida Business Committee through resolution; and
250	(8) Any further information, disclosure or consent required under the Division's
251	governing standard operating procedure.

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- (b) Applications for renewal, transfer and assignment shall be subject to the same terms and approved under the same criteria as initial applications unless there has been an intervening change as defined in the Division's governing standard operating procedure.
  - (1) The initial fee for license transfers and assignments shall be prorated for that term as set forth in the licensing fee schedule created by the Division and approved by the Oneida Business Committee through resolution.
- (c) A license modification shall be requested pursuant to the process set forth within the Division's governing standard operating procedure if there is any change to the information submitted in the initial or renewal application including, but not limited to, the sale of a business/entity, the production of hemp in a new location, or a change in any key participants who are producing under the license.
  - (1) Applicants shall notify the Division immediately shall there be any change in the information provided during the application process.
- (d) The application and all materials submitted during the application process, whether pursuant to a request for an initial, renewed, transferred/assigned or modified license, shall become the property of the Nation and shall be maintained by the Division for a minimum of seven (7) years.
- 508.6-3. *License Eligibility*.
  - (a) Applicants who materially falsify any information provided in or along with their application shall be deemed ineligible for licensure.
  - (b) Applicants with a state or felony conviction relating to a controlled substance shall be deemed ineligible to receive a license for a period of ten (10) years from the date of their conviction.
    - (1) Exception. Persons lawfully growing hemp under the 2014 Farm Bill before December 20, 2018 and whose conviction also occurred before that date shall not be considered ineligible hereunder.
- 508.6-4. *License Issuance*. Applications for licensure and license renewal, transfer/assignment or modification shall be reviewed by the Division for completeness and to determine an applicant's eligibility.
  - (a) The Division shall set the process for issuing licenses hereunder in a standard operating procedure that includes, at a minimum:
    - (1) That the applicant be notified of his or her eligibility within thirty (30) days following the Division's receipt of a complete application;
    - (2) That denial of an application for licensure, license renewal, license transfer/ assignment or license modification be provided to the applicant in writing and include the basis for denial, as well as information on how to appeal the Division's decision:
    - (3) That each applicant deemed eligible for licensure shall be assigned a license identification number; and
    - (4) That for each license it issues, the Division, in cooperation with the Division of Land Management, shall record the type of land designation for each parcel of land listed in the licensee's application as an intended hemp production site and maintain such information within the Division's files for a minimum of seven (7)

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295 years. 508.7. Required Recordkeeping and Reporting 296 297 508.7-1. Division Reporting. 298 (a) Hemp Grower Report. By the first of each month, the Division shall submit to the 299 USDA a report providing the contact information and the status of the license issued for 300 each producer under the Nation's plan. The report shall contain: 301 (1) For each new producer who is a natural person, the producer's: 302 (A) Full name; 303 (B) License identification number; 304 (C) Business address: 305 (D) Telephone number; (E) Email address (if available); and 306 307 (F) A legal description of the land on which the producer is producing or intends to produce, including, to the extent practicable, its geospatial 308 309 location. (2) For each new producer that is a business/entity, the business/entity's: 310 311 (A) Full business/entity name; (B) License identification number; 312 (C) Principal business/entity location address; 313 314 (D) Full name, title and email address (if available) of each key participant; (E) A legal description of the land on which the producer is producing or 315 intends to produce, including, to the extent practicable, its geospatial 316 317 location. 318 (3) For each producer that was included in a previous report and whose reported information has changes, the report shall include the previously reported 319 320 information and the new information. 321 (b) Hemp Disposal Report. By the first of each month, the Division shall submit a report 322 to the USDA of any occurrence of non-conforming plants or plant materials and provide a 323 disposal record for those plants and plant materials that contains: 324 (1) The producer's name and address; (2) The producer's license identification number; 325 (3) Location information, such as lot number, location type and geospatial location 326 327 or other location descriptor for the production area subject to disposal; 328 (4) Information on the agent handling the disposal; and 329 (5) The total acreage. 330 (c) Annual Report. By December 15 of each year, the Division shall submit an annual report to the USDA that contains the following information: 331 332 (1) Total planted acreage; 333 (2) Total harvested acreage; and 334 (3) Total disposed of acreage. 335 Producer Reporting. 508.7-2. 336 (a) Planting and Harvesting. The Division shall create a standard operating procedure 337 which sets forth a process for producers to report planting, pre-harvest and post-harvest

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- information to the Division that will allow for the Division to carry out its reporting duties under section 508.7-1 of this law in a timely manner.
  - (b) *Test Results*. Producers shall share any test results obtained under section 508.8 of this law with the Division and, as required, to the USDA pursuant to the process set forth in the Division's standard operating procedure for producer reporting.
  - (c) *FSA Reporting*. Upon the issuance of a license, producers shall report their hemp crop acreage to the FSA using form FSA-578 or any alternative form approved by the FSA for purposes hereof.
    - (1) The report shall include, at a minimum:
      - (A) The producer's contact information and license number;
      - (B) The crop acreage; and
      - (C) The specific location where hemp is being produced.
        - (i) The specific location where hemp is being produced must be identified, to the extent practicable, by the geospatial location for each lot, greenhouse, building or site where hemp will be produced.
    - (2) Producers are responsible for filling out and filing the FSA-578 or alternative form consistent with the process set by the FSA.
    - (3) Producers shall be responsible for forwarding a copy of the FSA-578 or alternative form to the Division at the same time they file it with the FSA.
  - (d) *Convictions*. Within five (5) business days of conviction, the producer must notify the Division of any felony convictions that would subject the producer to immediate revocation under section 508.11-4 of this law.
- 508.7-3. Recordkeeping.
  - (a) The Division shall retain for a minimum of (7) years all information required to be collected in section 508.6 of this law for every license it issues, renews, transfers/assigns and modifies in accordance with the Nation's plan.
  - (b) The Division and producers shall retain all documentation referenced within sections 508.7 and 508.8 of the law for a period of at least seven (7) years.
    - (1) Producers shall retain the documentation in a manner that it can be readily provided to the Division upon request.

## 508.8. Sampling and Testing

- 508.8-1. *General*. Samples of all hemp produced under the Nation's plan must be collected and tested in accordance with this section of the law to determine whether it exceeds the acceptable hemp THC level.
  - (a) Subject to section 508.8-1(a)(1), the Division shall be responsible for the collection and testing of samples of all hemp produced under the Nation's plan.
    - (1) The Division may, in its discretion, appoint an outside agent or agency, other than a producer, to carry out the collection and testing of samples hereunder.
  - (b) Producers shall be responsible to pay any fees associated with the sampling and testing of their hemp production.
  - (c) Alternative sampling and testing protocols may be used in place of the protocols set forth herein if approved by the USDA as being comparable and similarly reliable to the

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baseline mandated by the Farm Bill.

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- 2. *Sampling*. The method used for sampling must:
- (a) Require that the sample is taken from the flower material of the cannabis plant;(b) Be sufficient at a confidence level of 95% that no more than 1% of the plants in the
- (b) Be sufficient at a confidence level of 95% that no more than 1% of the plants in the lot would exceed the acceptable hemp THC level;
- (c) Ensure that a representative sample is collected that represents a homogeneous composition of the lot; and
- (d) Ensure that samples of hemp plant material from one lot are not commingled with hemp plant material from other lots.
- 508.8-3. *Protocol for the Collection of Samples*. The hemp to be selected for sampling shall be determined by a representative of the Division or the agent/agency appointed by the Division and, subject to section 508.8-1(c), shall be collected as follows:
  - (a) Producers shall be required to report in writing to the Division at least fifteen (15) days before an expected harvest date that a crop is about to be harvested.
    - (1) The Division's receipt of a harvest notification triggers a site inspection and sample collection by the Division, or the agent/agency appointed by the Division.
    - (2) Producers shall not harvest any crop prior to samples being collected.
  - (b) The Division shall contact the producer to confirm the field's location and schedule a time for inspection and sample collection prior to harvest.
    - (1) During a scheduled sample collection, the producer or authorized representative of the producer shall be present at the growing site.
    - (2) The Division, or agent/agency appointed by the Division, shall be provided with complete and unrestricted access to all hemp, and other cannabis plants, if any, whether growing or harvested, and all land, buildings, and other structures used for the production of hemp and other cannabis plants, if any, and all locations listed in the producer's application.
  - (c) A separate sample shall be taken for each variety and from each lot of a given variety.
  - (d) Cuttings shall be collected to make one representative sample as follows:
    - (1) The top twenty (20) cm of the hemp plant's flower, including female floral material, shall be clipped;
    - (2) Cuttings from at least five (5) hemp plants within the lot shall be taken and the complete sample shall be placed in a paper bag;
    - (3) The bag shall be sealed by folding over the top once and stapling shut;
    - (4) The bag shall be labeled with a sample identification that includes, at a minimum, the last four (4) numerical digits of the producer's license identification number, the date (MM/DD/YY) of collection, and a two (2) digit sequential sample number assigned by the Division, or agent/agency appointed by the Division.
  - (e) The sample shall be transported to the Division for storage in a secure area until it is sent to the testing lab for analysis.
  - (f) Producers shall be required to harvest their crop not more than fifteen (15) days following the date of the sample collection.
    - (1) If the producer fails to complete the harvest within fifteen (15) days of the sample collection, a secondary sample of the lot shall be required to be submitted

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424	for testing.
425	(2) Harvested lots of hemp plants shall not be commingled with other harvested
426	lots or other material without prior written permission from the Division.
427	(3) Floral materials harvested for phytocannabinoid extraction shall not be moved
428	beyond the processor, or commingled, or extracted, until the Division releases the
429	material.
430	(4) Producers shall be notified within thirty (30) days of sampling of the status of
431	the testing.
432	(5) Any producer may request additional testing at its cost if it is believed that the
433	original delta-9 THC concentration level test results were in error.
434	508.8-4. Testing. Subject to section 508.8-1(c), sample testing shall be completed by one of the
435	DEA-registered laboratories designated by the Division for meeting the requirements of the
436	Nation's plan and the Farm Bill.
437	(a) Laboratories designated by the Division hereunder shall be approved by the Oneida
438	Business Committee through resolution.
439	508.8-5. Testing Protocol.
440	(a) <i>Methodology</i> . The testing process shall be able to accurately identify whether a sample
441	contains a delta-9 THC content concentration level that exceeds the acceptable hemp THC
442	level by including, at a minimum, a validated testing methodology that uses:
443	(1) Postdecarboxylation or other similarly reliable method;
444	(2) Considers the potential conversion of THC-A in hemp into THC; and
445	(3) A test result that measures total available THC derived from the sum of the
446	THC and THC-A content.
447	(A) Testing methodologies meeting the requirements of this section include
448	gas or liquid chromatography with detection.
449	(b) The total THC concentration level shall be determined and reported on a dry weight
450	basis.
451	(1) Analytical testing for purposes of detecting the concentration levels of THC
452	shall meet the following standards:
453	(A) Laboratory quality assurance must ensure the validity and reliability of
454	test results;
455	(B) Analytical method selection, validation, and verification must ensure
456	that the testing method used is appropriate (fit for purpose), and that the
457	laboratory can successfully perform the testing;
458	(C) The demonstration of testing validity must ensure consistent, accurate
459	and analytical performance;
460	(D) Method performance specifications must ensure analytical tests are
461	sufficiently sensitive for the purposes of the detectability requirements of
462	the Nation's plan; and
463	(E) An effective disposal procedure for hemp plants that are produced that
464	do not meet the requirements of the Nation's plan.
465	(c) Any test of a representative sample resulting in higher than the acceptable hemp THC
466	level shall be conclusive evidence that the lot represented by the sample is not in

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compliance with the Nation's plan.

 (1) Lots that do not test at or below the acceptable hemp THC level may not be further handled, processed, or enter the stream of commerce.

 (2) The Division shall ensure the lot is disposed of in accordance with the Nation's plan, the Controlled Substances Act and the DEA regulations.

 (3) The Division shall notify the USDA of its intent to dispose of non-conforming plants and verify disposal by submitting required documentation.

(d) Measurement of uncertainty must be estimated and reported with test results.

 (1) Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

## 508.9. Disposal of Noncompliant Plants

508.9-1. If the test results conclude that the THC levels exceed the acceptable hemp THC level, the lot represented by the sample shall be destroyed in accordance with this section.

 (a) In the event test results exceed the acceptable hemp THC level, that harvest must be segregated from other harvested lots and remain segregated.

(1) Leaf and floral material from the harvest of that lot must then be destroyed.

 (b) If a variety is designated as a prohibited variety, the Division shall require the producer to surrender without compensation the entire harvest and any unharvested crop, any live plants, and all germplasm of this variety to the Division for destruction by composting or burning.

508.9-2. Destruction

 (a) Subject to section 508.9-2(a)(1), the Division shall be responsible to dispose of all hemp that exceeds the acceptable hemp THC level in accordance with the Controlled Substances Act and DEA regulations.

 (1) The Division may, in its discretion, appoint an outside agent or agency, other than a producer, to carry out the destruction of noncompliant hemp hereunder.

(b) So long as in compliance with the Controlled Substances Act and DEA regulations, hemp may be destroyed by burning or by composting where it is made unusable and rendered indistinguishable from any other plant material.

(c) The Division shall promptly notify the USDA by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the definition of hemp in the Nation's plan and attach the records demonstrating the appropriate disposal of all those plants and materials in the lot from which the representative samples were taken.

(1) The notification shall include the test results from the representative samples.

## 508.10. Compliance

 508.10-1. *Inspections*. The Division shall conduct scheduled inspections of all producers and production sites at least once per growing season to verify that hemp is not being produced in violation of this law.

(a) In addition to scheduled inspections, the Division shall have authority to conduct random inspections of all producers and production sites at any time.

(b) Whether a scheduled or random inspection, the Division shall be granted unrestricted

510 access to the production sites. 511 508.10-2. Producers must maintain copies of all records and reports necessary to demonstrate compliance with the Nation's plan for a minimum of seven (7) years. 512 513 514 508.11. Enforcement 508.11-1. General. Violations with this law shall be subject to enforcement solely in accordance 515 516 with this section. 517 508.11-2. Negligent Violations. A producer that negligently violates the Nation's plan and/or this law shall not, as a result of that violation, be subject to any criminal enforcement action by the 518 519 Tribal, federal, state or local government. 520 (a) Negligent violations shall include, but not be limited to: (1) A failure to provide a legal description of land on which the producer produces 521 522 hemp: 523 (2) A failure to obtain a license from the Division to produce hemp; (3) The production of cannabis with a delta-9 tetrahydrocannabinol concentration 524 525 exceeding the acceptable hemp THC level. 526 (A) Cannabis produced with a delta-9 tetrahydrocannabinol concentration 527 of not more than 0.5 percent on a dry weight basis shall not be considered a 528 negligent violation if the producer made reasonable efforts to grow hemp. 529 (i) The cannabis plants and plant materials from such representative 530 samples must still be disposed of in accordance with section 508.9 531 of this law. 532 (b) If the Division finds that a negligent violation occurred, it shall establish a corrective action plan that includes, at a minimum: 533 (1) A plan to correct the violation; 534 535 (2) A reasonable date by which producers shall correct the negligent violation; and 536 (A) The Division shall be responsible to monitor producers under corrective 537 action plans for implementation and adherence thereto. 538 (3) A requirement that producers periodically report to the Division on their 539 compliance with the Nation's plan for a period of not less than the next two (2) years from the date of the negligent violation. 540 541 (c) Producers found to have negligently violated this law three (3) times within a five (5) year period shall be ineligible to produce hemp for a period of at least five (5) years from 542 543 the date of the third violation. 544 508.11-3. Violations Made with a Culpable Mental State Greater Than Negligence. 545 (a) If it determines that a producer violation was committed with a culpable mental state 546 greater than negligence, the Division shall immediately report the producer to the U.S. 547 Attorney General, USDA and the Nation's chief law enforcement officer or chief law 548 enforcement officer of the state charged with receiving such information. 508.11-4. Enforcement. 549 550 (a) Suspensions. 551 (1) The Division may suspend a license if it determines that the producer has: 552 (A) Engaged in conduct considered a violation of this law; or

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553	(B) Failed to comply with a corrective plan or other written order of the
554	Division relating to a negligent violation of this law.
555	(2) Producers whose licenses have been suspended shall be prohibited from:
556	(A) Absent written permission from the Division, handling or removing
557	hemp or cannabis from the location where hemp or other cannabis was
558	located at the time when the Division issued its notice of suspension; and
559	(B) Producing hemp during the period of suspension.
560	(3) A suspended license may be restored after a minimum waiting period of one
561	(1) year.
562	(A) Producers whose license have been suspended may be required to
563	comply with a corrective action plan before having their licenses restored.
564	(b) Immediate Revocation. The Division shall immediately revoke a license if it finds that
565	the producer:
566	(1) Plead guilty to, or is convicted of, any felony related to a controlled substance
567	or a violent/sex crime;
568	(2) Made materially false statements during the application process or to Division
569	representatives while in the process of monitoring or enforcing this law with a
570	culpable mental state greater than negligence;
571	(3) Was found to be growing cannabis exceeding the acceptable hemp THC level
572	with a culpable mental state greater than negligence; or
573	(4) Was found to have negligently violated this law three (3) times in a five (5)
574	year period.
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576	508.12. Appeals
577	508.12-1. Any person aggrieved by an action of the Division may appeal to the Judiciary in
578	accordance with governing laws of the Nation.
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580	End.
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# June 12, 2020, Legislative Operating Committee E-Poll Approval of the Oneida Election Board's Request for Emergency Amendments to the Election Law

E-POLL REQUEST: Approval of the Oneida Election Board's Request for Emergency Amendments to the Election...



Good Morning Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the Oneida Election Board's request for emergency amendments to the Election law.

#### **EXECUTIVE SUMMARY**

On June 11, 2020, the Legislative Operating Committee received a request from the Oneida Election Board to consider emergency amendments to the Election law. The request from the Oneida Election Board explained that the Election Board is currently planning for how to hold a safe General Election in July. The Election Board's safety plans include allowing voters to choose between typical indoor voting and outdoor, drive-through voting. Section 102.9-2 of the Election law requires elections to be held "in an Oneida Nation facility." With the possibility for outdoor, drive-through voting, the Election Board requests an emergency amendment to section 102.9-2 of the Election law to state, "Elections shall be held at an Oneida Nation facility(s) as determined by the Election Board."

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. The Election Board is requesting emergency amendments to the Election law because the amendment is necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendment is needed to protect the Reservation population against the public health crisis that is the COVID-19 pandemic. Allowing for the possibility of outdoor, drive-through voting to occur will help reduce any unnecessary contact between individuals which could spread COVID-19, while also ensuring that the 2020 General Election can occur without interruption. The General Election is tentatively scheduled for July 25, 2020. Therefore, the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the General Election could still occur on July 25, 2020. [1 O.C. 109.9-5].

The Election law is already on the Legislative Operating Committee's Active Files List, as the Legislative Operating Committee recently adopted emergency amendments to this law on May 13, 2020, through the adoption of resolution BC-05-13-20-H. Therefore, the Legislative Operating Committee does not need to add this request to its Active Files List, but needs to determine whether to pursue these emergency amendments.

An e-poll is necessary for this matter because Legislative Operating Committee meetings have been canceled due to the COVID-19 pandemic, and immediate action is required by the Legislative Operating

Committee to decide whether to pursue emergency amendments to the Election law prior to the July 25, 2020, General Election.

#### **REQUESTED ACTION**

Approve the Oneida Election Board's request for additional emergency amendments to the Election law to address section 102.9-2, and direct the Legislative Reference Office to begin preparing the emergency amendments to the Election law and corresponding materials.

### **DEADLINE FOR RESPONSE**

June 12, 2020 at 1:30 p.m.

All supporting documentation has been attached to this email for your convenience.



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

## **E-POLL RESULTS:**

The e-poll was approved by David P. Jordan, Jennifer Webster, Kirby Metoxen, and Daniel Guzman King. Ernest Stevens III did not provide a response to this e-poll.





## **Oneida Nation**

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



## AGENDA REQUEST FORM

1)	Request Date: June 11, 2020		
2)	Contact Person(s): Twylite Moore, Chairperson		
	Dept: Election Board		
	Phone Number: Email: twylitem@gmail.com		
3)	Agenda Title: Emergency Amendment to Election Law		
4)			
,	The Election Board is making plans for a safer General Election in July.  The plans include allowing voters to choose between typical indoor voting and outdoor, drive-through voting. Section 102.9-2 of the Election Law requires elections to be held "in an Oneida Nation facility." With the possibility for drive-through voting, the Board requests an emergency		
	List any supporting materials included and submitted with the Agenda Request Form		
	1)		
	2)		
5)	Please list any laws, policies or resolutions that might be affected:		
6)	Please list all other departments or person(s) you have brought your concern to: Consult with our assigned attorney from the Oneida Law Office.		
7)	Do you consider this request urgent?  Yes  No		
	If yes, please indicate why: The General Election is scheduled for July 25, 2020.		
	dersigned, have reviewed the attached materials, and understand that they are subject to action by slative Operating Committee.		
Signatur	re of Requester:		

Please send this form and all supporting materials to:

LOC@oneidanation.org

or

Legislative Operating Committee (LOC) P.O. Box 365

P.O. Box 365 Oneida, WI 54155 Phone 920-869-4376

## June 16, 2020, Legislative Operating Committee E-Poll Approval of the Election Law Emergency Amendments Adoption Packet

E-POLL REQUEST: Approval of the Election Law Emergency Amendments Adoption Packet



## **Good Morning Legislative Operating Committee,**

This e-mail serves as the e-poll for the approval of the Election law emergency amendments adoption packet.

#### **EXECUTIVE SUMMARY**

An emergency amendment to the Election law is being sought to address the impact of the COVID-19 pandemic on the 2020 General Election. The emergency amendment to the Election law will provide that elections shall be held *at* an Oneida Nation facility, as opposed to *in* an Oneida Nation facility, to allow for the potential use of outdoor, drive-through voting during the 2020 General Election. [1 O.C. 102.9-2].

In response to the outbreak of the COVID-19 pandemic, on March 12, 2020, in accordance with Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and provided the necessary authority should action need to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. [3 O.C. 302.8-1]. This declaration of a Public Health State of Emergency was extended by the Oneida Business Committee until July 12, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, and BC-06-10-20-A.

On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. On April 21, 2020, the COVID-19 Core Decision Making Team issued an "Updated Safer at Home" declaration which allowed for gaming and golf operations to resume. Then on May 19, 2020, a "Safer at Home Declaration, Amendment, Open for Business" declaration was issued which directs that individuals within the Oneida Reservation should continue to stay at home, businesses can re-open under certain safer business practices, and social distancing should be practiced by all persons. The COVID-19 Core Decision Making Team most recently issued a "Stay Safer at Home" declaration on June 10, 2020, which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.

The Oneida Business Committee is delegated the authority to temporarily enact emergency legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than

would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency amendments to the Election law are necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendments are needed to protect the Reservation population against the public health crisis that is the COVID-19 pandemic. Allowing for a member of the Nation to choose the option of outdoor, drive-through voting during the 2020 General Election will help reduce any unnecessary contact between individuals which could spread COVID-19, while also ensuring that the 2020 General Election can occur without interruption.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The 2020 General Election is tentatively scheduled for July 25, 2020. Therefore, the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the General Election could still occur on July 25, 2020, without violating the Election law.

An e-poll is necessary for this matter because Legislative Operating Committee meetings have been canceled due to the COVID-19 pandemic, and immediate action is required by the Legislative Operating Committee to approve the Election law emergency amendments adoption packet so it can submitted for inclusion on the June 24, 2020, Oneida Business Committee meeting agenda.

#### **REQUESTED ACTION**

Approve the Election law emergency amendments adoption packet and forward to the Oneida Business Committee for consideration.

#### **DEADLINE FOR RESPONSE**

June 16, 2020 at 1:30 p.m.

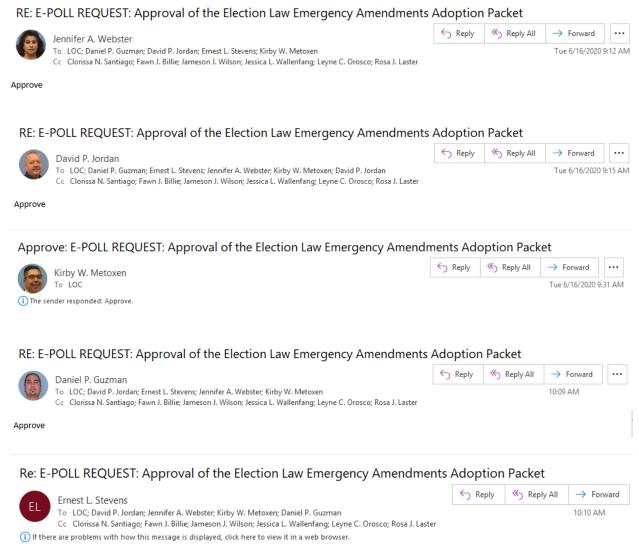
All supporting documentation has been attached to this email for your convenience.



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

## **E-POLL RESULTS:**

The e-poll was approved by Jennifer Webster, David P. Jordan, Kirby Metoxen, Daniel Guzman King, and Ernest Stevens III.



Approve



## Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson 🔯

DATE: June 24, 2020

RE: Election Law Emergency Amendments

Please find the following attached backup documentation for your consideration of the Election Law Emergency Amendments:

1. Resolution: Adoption of Additional Emergency Amendments to the Election Law

- 2. Statement of Effect: Adoption of Additional Emergency Amendments to the Election Law
- 3. Election Law Emergency Amendments Legislative Analysis
- 4. Election Law Emergency Amendments (Redline)
- 5. Election Law Emergency Amendments (Clean)

#### Overview

Emergency amendments to the Election law (the "Law") are being sought to address the impact of the COVID-19 pandemic on the Nation's 2020 General Election. The emergency amendments to the Law will provide that elections shall be held *at* an Oneida Nation facility, as opposed to *in* an Oneida Nation facility, to allow for outdoor, drive-through voting. [1 O.C. 102.9-2].

In response to the outbreak of the COVID-19 pandemic, on March 12, 2020, in accordance with Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and provided the necessary authority should action need to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. [3 O.C. 302.8-1]. This declaration of a Public Health State of Emergency was extended by the Oneida Business Committee until May 12, 2020, through the adoption resolution BC-03-28-20-A, then extended again until June 11, 2020, through the adoption of resolution BC-06-10-20-A.

On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. On April 21, 2020, the COVID-19 Core Decision Making Team issued an "Updated Safer at Home" declaration which allowed for gaming and golf operations to resume. Then on May 19, 2020, a "Safer at Home Declaration, Amendment, Open for Business" declaration was issued which directs that individuals within the Oneida Reservation should continue to stay at home, businesses can re-open under certain safer business practices, and social distancing should be practiced by all persons. The COVID-19 Core Decision Making Team most

recently issued a "Stay Safer at Home" declaration on June 10, 2020, which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.

The Oneida Business Committee is delegated the authority to temporarily enact emergency legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency amendments to the Election law are necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendments are needed to protect the Reservation population against the public health crisis that is the COVID-19 pandemic. Allowing for a member of the Nation to choose the option of outdoor, drive-through voting during the 2020 General Election will help reduce any unnecessary contact between individuals which could spread COVID-19, while also ensuring that the 2020 General Election can occur without interruption.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The 2020 General Election is tentatively scheduled for July 25, 2020. Therefore, the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the General Election could still occur on July 25, 2020, without violating the Election law.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months, or until the 2020 General Election has concluded, whichever is sooner. There will be one (1) opportunity to extend the emergency amendments for an additional six (6) months. [1 O.C. 109.9-5(b)].

## **Requested Action**

Approve the Resolution: Adoption of Additional Emergency Amendments to the Election Law



## **Oneida Nation**

Post Office Box 365

Phone: (920)869-2214

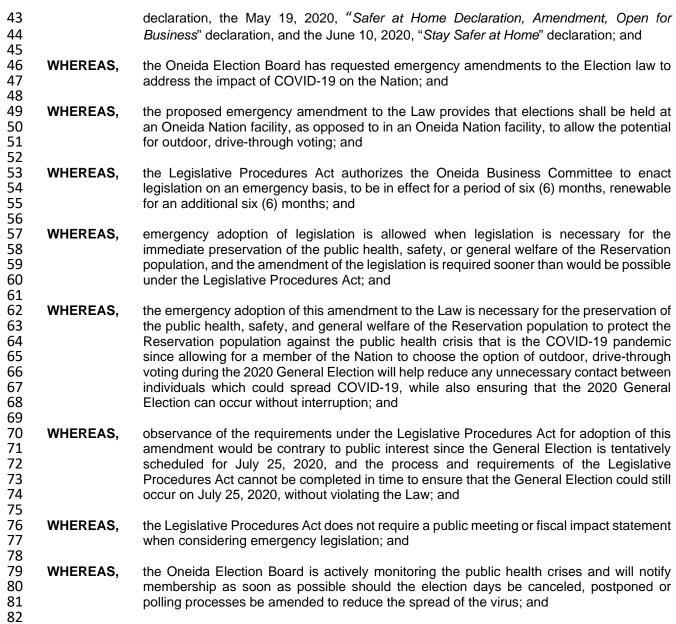


Oneida, WI 54155

## **BC** Resolution # Adoption of Additional Emergency Amendments to the Election Law

1 2 3	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
4	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 22 24 25 26 27 28 29 30 31 33 33 34 35 36 36 37 38 38 39 39 39 39 39 39 39 39 39 39 39 39 39	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
	WHEREAS,	the Election law ("the Law") was adopted by the General Tribal Council for the purpose of governing the procedures for the conduct of orderly elections of the Nation, and was most recently amended by the Oneida Business Committee on an emergency basis through the adoption of resolutions BC-03-17-20-B and BC-05-13-20-H; and
	WHEREAS,	the Law requires that elections shall be held in an Oneida Nation facility(s) as determined by the Oneida Election Board; and
	WHEREAS,	the federal government has proclaimed a public health emergency related to the spread of the COVID-19 virus and has identified that the spread of the virus has resulted in large numbers of individuals becoming ill and high mortality rates, impacts to the stock markets, and businesses; and
	WHEREAS,	state governors, including the State of Wisconsin, have declared public health emergencies and state public health officers have issued orders, for example, closing public schools, limiting public gatherings, and closing restaurants and bars except for take-out orders; and
	WHEREAS,	on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses; and
	WHEREAS,	the Nation's Public Health State of Emergency has since been extended until July 12, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, and BC-06-10-20-A; and
	WHEREAS,	on March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed; and
41 42	WHEREAS,	the COVID-19 Core Decision Making Team has issued subsequent declarations modifying the "Safer at Home" declaration including the April 21, 2020 "Updated Safer at Home"

**BC** Resolution



NOW THEREFORE BE IT RESOLVED, the Oneida Business Committee hereby adopts emergency amendments to the Election Law effective immediately for six (6) months from the date of adoption of this resolution, or until the 2020 General Election is concluded, whichever is sooner.

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## Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



#### **Statement of Effect**

Adoption of Additional Emergency Amendments to the Election Law

## **Summary**

This resolution adopts an emergency amendment to the Election law to provide that elections shall be held at an Oneida Nation facility, as opposed to in an Oneida Nation facility, to allow the potential for outdoor, drive-through voting to be utilized during the 2020 General Election.

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

Date: June 15, 2020

## Analysis by the Legislative Reference Office

This resolution adopts an emergency amendment to the Election law ("the Law"). The purpose of the Law is to govern the procedures for the conduct of orderly elections of the Nation. [1 O.C. 102.1-1]. The emergency amendment to the Law will provide that elections shall be held at an Oneida Nation facility, as opposed to in an Oneida Nation facility, to allow the potential for outdoor, drive-through voting to be utilized during the 2020 General Election. [1 O.C. 102.9-2].

The Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety or general welfare of the reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [1 O.C. 109.9-5].

The resolution provides various information on the COVID-19 pandemic that the world is now facing. This pandemic has resulted in many countries experiencing the effects of illness and health issues related to COVID-19, as well as vast economic impacts. On March 12, 2020, in accordance with Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a Public Health State of Emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. This declaration of a Public Health State of Emergency was extended by the Oneida Business Committee until July 12, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, and BC-06-10-20-A.

On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. On April 21, 2020, the COVID-19 Core Decision Making Team issued an "Updated Safer at Home" declaration which allowed for gaming and golf operations to resume. Then on May 19, 2020, a "Safer at Home Declaration, Amendment, Open for Business" declaration was issued which directs that individuals within the Oneida Reservation should continue to stay at home, businesses can re-open under certain safer business practices, and social

distancing should be practiced by all persons. The COVID-19 Core Decision Making Team most recently issued a "Stay Safer at Home" declaration on June 10, 2020, which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.

The resolution provides that the emergency amendment to this Law is necessary for the preservation of the public health, safety, and general welfare of the Reservation population. The emergency amendment is needed to protect the Reservation population against the public health crisis that is the COVID-19 pandemic. Allowing for a member of the Nation to choose the option of outdoor, drive-through voting during the 2020 General Election will help reduce any unnecessary contact between individuals which could spread COVID-19, while also ensuring that the 2020 General Election can occur without interruption.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this amendment would be contrary to public interest. The 2020 General Election is tentatively scheduled for July 25, 2020. [1 O.C. 102.12-1]. Therefore, the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the General Election could still occur on July 25, 2020, without violating the Election law.

The emergency amendment to the Law will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendments will remain effective for six (6) months, or until the 2020 General Election concludes, whichever is sooner. The LPA provides the possibility to extend the emergency amendments for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

### Conclusion

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





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## EMERGENCY AMENDMENTS TO ELECTION LAW LEGISLATIVE ANALYSIS

## **SECTION 1. EXECUTIVE SUMMARY**

Analysis by the Legislative Reference Office		
Intent of the	Provide that elections shall be held at an Oneida Nation facility, as opposed	
<b>Proposed Amendments</b>	to in an Oneida Nation facility, to allow for outdoor, drive-through voting.	
Purpose	To govern the procedures for the conduct of orderly elections of the Nation	
	[1 O.C. 102.1-1]	
Affected Entities	Oneida Election Board, Business Committee Support Office, Oneida	
Business Committee, Oneida Nation Judiciary, Oneida Gaming Commission		
Legal Resource Center, Oneida Land Claims Commission, Oneida Land		
	Commission, Oneida Nation Commission on Aging, Oneida Nation School	
	Board, Oneida Trust Enrollment Committee.	
Related Legislation	Boards, Committees, and Commissions law, Emergency Management and	
	Homeland Security law.	
<b>Public Meeting</b>	A public meeting is not required for emergency legislation [1 O.C. 109.8-	
	1(b) and 109.9-5(a)].	
Fiscal Impact	A fiscal impact statement is not required for emergency legislation [1 O.C.	
	109.9-5(a)].	
<b>Expiration of Emergency</b>	Emergency amendments expire six (6) months after adoption and may be	
Amendments	renewed for one additional six (6) month period.	

## SECTION 2. LEGISLATIVE DEVELOPMENT

- **A.** *Background*. The Election law was first adopted on June 19, 1993, and most recently amended on an emergency basis by the Oneida Business Committee on March 17, 2020, and then again on May 13, 2020. The Election law governs the procedures for the conduct of orderly elections of the Nation. [1 O.C. 102.1-1].
  - *March 17, 2020 Emergency Amendments*. The Election law was amended on an emergency basis through resolution BC-03-17-20-B in response to the COVID-19 pandemic for the purpose of:
    - Eliminating the caucus from the election process;
    - Requiring an individual to submit an application in order to have his or her name placed on a ballot for an election;
    - Eliminating the requirement for an individual to obtain at least ten (10) signatures of qualified voters when submitting an application to be placed on the ballot;
    - Requiring that all applications be submitted to the Business Committee Support Office by the close of business on April 24, 2020;
    - Eliminating referendums from the election process; and
    - Reducing the number of Oneida Election Board members who are required to sign the election totals on machine counted ballots.
  - *May 13, 2020 Emergency Amendments*. The Election law was amended on an emergency basis through resolution BC-05-13-20-H in response to the COVID-19 pandemic for the purpose of:

- Allowing the Election Board to cancel the primary election when large gatherings of people present a substantial risk to the health and safety of the Nation's citizens; and
   Clarifying that if a primary election is canceled then all eligible candidates shall be placed
  - Clarifying that if a primary election is canceled then all eligible candidates shall be placed on the ballot for the General Election.
  - **B.** *COVID-19 Pandemic*. The world is currently facing a pandemic of the coronavirus disease 2019 (COVID-19). The COVID-19 outbreak originated in Wuhan, China and has spread to many other countries throughout the world, including the United States. The COVID-19 pandemic has resulted in high rates of infection and mortality, as well as vast economic impacts including effects on the stock market and the closing of all non-essential businesses.
    - Declaration of a Public Health State of Emergency.

- On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared the Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority should action need to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
  - The Public Health State of Emergency was extended until May 12, 2020, by the Oneida Business Committee through the adoption of resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency."
  - The Public Health State of Emergency was then again extended by the Oneida Business Committee until June 11, 2020, through the adoption of resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until June 11, 2020,"
  - The Public Health State of Emergency was further extended until July 12, 2020, by the Oneida Business Committee through the adoption of resolution BC-06-10-20-A titled, "Extension of Declaration of Public Health State of Emergency Until July 12, 2020."
- Additional Action taken by the Nation in Response to COVID-19.
  - On March 17, 2020, the Oneida Business Committee adopted emergency amendments to the Emergency Management and Homeland Security law to create and delegate authority to a COVID-19 Core Decision Making Team ("COVID-19 Team"). [3 O.C. 302.10].
    - When a public health emergency has been declared, the COVID-19 Team has the authority to declare exceptions to the Nation's laws, policies, procedures, regulations, or standard operating procedures during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees. [3 O.C. 302.10-2].
    - These declarations remain in effect for the duration of the Public Health State of Emergency. [3 O.C. 302.10-3].
  - On March 24, 2020, the Nation's COVID-19 Team issued a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed.

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On April 21, 2020, the COVID-19 issued an "Updated Safer at Home" declaration 63 64 which allowed for gaming and golf operations to resume. On May 19, 2020, the COVID-19 Team issued a "Safer at Home Declaration, 65 Amendment, Open for Business" which directs that individuals within the Oneida 66 Reservation should continue to stay at home, businesses can re-open under certain 67 68 safer business practices, and social distancing should be practiced by all persons. 69 On June 10, 2020, the COVID-19 Team issued a "Stay Safer at Home" declaration which lessened the restrictions of the "Safer at Home Declaration, Amendment, 70 Open for Business" while still providing guidance and some restrictions. 71 On March 27, 2020, the Nation's COVID-19 Team issued a "Suspension of Public 72 Meetings under the Legislative Procedures Act" declaration which suspended the 73 74 Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative 75 76 process by submitting written comments, questions, data, or input on proposed legislation 77 to the Legislative Operating Committee via e-mail during the public comment period. On April 8, 2020, the Oneida Business Committee adopted resolution BC-04-08-20-C 78 79 titled, "Tier V Budget Contingency Declared for Remainder of Fiscal Year 2020," which 80 required a great reduction in expenses as a result of zero gaming revenues supporting governmental functions and included initial and on-going layoffs. 81 82 C. 2020 General Election. The Nation is required to hold a General Election every three (3) years in the 83 month of July. [Constitution and Bylaws of the Oneida Nation Article III, Section 5; 1 O.C. 102.9-1]. 84 Positions on the Ballot for the 2020 General Election. The 2020 General Election ballot would 85 include the following positions: Oneida Business Committee; 86 87 One (1) vacancy – Chairperson, three (3) year term. One (1) vacancy – Vice Chairperson, three (3) year term. 88 One (1) vacancy – Treasurer, three (3) year term. 89 One (1) vacancy – Secretary, three (3) year term. 90 91 Five (5) vacancies – Council Member, three (3) year term. 92 Oneida Election Board; 93 Three (3) vacancies – three (3) year term. 94 Oneida Gaming Commission; 95 One (1) vacancy – five (5) year term. 96 Legal Resource Center; 97 One (1) vacancy – Attorney, four (4) year term. One (1) vacancy – Advocate, four (4) year term. 98 99 Oneida Land Claims Commission; 100 Two (2) vacancies – three (3) year term. Oneida Land Commission; 101 102 Two (2) vacancies – three (3) year term. 103 Oneida Nation Commission on Aging; Three (3) vacancies – three (3) year term. 104 Oneida Nation School Board; 105 106 Three (3) vacancies – Parent, three (3) year term.

- Oneida Trust Enrollment Committee; and
   Two (2) vacancies three (3) year term.
   Oneida Judiciary.
  - Court of Appeals:

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- One (1) vacancy Appellate Court Chief Judge, six (6) year term.
- One (1) vacancy Appellate Court Judge, six (6) year term.
- Trial Court:
  - One (1) vacancy Trial Court Chief Judge, six (6) year term.
  - One (1) vacancy Trial Court Judge, six (6) year term.
- Originally, the caucus for the 2020 General Election was scheduled to be held on March 14, 2020, with the primary election to be held on May 16, 2020, and the General Election occurring on July 4, 2020. Upon cancelation of the caucus through the adoption of emergency amendments through BC-03-17-20-B, the primary election was rescheduled to May 23, 2020, and the 2020 General Election was rescheduled to July 25, 2020. The primary election was then canceled following the adoption of emergency amendments through BC-05-13-20-H.
- **D.** Request for Emergency Amendments. In response to the COVID-19 pandemic, emergency amendments to the Law are being sought by the Oneida Election Board to allow for outdoor, drive-through voting to occur by clarifying that an election shall take place at an Oneida Nation facility, and not in an Oneida Nation facility.

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

- A. Representatives from the following departments or entities participated in the development of this Lawand legislative analysis:
  - Oneida Law Office; and
  - Oneida Election Board.
- **B.** The following laws were reviewed in the drafting of this analysis:
  - Oneida Nation Constitution and Bylaws;
  - Emergency Management and Homeland Security law; and
- Boards, Committees, and Commissions law.

## **SECTION 4. PROCESS**

- **A.** These amendments are being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency law "where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the Reservation population and enactment or amendment of legislation is required sooner than would be possible under this law" [1 O.C. 109.9-5].
  - Emergency amendments are being pursued for the immediate preservation of the public health, safety, and general welfare of the Reservation population against the public health crisis that is the COVID-19 pandemic. Chairman Tehassi Hill declared a Public Health State of Emergency for the Nation on March 12, 2020. Allowing for the possibility of outdoor, drive-through voting to occur will help reduce any unnecessary contact between individuals which could spread COVID-19, while also ensuring that the 2020 General Election can occur without interruption.
  - Observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The 2020 General Election is tentatively

- scheduled for July 25, 2020. Therefore, the process and requirements of the Legislative Procedures
  Act cannot be completed in time to ensure that the General Election could still occur on July 25,
  2020, without violating the Election law.
  - **B.** Emergency amendments typically expire six (6) months after adoption, with one (1) opportunity for a six (6) month extension of the emergency amendments. [1 O.C. 109.9-5(b)]. The resolution for these emergency amendments provides that the amendment will expire in six (6) months or until the 2020 General Election is concluded, whichever is sooner.
  - **C.** The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact statement will eventually be required when considering permanent adoption of these amendments.
  - **D.** The Legislative Operating Committee decided to pursue these emergency amendments on June 12, 2020.

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

- **A.** *Location of the Election.* The proposed emergency amendment to the Election law provides that elections shall be held at an Oneida Nation facility(s) as determined by the Election Board. [1 O.C. 102.9-2]. Previously, the Election law provided that elections shall be held in an Oneida Nation facility(s) as determined by the Election Board.
  - Effect. The proposed emergency amendment would provide flexibility for the Oneida Election Board to utilize outdoor, drive-through voting in the parking lot of an Oneida Nation facility. Allowing for the option of outdoor, drive-through voting to occur will help reduce any unnecessary contact between individuals which could spread COVID-19, while also ensuring that the 2020 General Election can occur without interruption.

## **SECTION 6. EXISTING LEGISLATION**

- **A.** *Related Legislation*. The following laws of the Nation are related to the emergency amendments to this Law:
  - Boards, Committees, and Commissions law. The Boards, Committees, and Commission law governs boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1].
    - The Boards, Committees, and Commissions law provides that all elected positions shall be nominated at a caucus called by the Oneida Election Board, or petition for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment. [1 O.C. 105.8-1]. The Boards, Committees, and Commissions law then goes on to provide that all other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections. [1 O.C. 105.8-2].
    - In accordance with the Boards, Committees, and Commissions law, this Law shall govern the election process for the election of a member of an entity.
  - Emergency Management and Homeland Security law. The Emergency Management and Homeland Security law provides for the development and execution of plans for the protection of

residents, property, and the environment in an emergency or disaster; and provides for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; and establishes the use of the National Incident Management System; and designates authority and responsibilities for public health preparedness. [3 O.C. 302.1-1].

- The Emergency Management and Homeland Security law provides that the Oneida Business Committee shall be responsible for proclaiming or ratifying the existence of an emergency. [3 O.C. 302.8-1]. A public health emergency is defined as the occurrence or imminent threat of an illness or health condition which:
  - (1) is a quarantinable disease, or is believed to be caused by bioterrorism or a biological agent; and
  - (2) poses a high probability of any of the following:
    - (A) a large number of deaths or serious or long-term disability among humans; or
    - (B) widespread exposure to a biological, chemical, or radiological agent that creates a significant risk of substantial future harm to a large number of people. [3 O.C. 302.3-1(o)].
- Chairman Tehassi Hill's March 12, 2020, "Declaration of Public Health State of Emergency" and the subsequent extensions conform with the requirements of the Emergency Management and Homeland Security law.

## **SECTION 7. OTHER CONSIDERATIONS**

- **A.** *Deadline for Permanent Adoption of Amendments.* The emergency amendments will expire six (6) months after adoption or until the 2020 General Election is concluded, whichever is sooner. The emergency amendments may be renewed for an additional six (6) month period.
  - Conclusion: The Legislative Operating Committee will need to consider the development and adoption of permanent amendments to this Law within the next six (6) to twelve (12) months.
- **B.** Consideration of Additional Amendments. The Oneida Election Board will be actively monitoring the Public Health State of Emergency and will notify the membership of the Nation as soon as possible should the 2020 General Election day be canceled or postponed, or if the polling processes need to be amended to reduce the spread of COVID-19.
  - Conclusion: The Legislative Operating Committee may have to consider additional amendments
    to this Law if the 2020 General Election timeframe or procedure will be further impacted by the
    COVID-19 Public Health State of Emergency.
- **C.** Fiscal Impact. A fiscal impact statement is not required for emergency legislation.
  - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

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## Title 1. Government and Finances - Chapter 102 Onayote?a·ká· Tho Ni· Yót Tsi? ayethiyataláko Tsi? Kayanláhsla

People of the Standing Stone how it is we will appoint them the kind of laws we have **ELECTION** 

102.1.	Purpose and Policy	102.8. Registration of Voters
102.2.	Adoption, Amendment, Repeal	102.9. Election Process
102.3.	Definitions	102.10. Tabulating and Securing Ballots
102.4.	Election Board	102.11. Election Outcome and Ties
102.5.	Candidate Eligibility	102.12. Elections
102.6.	Selection of Candidates	102.13. Oneida Nation Constitution and By-law Amendments
102.7	Notice of Polling Places	

## 1 102.1. Purpose and Policy

2 102.1-1. It is the policy of the Nation that this law shall govern the procedures for the conduct of orderly elections of the Nation, including pre-election activities. Because of the desire for orderly

4 and easily understood elections, there has not been an allowance made for write-in candidates on

5 ballots.

102.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida Nation in the conduct of elections. It is intended to govern all procedures used in the election process.

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## 102.2. Adoption, Amendment, Repeal

- 11 102.2-1. This law was adopted by the Oneida General Tribal Council by resolution GTC 07-06-
- 98-A and amended by resolutions GTC-01-04-10-A, BC-02-25-15-C, GTC-04-23-17-A, BC-03-
- 13 17-20-B, and emergency amended by resolutions BC-03-17-20-B, BC-05-13-20-H-, and BC-

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- 15 102.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to
- the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding
- amendments to this law and policies adopted regarding implementation of this law are to be
- presented to the Business Committee who shall then adopt or forward action(s) to the General
- 19 Tribal Council for adoption.
- 20 102.2-3. 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
- 22 to have legal force without the invalid portions.
- 23 102.2-4. 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.
- 25 102.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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## 102.3. Definitions

- 102.3-1. 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.
- 30 102.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on
- 31 the Election Board during an election and until election results have been certified.
- 32 102.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for
- acceptance on a ballot.
- 34 102.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. 4:30 p.m., excluding
- 35 holidays of the Nation.
- 36 102.3-5. "Campaigning" shall mean all efforts designed to influence members of the Nation to
- 37 support or reject a particular candidate of the Nation including, without limitation, advertising,

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- rallying, public speaking, or other communications with members of the Nation.
- 39 102.3-6. "Candidate" shall mean an applicant for an elected position whose name is placed on the
- ballot by the Election Board after successful application.
- 41 102.3-7. "Clerk" shall mean the election official who identifies proper registration for the purpose
- 42 of determining voter eligibility.
- 43 102.3-8. "Close of business" shall mean 4:30 p.m. Monday through Friday.
- 102.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political
- or otherwise, in which a Nation elected official, employee, consultant, appointed or elected,
- 46 member of any board, committee or commission, or their immediate relatives, friends or
- associates, or any other person with whom they have contact, that conflicts with any right of the
- Nation to property, information, or any other right to own and operate its enterprises, free from
- 49 undisclosed competition or other violation of such rights of the Oneida Nation, or as defined in
- any law or policy of the Nation.
- 51 102.3-10. "Election" shall mean every primary and election.
- 52 102.3-11. "General election" shall mean the election held every three (3) years in July to elect the
- 53 Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the
- Business Committee and may include contests for elected boards, committees and commissions
- 55 positions.
- 56 102.3-12. "Judge" shall mean the election official who informs and advises the Chairperson of
- 57 discrepancies, complaints and controversy regarding voter eligibility.
- 58 102.3-13. "Judiciary" means the judicial system that was established by Oneida General Tribal
- 59 Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of
- 60 the Nation.
- 61 102.3-14. "Lot drawing" shall mean the equal chance method used to select a candidate as the
- winner of an elected position, in the case of a tie between two (2) or more candidates.
- 63 102.3-15. "Nation" means the Oneida Nation.
- 64 102.3-16. "Nation's newspaper" shall mean the Kalihwisaks, or any other newspaper operated by
- 65 the Nation for the benefit of transmitting news to members of the Nation, which is designated by
- the Election Board as a source for election related news.
- 67 102.3-17. "Oneida Police Officer" shall mean an enrolled member of the Oneida Nation who is a
- 68 police officer on any police force.
- 69 102.3-18. "Private property" shall mean any lot of land not owned by the Nation, a residential
- dwelling or a privately owned business within the boundaries of the Reservation.
- 71 102.3-19. "Prominent locations" shall mean the polling places, main doors of the Norbert Hill
- 72 Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida
- 73 Community Health Center, the SEOTS building and all One-Stop locations.
- 74 102.3-20. "Qualified voter" shall mean an enrolled member of the Nation who is eighteen (18)
- 75 years of age or older.
- 76 102.3-21. "Rejected Ballots" shall mean those ballots which are rejected by the vote tabulating
- 77 machine.
- 78 102.3-22. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise marred
- 79 and is not tabulated.
- 80 102.3-23. "Teller" shall mean the election official in charge of collecting and storing of all ballots.

## 83 102.4. Election Board

- 84 Section A. Establishment, Composition and Election
- 85 102.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this
- law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.
- 87 102.4-2. The Election Board shall consist of nine (9) elected members. All members shall be
- elected to terms of three (3) years, not to exceed two (2) consecutive terms.
- 89 102.4-3. *Recusal*. An Election Board member shall recuse himself/herself from participating as an
- 90 Election Board member in any pre-election, election day, or post-election activities while he or
- she is an applicant or candidate in any election or there is otherwise a conflict of interest.
- 92 102.4-4. Removal. Removal of members shall be pursuant to the Oneida Removal Law. A member
- 93 who is removed from the Election Board shall be ineligible to serve on the Board for three (3)
- years from the time he or she is removed from the Election Board.
- 95 102.4-5. Vacancies. Any vacancy in an unexpired term shall be filled by appointment by the
- 96 Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed
- 97 to correspond with the pre-election activities and the needs of the Election Board.
- 98 102.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.
- 99 102.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to
- 100 the Election Board, as recommended by the Election Board, to assist with election day and pre-
- 101 election activities.
- 102 102.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in
- the By-laws of the Election Board, to preside over the meetings. This selection shall be carried
- out at the first meeting of the Election Board following an election. The Chairperson shall then
- ask the Election Board to select a Vice-Chairperson and Secretary.

Section B. Duties of the Election Board

102.4-9. The Election Board shall have the following duties, along with other responsibilities listed throughout this law.

- (a) The Election Board shall be in charge of all registration and election procedures; and
- (b) Upon completion of an election, the Election Board shall make a final report on the election results as set out in this law.

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- Section C. Specific Duties of Officers and Election Board Members
- 102.4-10. Specific duties of the Chairperson and other Election Board members, in addition to being present at all Election Board meetings and assisting the handicapped through the voting process, are as set out herein:
  - (a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 102.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and Trust Enrollment Department personnel when their election day duties are complete; and shall post and report election results.
  - (b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.
- 124 (c) Secretary: Shall keep a record of the meetings and make them available to the Nation's Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.
  - (d) Clerks: Shall implement the requirements of identifying and registering all voters and

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determining voter eligibility. Clerks shall work in conjunction with the Trust Enrollment
Department personnel in the registration process, and assist the Chairperson as directed in
conducting the election. Clerks cannot be currently employed by the Trust Enrollment
Department.

- (e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as determined by this law. Shall assist the Chairperson in conducting the election.
- (f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between members of the Nation and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

141 Section D. Compensation Rates

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142 102.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee.

The Election Board shall have a budget, approved through the Nation's budgeting process.

145 102.4-12. The Trust Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

## 102.5. Candidate Eligibility

149 Section A. Requirements

102.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted bylaws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.

- 102.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:
  - (a) be an enrolled member of the Nation, as verified by membership rolls of the Nation.
  - (b) be a qualified voter on the day of the election.
  - (c) provide proof of physical residency as required for the position for which they have applied. Proof of residency may be through one (1) or more of the following:
    - (1) a valid Wisconsin driver's license;
    - (2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;
    - (3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.
- 102.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to election.
- 167 102.5-4. Applications shall be filed by presenting the information to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, by April 24,
- 169 2020. No mailed, internal Nation mail delivery, faxed or other delivery method shall be accepted.
- 170 102.5-5. The names of the candidates and the positions sought shall be a public record and made
- available to the public upon the determination of eligibility by the Election Board or the Board's
- designated agent.

- 174 Section B. Eligibility Review
- 175 102.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal.
- At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall
- select the hearing body. The hearing shall be held within two (2) business days of receipt of the
- appeal. The applicant shall be notified by phone of time and place of the hearing. The decision
- of the hearing body shall be sent via certified mail or hand delivery within two (2) business days
- of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the
- 181 Judiciary on an accelerated schedule.
- 182 102.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a position shall be notified by certified
- mail return receipt requested. The notice shall provide the following information:
  - (a) Position for which they were considered
  - (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
  - (c) A brief summary explaining why the applicant was found to be ineligible.
  - (d) That the applicant has two (2) business days from notification to make an appeal. Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal Nation mail, faxed or other delivery method will be accepted.

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Section C. Campaign Financing

102.5-8. Contributions:

- (a) Solicitation of Contributions by Candidates.
  - (1) Candidates shall only accept contributions from individuals who are members of the Nation or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.
  - (2) Candidates shall not solicit or accept contributions in any office or business/facility of the Nation.
- (b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.
- 102.5-9. Campaign Signs and Campaigning:
  - (a) Placement of campaign signs:
    - (1) Campaign signs shall not be posted or erected on any property of the Nation except for private property with the owner/tenant's permission.
    - (2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.
    - (3) No campaign sign shall project beyond the property line into the public right of way.
  - (b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.
  - (c) Employees of the Nation shall not engage in campaigning for offices of the Nation during work hours. The Nation's employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.

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- 218 (d) Enforcement. The Zoning Administrator shall cause to be removed any campaign signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.
  - (e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

### Section D. Candidate Withdrawal

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- 102.5-10. Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.
- 102.5-11. After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.
- 233 102.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.
- 236 102.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.
  - 102.5-14. Candidate Withdrawal After Winning an Election.
    - (a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.
    - (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

#### 2.6. Selection of Candidates

- 102.6-1. Any eligible member of the Nation may apply to be placed on a ballot according to the following procedures:
  - (a) Applicants shall use an official form as designated by this law which may be obtained in the Office of the Nation's Secretary.
  - (b) The form shall consist of information that satisfies the minimum requirements for eligible candidates, as descried in section 102.5-2 of this law.
  - (c) Applications shall be presented to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business on April 24, 2020. The location to drop-off applications shall be the Business Committee Support Office.
  - (d) The Nation's Secretary shall forward all applications to the Election Board Chairperson the next business day following the close of submissions.
- 102.6-2. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

## 263 102.7. Notice of Polling Places

- 102.7-1. The Election Board shall post a notice in the prominent locations, stating the location of
- the polling places and the time the polls will be open. This notice shall also be posted in an easily
- visible position, close to the entrance of the Nation's businesses/facilities.
- 267 102.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the
- election, and shall remain posted until the poll closes on the day of the election.
- 269 102.7-3. Except for a Special Election, notice for the election shall be mailed to all Nation
- members, stating the time and place of the election and a sample of the ballot, no less than ten (10)
- 271 calendar days prior to the election, through a mass mailing. The Trust Enrollment Department
- shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior
- to the requested mailing.
- 274 102.7-4. Notice of the election shall be placed in the Nation's newspaper.

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## 102.8. Registration of Voters

- 277 Section A. Requirements
- 278 102.8-1. Registration of Voters. All enrolled members of the Nation, who are eighteen (18) years
- of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the
- 280 Oneida Nation Constitution.

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- 282 Section B. Identification of Voters
- 102.8-2. All voters must present one of the following picture identifications in order to be able to vote:
- 285 (a) Oneida Nation I.D.
- (b) Drivers License.
  - (c) Other I.D. with name and photo.

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- 289 Section C. Registration Procedures
- 290 102.8-3. Voters shall physically register, on the day of the election, at the polls.
- 291 102.8-4. Trust Enrollment Department personnel shall be responsible for verifying enrollment
- 292 with the Nation. Conduct of Trust Enrollment Department personnel is governed by the Election
- 293 Officials during the voting period.
- 294 102.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration
- Form containing the voter's following information:
  - (a) name and maiden name (if any);
    - (b) current address;
    - (c) date of birth; and
    - (d) enrollment number.

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- 301 Section D. Qualification/Verification of Voter Eligibility
- 302 102.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote,
- 303 the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with
- 304 the Trust Enrollment Department personnel who are registering voters, to decide the voting
- member's eligibility currently being questioned and shall make such decisions from the facts
- 306 available, whether the applicant is, in fact, qualified/verifiable under the Oneida Nation
- 307 Constitution, Article III Section 2, to vote in the Nation's elections.

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- 102.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of the voter shall be written next to a numbered list which corresponds to the numbered and sealed envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box
- 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they
   desire to challenge the decision made by the Election Officials. The Election Board shall make a
- final decision, within five (5) business days of receiving the appeal and shall report this decision

in the final report sent to the Oneida Business Committee.

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#### 102.9. Election Process

- 318 Section A. Polling Places and Times
- 102.9-1. In accordance with Article III, Section 5 of the Oneida Nation Constitution, elections shall be held in the month of July on a date set by the General Tribal Council. The General Tribal
- 321 Council shall set the election date at the January annual meeting, or at the first GTC meeting held
- during a given year. Special Elections shall be set in accordance with 102.12-6.
- 323 102.9-2. Elections shall be held <u>inat</u> an Oneida Nation facility(s) as determined by the Election Board.
- 102.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line to vote at 7:00 p.m. shall be allowed to vote.
  - (a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four
  - (4) members of the Nation verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.
- 102.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, and until the counting of ballots is completed, and tentative results posted.
- 102.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such that there is an area with at least two sides and a back enclosure.
- 102.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of the voting area, excluding private property.
- 337 102.9-7. No one causing a disturbance shall be allowed in the voting area.
- 102.9-8. Election Board members may restrict the voting area to qualified voters only. This restriction is in the interest of maintaining security of the ballots and voting process.

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- 341 Section B. Ballot Box
- 342 102.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and shall be locked until counting at the close of polls. Provided that, with electronic ballot counting, the ballots may be placed within the ballot counting machine as they are received.

- 346 Section C. Spoiled Ballots
- 347 102.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.
- 348 102.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials
- and placed in an envelope marked as "Spoiled Ballots."
- 350 102.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15)
- 351 calendar days following finalization of any challenge of the election, at the Records Management
- 352 Department.

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- Section D. Rejected Ballots
- 102.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.
- 356 (a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 102.9-10 through 102.9-12.
  - (b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

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# 102.10. Tabulating and Securing Ballots

- 366 Section A. Machine Counted Ballots
- 102.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.
- 102.10-2. At least three (3) Election Board members shall sign the election totals, which shall include the tape signed by the members of the Nation before the polls were opened per section 102.9-3(a).

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- 373 Section B. Manually Counted Ballots
- 374 102.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.
- 376 102.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall
- be secured in a sealed container for transportation to the ballot counting location. The sealed
- 378 ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election
- 379 Officials for counting/tallying of ballots.
- 380 102.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and
- witnessed/monitored by an Oneida Police Officer.
- 102.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.

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- 385 Section C. Securing Ballots
- 386 102.10-7. The Judges shall place together all ballots counted and secure them together so that they
- cannot be untied or tampered with without breaking the seal. The secured ballots, and the election
- totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container in such a manner that the container cannot be opened without breaking the seals or locks, or
- in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The Oneida Police Officer shall then deliver, on the day of the election,
- the sealed container to the Records Management Department for retaining.

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#### 102.11. Election Outcome and Ties

- 394 Section A. Election Results Announcement
- 395 102.11-1. The tentative results of an election shall be announced and posted by the Election Board
- 396 within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain
- 397 the following statement:

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"The election results posted here are tentative results. Final election results are forwarded by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"

102.11-2. The Election Board shall post, in the prominent locations, and publish in the Nation's newspaper, the tentative results of an election.

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- 102.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to determine the outcome of an election, the Election Board shall conduct an automatic recount of the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.
- 102.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.
  - (a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.
  - (b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.
  - (c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

Section C. Recount Procedures

- 102.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the office of the Nation's Secretary, or noticed designated agent, within five (5) business days after the election. Requests shall be limited to one (1) request per candidate. The Nation's Secretary shall contact
- 436 the Election Board Chairperson by the next business day after the request for recounts. 437
- 102.11-6. The Election Board shall respond by the close of business on the fifth (5<sup>th</sup>) day after the 438 request regarding the results of the recount. Provided that, no recount request need be honored 439
- 440 where there have been two (2) recounts completed as a result of a request either as a recount of the 441 whole election results, or of that sub-section.
- 442 102.11-7. All recounts shall be conducted manually with, if possible, the original Election

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- Officials and Oneida Police Officer present, regardless of the original type of counting process.
- Manual recounts may, at the discretion of the Election Officials, be of the total election results, or
- of the challenged sub-section of the election results.
- 446 102.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed
- container with the ballots from the Records Management Department and transporting it to the
- 448 ballot recounting location.

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- 102.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three
- 450 (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election
- Board Chairperson and an Oneida Police Officer shall witness the recount.
- 452 102.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be
- counted until two (2) final tallies are equal in back to back counting and the total count of ballots
- reconciles with the total count from the ballot counting machine. Sub-sections of candidates may be recounted in lieu of a full recount.
  - (a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.
  - (b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

Section D. Challenges and Declaration of Results

- 102.11-11. Challenges. Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.
  - (a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.
  - (b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.
- 102.11-12. *The Final Report*. The Election Board shall forward a Final Report to the Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:
  - (a) Total number of persons voting.
  - (b) Total votes cast for each candidate by subsection of the ballot.
  - (c) List of any ties and final results of those ties, including the method of resolution.
  - (d) List of candidates elected and position elected to.
  - (e) Number of spoiled ballots.
  - (f) Cost of the election, including the compensation paid to each Election Board member.
- 102.11-13. *Declaration of Results*. The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.

- 102.11-14. Candidates elected to the Business Committee shall resign from any salaried position 488 489 effective prior to taking a Business Committee oath of office
- 490 102.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the 491 492 official results of an election are declared by the Business Committee.
  - (a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.
  - (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.
  - 102.11-16. The Election Board shall send notice to the Records Management Department to destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

#### **102.12.** Elections

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- Section A. Primary Elections; Business Committee
- 102.12-1. When to Hold a Primary Election. A primary election for Business Committee positions is required to be held on a Saturday at least sixty (60) calendar days prior to the election whenever there are three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-large council member positions.
  - (a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.
  - (b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.
  - (c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.
- 102.12-2. Cancelation of a Primary Election. A primary election for Business Committee positions may be canceled in the following circumstances:
  - (a) The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary.
  - (b) The Election Board may cancel the primary election when large gatherings of people present a substantial risk to the health and safety of the Nation's citizens.
    - (1) In the event the Election Board cancels the primary election, all candidates that are determined eligible according to section 102.5 and are not made ineligible under section 102.6-2 shall be placed on the ballot for the general election.
- 102.12-4. In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for notifying the Oneida public in section 102.5-11 and 102.5-12 shall be followed, including the requirement to print a notice in the Nation's newspaper if timelines allow.
- 530 Section B. Special Elections
- 531 102.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as defined in this law, may be placed on the same ballot as the subject matter of an election. 532

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- 533 102.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business
- Committee as recommended by the Election Board or as ordered by the Judiciary in connection
- with an election challenge.
- 536 102.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent
- 537 locations, and placed in the Nation's newspaper not less than ten (10) calendar days prior to the
- 538 Special Election.
- 539 102.12-8. In the event of an emergency, the Election Board may reschedule the election, provided
- that no less than twenty-four (24) hours notice of the rescheduled election date is given to the
- voters, by posting notices in the prominent locations.

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- 543 Section C. Initiation of Special Elections
- 544 102.12-9. Special Elections may be initiated by a request or directive of the General Tribal Council
- or the Oneida Business Committee.
- 546 102.12-10. Special Election may be requested by a member of the Nation to the Business
- 547 Committee or General Tribal Council.
- 548 102.12-11. All Special Elections shall follow rules established for all other elections. This includes
- positions for all Boards, Committees and Commissions.

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#### 102.13. Oneida Nation Constitution and By-law Amendments

- 102.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition of qualified voters. The requirements for the Oneida Business Committee's initiation of Constitutional amendments are as provided in the Constitution and as further detailed in the supporting standard operating procedures which the Oneida Business Committee shall adopt. Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting a petition to the Office of the Nation's Secretary which includes the full text of the proposed amendments and signatures that are equal in number to at least ten percent (10%) of all members qualified to vote.
  - (a) Qualified voters may request a petition form from the Office of the Nation's Secretary.
  - (b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall direct the Trust Enrollment Department to calculate the number of signatures currently required for a petition submittal, which shall be ten percent (10%) of all members qualified to vote on the date the petition form is requested from the Office of the Nation's Secretary. When the Nation's Secretary receives the calculation from the Trust Enrollment Department, the Nation's Secretary shall provide the requester with the petition form and the number of signatures that are currently required.
  - (c) Such petitions shall be circulated with all supporting materials and submitted a minimum of ninety (90) days prior to the election at which the proposed amendment is to be voted upon. If a petition includes supporting materials in addition to the petition form, each qualified voter signing the petition shall also acknowledge that the supporting materials were available for review at the time he or she signed the petition by initialing where required on the petition form.
  - (d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment Department for verification of signatures and to the Election Board to provide notice that the petition may need to be placed on an upcoming ballot.

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- (e) If the petition is verified by the Trust Enrollment Department to contain signatures from at least ten percent (10%) of all qualified voters, the Election Board shall make an official announcement of the proposed amendments to the Oneida Nation Constitution at least sixty (60) days prior to the election at which the proposed amendments are to be voted on.
- 102.13-2. The Election Board shall place any proposed amendments to the Oneida Nation Constitution that meet the requirements contained in 102.13-1 on the ballot at the next general election. Provided that, the Oneida Business Committee or General Tribal Council may order a special election be held to consider the proposed amendments. In such circumstances, the Election Board shall place any proposed amendments to the Oneida Nation Constitution on the ballot at the next special election.
- 588 102.13-3. The Election Board shall publish any proposed amendments by publishing a sample ballot no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust 589 Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty 590 (20) calendar days prior to the requested mailing. Copies of such publications shall be prominently 591 592 posted in each polling place and at administrative offices of the Nation and shall also be published 593 in official Oneida media outlets, which the Oneida Business Committee shall identify by resolution. For the purposes of this section, Oneida administrative offices means the location 594 where the Oneida Business Committee conducts business. 595
- 102.13-4. The Election Board shall ensure that the ballot contains a statement of the purpose of the proposed amendments prepared by the Oneida Law Office. The Oneida Law Office shall ensure that the statement of purpose is one hundred (100) words or less exclusive of caption, is a true and impartial statement and is written in such a manner that does not create prejudice for or against the proposed amendment.
  - 102.13-5. Pursuant to Article VI, Section 3 of the Oneida Nation Constitution, proposed amendments that are approved by sixty-five percent (65%) of the qualified voters that vote on that amendment shall become part of the Constitution and By-laws, and shall abrogate or amend existing provisions of the Constitution and By-laws at the end of thirty (30) days after submission of the final election report.
    - 102.13-6. If two (2) or more amendments approved by the voters at the same election conflict, the amendment receiving the highest affirmation vote prevails.

#### End.

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Adopted - June 19, 1993

- 614 Amended June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)
- Presented for Adoption of 1997 Revisions GTC-7-6-98-A
- Amended- October 11, 2008 (General Tribal Council Meeting)
- 617 Amended-GTC-01-04-10-A
- 618 Amended BC-02-25-15-C
- 619 Amended GTC-04-23-17-A
- 620 Emergency Amended BC-03-17-20-B
- **621** Emergency Amended BC-05-13-20-H
- 622 Emergency Amended BC- - -

# Title 1. Government and Finances - Chapter 102 Onayote<sup>9</sup>a·ká· Tho Ni· Yót Tsi<sup>9</sup> ayethiyataláko Tsi<sup>9</sup> Kayanláhsla

People of the Standing Stone how it is we will appoint them the kind of laws we have **ELECTION** 

102.1.	Purpose and Policy	102.8.	Registration of Voters
102.2.	Adoption, Amendment, Repeal	102.9.	Election Process
102.3.	Definitions	102.10.	Tabulating and Securing Ballots
102.4.	Election Board	102.11.	Election Outcome and Ties
102.5.	Candidate Eligibility	102.12.	Elections
102.6.	Selection of Candidates	102.13.	Oneida Nation Constitution and By-law Amendments
102.7	Notice of Polling Places		

## 1 102.1. Purpose and Policy

- 2 102.1-1. It is the policy of the Nation that this law shall govern the procedures for the conduct of
- 3 orderly elections of the Nation, including pre-election activities. Because of the desire for orderly
- 4 and easily understood elections, there has not been an allowance made for write-in candidates on
- 5 ballots.
- 102.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida Nation in the conduct of elections. It is intended to govern all procedures used in the election process.

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# 102.2. Adoption, Amendment, Repeal

- 11 102.2-1. This law was adopted by the Oneida General Tribal Council by resolution GTC 07-06-
- 12 98-A and amended by resolutions GTC-01-04-10-A, BC-02-25-15-C, GTC-04-23-17-A, and
- emergency amended by resolutions BC-03-17-20-B, BC-05-13-20-H, and BC-\_\_-\_\_.
- 14 102.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to
- 15 the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding
- amendments to this law and policies adopted regarding implementation of this law are to be
- presented to the Business Committee who shall then adopt or forward action(s) to the General
- 18 Tribal Council for adoption.
- 19 102.2-3. 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
- 21 to have legal force without the invalid portions.
- 22 102.2-4. In the event of a conflict between a provision of this law and a provision of another law,
- 23 the provisions of this law shall control.
- 24 102.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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#### 102.3. Definitions

- 27 102.3-1. 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.
- 102.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.
- 31 102.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for
- 32 acceptance on a ballot.
- 33 102.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. 4:30 p.m., excluding
- 34 holidays of the Nation.
- 35 102.3-5. "Campaigning" shall mean all efforts designed to influence members of the Nation to
- 36 support or reject a particular candidate of the Nation including, without limitation, advertising,
- 37 rallying, public speaking, or other communications with members of the Nation.

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- 38 102.3-6. "Candidate" shall mean an applicant for an elected position whose name is placed on the
- 39 ballot by the Election Board after successful application.
- 40 102.3-7. "Clerk" shall mean the election official who identifies proper registration for the purpose
- 41 of determining voter eligibility.
- 42 102.3-8. "Close of business" shall mean 4:30 p.m. Monday through Friday.
- 43 102.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political
- or otherwise, in which a Nation elected official, employee, consultant, appointed or elected,
- 45 member of any board, committee or commission, or their immediate relatives, friends or
- associates, or any other person with whom they have contact, that conflicts with any right of the
- Nation to property, information, or any other right to own and operate its enterprises, free from
- 48 undisclosed competition or other violation of such rights of the Oneida Nation, or as defined in
- any law or policy of the Nation.
- 50 102.3-10. "Election" shall mean every primary and election.
- 51 102.3-11. "General election" shall mean the election held every three (3) years in July to elect the
- 52 Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the
- Business Committee and may include contests for elected boards, committees and commissions
- 54 positions.
- 55 102.3-12. "Judge" shall mean the election official who informs and advises the Chairperson of
- discrepancies, complaints and controversy regarding voter eligibility.
- 57 102.3-13. "Judiciary" means the judicial system that was established by Oneida General Tribal
- 58 Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of
- 59 the Nation.
- 60 102.3-14. "Lot drawing" shall mean the equal chance method used to select a candidate as the
- winner of an elected position, in the case of a tie between two (2) or more candidates.
- 62 102.3-15. "Nation" means the Oneida Nation.
- 63 102.3-16. "Nation's newspaper" shall mean the Kalihwisaks, or any other newspaper operated by
- the Nation for the benefit of transmitting news to members of the Nation, which is designated by
- the Election Board as a source for election related news.
- 66 102.3-17. "Oneida Police Officer" shall mean an enrolled member of the Oneida Nation who is a
- 67 police officer on any police force.
- 68 102.3-18. "Private property" shall mean any lot of land not owned by the Nation, a residential
- dwelling or a privately owned business within the boundaries of the Reservation.
- 70 102.3-19. "Prominent locations" shall mean the polling places, main doors of the Norbert Hill
- 71 Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida
- 72 Community Health Center, the SEOTS building and all One-Stop locations.
- 73 102.3-20. "Qualified voter" shall mean an enrolled member of the Nation who is eighteen (18)
- years of age or older.
- 75 102.3-21. "Rejected Ballots" shall mean those ballots which are rejected by the vote tabulating
- 76 machine.
- 77 102.3-22. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise marred
- and is not tabulated.
- 79 102.3-23. "Teller" shall mean the election official in charge of collecting and storing of all ballots.

- 83 Section A. Establishment, Composition and Election
- 102.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this
- law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.
- 86 102.4-2. The Election Board shall consist of nine (9) elected members. All members shall be
- elected to terms of three (3) years, not to exceed two (2) consecutive terms.
- 88 102.4-3. *Recusal*. An Election Board member shall recuse himself/herself from participating as an
- 89 Election Board member in any pre-election, election day, or post-election activities while he or
- she is an applicant or candidate in any election or there is otherwise a conflict of interest.
- 91 102.4-4. *Removal*. Removal of members shall be pursuant to the Oneida Removal Law. A member
- 92 who is removed from the Election Board shall be ineligible to serve on the Board for three (3)
- years from the time he or she is removed from the Election Board.
- 94 102.4-5. Vacancies. Any vacancy in an unexpired term shall be filled by appointment by the
- 95 Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed
- to correspond with the pre-election activities and the needs of the Election Board.
- 97 102.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.
- 98 102.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to
- the Election Board, as recommended by the Election Board, to assist with election day and preelection activities.
- 101 102.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in
- the By-laws of the Election Board, to preside over the meetings. This selection shall be carried
- out at the first meeting of the Election Board following an election. The Chairperson shall then
- ask the Election Board to select a Vice-Chairperson and Secretary.

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Section B. Duties of the Election Board

102.4-9. The Election Board shall have the following duties, along with other responsibilities listed throughout this law.

- (a) The Election Board shall be in charge of all registration and election procedures; and
- (b) Upon completion of an election, the Election Board shall make a final report on the election results as set out in this law.

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Section C. Specific Duties of Officers and Election Board Members

- 102.4-10. Specific duties of the Chairperson and other Election Board members, in addition to being present at all Election Board meetings and assisting the handicapped through the voting process, are as set out herein:
  - (a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 102.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and Trust Enrollment Department personnel when their election day duties are complete; and shall post and report election results.
  - (b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.
- 123 (c) Secretary: Shall keep a record of the meetings and make them available to the Nation's Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.
  - (d) Clerks: Shall implement the requirements of identifying and registering all voters and determining voter eligibility. Clerks shall work in conjunction with the Trust Enrollment

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- Department personnel in the registration process, and assist the Chairperson as directed in conducting the election. Clerks cannot be currently employed by the Trust Enrollment Department.
  - (e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as determined by this law. Shall assist the Chairperson in conducting the election.
  - (f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between members of the Nation and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

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- Section D. Compensation Rates
- 141 102.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee.
- The Election Board shall have a budget, approved through the Nation's budgeting process.
  - 102.4-12. The Trust Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

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#### 102.5. Candidate Eligibility

- 148 Section A. Requirements
- 102.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted bylaws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.
  - 102.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:
    - (a) be an enrolled member of the Nation, as verified by membership rolls of the Nation.
    - (b) be a qualified voter on the day of the election.
    - (c) provide proof of physical residency as required for the position for which they have applied. Proof of residency may be through one (1) or more of the following:
      - (1) a valid Wisconsin driver's license;
      - (2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;
      - (3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.
  - 102.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to election.
- 102.5-4. Applications shall be filed by presenting the information to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, by April 24, 2020. No mailed, internal Nation mail delivery, faxed or other delivery method shall be accepted.
- 169 102.5-5. The names of the candidates and the positions sought shall be a public record and made
- available to the public upon the determination of eligibility by the Election Board or the Board's designated agent.

- 173 Section B. Eligibility Review
- 174 102.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal.
- At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall
- select the hearing body. The hearing shall be held within two (2) business days of receipt of the
- appeal. The applicant shall be notified by phone of time and place of the hearing. The decision
- of the hearing body shall be sent via certified mail or hand delivery within two (2) business days
- of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the
- 180 Judiciary on an accelerated schedule.
- 181 102.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a position shall be notified by certified mail return receipt requested. The notice shall provide the following information:
  - (a) Position for which they were considered
  - (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
  - (c) A brief summary explaining why the applicant was found to be ineligible.
  - (d) That the applicant has two (2) business days from notification to make an appeal. Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal Nation mail, faxed or other delivery method will be accepted.

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Section C. Campaign Financing

102.5-8. Contributions:

- (a) Solicitation of Contributions by Candidates.
  - (1) Candidates shall only accept contributions from individuals who are members of the Nation or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.
  - (2) Candidates shall not solicit or accept contributions in any office or business/facility of the Nation.
- (b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee. 102.5-9. Campaign Signs and Campaigning:
  - (a) Placement of campaign signs:
    - (1) Campaign signs shall not be posted or erected on any property of the Nation except for private property with the owner/tenant's permission.
    - (2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.
    - (3) No campaign sign shall project beyond the property line into the public right of way.
  - (b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.
  - (c) Employees of the Nation shall not engage in campaigning for offices of the Nation during work hours. The Nation's employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.
  - (d) Enforcement. The Zoning Administrator shall cause to be removed any campaign

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- signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.
  - (e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

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- Section D. Candidate Withdrawal
- 102.5-10. Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.
- 102.5-11. After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.
- 102.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.
- 102.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.
- 239 102.5-14. Candidate Withdrawal After Winning an Election.
  - (a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.
  - (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

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#### 2.6. Selection of Candidates

- 102.6-1. Any eligible member of the Nation may apply to be placed on a ballot according to the following procedures:
  - (a) Applicants shall use an official form as designated by this law which may be obtained in the Office of the Nation's Secretary.
  - (b) The form shall consist of information that satisfies the minimum requirements for eligible candidates, as descried in section 102.5-2 of this law.
  - (c) Applications shall be presented to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business on April 24, 2020. The location to drop-off applications shall be the Business Committee Support Office.
  - (d) The Nation's Secretary shall forward all applications to the Election Board Chairperson the next business day following the close of submissions.
- 102.6-2. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

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#### **102.7.** Notice of Polling Places

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- 263 102.7-1. The Election Board shall post a notice in the prominent locations, stating the location of
- 264 the polling places and the time the polls will be open. This notice shall also be posted in an easily
- visible position, close to the entrance of the Nation's businesses/facilities.
- 266 102.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the
- election, and shall remain posted until the poll closes on the day of the election.
- 268 102.7-3. Except for a Special Election, notice for the election shall be mailed to all Nation
- members, stating the time and place of the election and a sample of the ballot, no less than ten (10)
- 270 calendar days prior to the election, through a mass mailing. The Trust Enrollment Department
- shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior
- to the requested mailing.
- 273 102.7-4. Notice of the election shall be placed in the Nation's newspaper.

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## **102.8.** Registration of Voters

- 276 Section A. Requirements
- 277 102.8-1. Registration of Voters. All enrolled members of the Nation, who are eighteen (18) years
- of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the
- 279 Oneida Nation Constitution.

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- 281 Section B. Identification of Voters
- 102.8-2. All voters must present one of the following picture identifications in order to be able to vote:
  - (a) Oneida Nation I.D.
    - (b) Drivers License.
    - (c) Other I.D. with name and photo.

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- 288 Section C. Registration Procedures
- 289 102.8-3. Voters shall physically register, on the day of the election, at the polls.
- 290 102.8-4. Trust Enrollment Department personnel shall be responsible for verifying enrollment
- with the Nation. Conduct of Trust Enrollment Department personnel is governed by the Election
- 292 Officials during the voting period.
- 293 102.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration
- Form containing the voter's following information:
- 295 (a) name and maiden name (if any);
- 296 (b) current address;
  - (c) date of birth; and
  - (d) enrollment number.

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- 300 Section D. Qualification/Verification of Voter Eligibility
- 301 102.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote,
- the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with
- 303 the Trust Enrollment Department personnel who are registering voters, to decide the voting
- member's eligibility currently being questioned and shall make such decisions from the facts
- 305 available, whether the applicant is, in fact, qualified/verifiable under the Oneida Nation
- 306 Constitution, Article III Section 2, to vote in the Nation's elections.
- 307 102.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be

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placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of

- 309 the voter shall be written next to a numbered list which corresponds to the numbered and sealed
- envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box
- 311 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they
- desire to challenge the decision made by the Election Officials. The Election Board shall make a
- final decision, within five (5) business days of receiving the appeal and shall report this decision
- in the final report sent to the Oneida Business Committee.

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#### 102.9. Election Process

- 317 Section A. Polling Places and Times
- 318 102.9-1. In accordance with Article III, Section 5 of the Oneida Nation Constitution, elections
- shall be held in the month of July on a date set by the General Tribal Council. The General Tribal
- 320 Council shall set the election date at the January annual meeting, or at the first GTC meeting held
- during a given year. Special Elections shall be set in accordance with 102.12-6.
- 102.9-2. Elections shall be held at an Oneida Nation facility(s) as determined by the Election Board.
- 102.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line to vote at 7:00 p.m. shall be allowed to vote.
  - (a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four
  - (4) members of the Nation verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.
- 102.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, and until the counting of ballots is completed, and tentative results posted.
- 332 102.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such
- that there is an area with at least two sides and a back enclosure.
- 102.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of
- 335 the voting area, excluding private property.
- 336 102.9-7. No one causing a disturbance shall be allowed in the voting area.
- 337 102.9-8. Election Board members may restrict the voting area to qualified voters only. This
- restriction is in the interest of maintaining security of the ballots and voting process.

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- 340 Section B. Ballot Box
- 341 102.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and
- shall be locked until counting at the close of polls. Provided that, with electronic ballot counting,
- 343 the ballots may be placed within the ballot counting machine as they are received.

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- 345 Section C. Spoiled Ballots
- 346 102.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.
- 347 102.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials
- and placed in an envelope marked as "Spoiled Ballots."
- 349 102.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15)
- 350 calendar days following finalization of any challenge of the election, at the Records Management
- 351 Department.

353 Section D. Rejected Ballots

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- 354 102.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.
- 355 (a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 102.9-10 through 102.9-12.
  - (b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

## 102.10. Tabulating and Securing Ballots

- 365 Section A. Machine Counted Ballots
- 102.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.
- 102.10-2. At least three (3) Election Board members shall sign the election totals, which shall include the tape signed by the members of the Nation before the polls were opened per section 102.9-3(a).
- 372 Section B. Manually Counted Ballots
- 373 102.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.
- 375 102.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall
- be secured in a sealed container for transportation to the ballot counting location. The sealed
- ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election Officials for counting/tallying of ballots.
- 102.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and witnessed/monitored by an Oneida Police Officer.
- 102.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.
- 384 Section C. Securing Ballots
- 385 102.10-7. The Judges shall place together all ballots counted and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots, and the election totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The Oneida Police Officer shall then deliver, on the day of the election, the sealed container to the Records Management Department for retaining.

#### 102.11. Election Outcome and Ties

- 393 Section A. Election Results Announcement
- 394 102.11-1. The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain
- 396 the following statement:
- 397 "The election results posted here are tentative results. Final election results are forwarded

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by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"

102.11-2. The Election Board shall post, in the prominent locations, and publish in the Nation's newspaper, the tentative results of an election.

404 Section B. Tie

- 102.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to determine the outcome of an election, the Election Board shall conduct an automatic recount of the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.
- 102.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.
  - (a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.
  - (b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.
  - (c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

Section C. Recount Procedures

- 102.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the office of the Nation's Secretary, or noticed designated agent, within five (5) business days after the election.
- Requests shall be limited to one (1) request per candidate. The Nation's Secretary shall contact the Election Board Chairperson by the next business day after the request for recounts.
- 437 102.11-6. The Election Board shall respond by the close of business on the fifth (5<sup>th</sup>) day after the
- request regarding the results of the recount. Provided that, no recount request need be honored
- where there have been two (2) recounts completed as a result of a request either as a recount of the
- 440 whole election results, or of that sub-section.
- 441 102.11-7. All recounts shall be conducted manually with, if possible, the original Election
- Officials and Oneida Police Officer present, regardless of the original type of counting process.

- Manual recounts may, at the discretion of the Election Officials, be of the total election results, or
- of the challenged sub-section of the election results.
- 102.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed
- container with the ballots from the Records Management Department and transporting it to the
- 447 ballot recounting location.

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- 102.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three
- 449 (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election
- Board Chairperson and an Oneida Police Officer shall witness the recount.
- 102.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be
- counted until two (2) final tallies are equal in back to back counting and the total count of ballots
- reconciles with the total count from the ballot counting machine. Sub-sections of candidates may be recounted in lieu of a full recount.
  - (a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.
  - (b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

Section D. Challenges and Declaration of Results

- 102.11-11. Challenges. Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.
  - (a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.
  - (b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.
- 102.11-12. *The Final Report*. The Election Board shall forward a Final Report to the Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:
  - (a) Total number of persons voting.
  - (b) Total votes cast for each candidate by subsection of the ballot.
  - (c) List of any ties and final results of those ties, including the method of resolution.
  - (d) List of candidates elected and position elected to.
  - (e) Number of spoiled ballots.
  - (f) Cost of the election, including the compensation paid to each Election Board member.
- 484 102.11-13. *Declaration of Results*. The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.
- 487 102.11-14. Candidates elected to the Business Committee shall resign from any salaried position

- 488 effective prior to taking a Business Committee oath of office
- 102.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the
- official results of an election are declared by the Business Committee.
  - (a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.
  - (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.
  - 102.11-16. The Election Board shall send notice to the Records Management Department to destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

#### **102.12.** Elections

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- Section A. Primary Elections; Business Committee
- 102.12-1. When to Hold a Primary Election. A primary election for Business Committee positions is required to be held on a Saturday at least sixty (60) calendar days prior to the election whenever there are three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-large council member positions.
  - (a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.
  - (b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.
  - (c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.
- 102.12-2. *Cancelation of a Primary Election*. A primary election for Business Committee positions may be canceled in the following circumstances:
  - (a) The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary.
  - (b) The Election Board may cancel the primary election when large gatherings of people present a substantial risk to the health and safety of the Nation's citizens.
    - (1) In the event the Election Board cancels the primary election, all candidates that are determined eligible according to section 102.5 and are not made ineligible under section 102.6-2 shall be placed on the ballot for the general election.
- 102.12-4. In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for notifying the Oneida public in section 102.5-11 and 102.5-12 shall be followed, including the requirement to print a notice in the Nation's newspaper if timelines allow.
- 529 Section B. Special Elections
- 530 102.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as
- defined in this law, may be placed on the same ballot as the subject matter of an election.
- 532 102.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business

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- 533 Committee as recommended by the Election Board or as ordered by the Judiciary in connection
- with an election challenge.
- 535 102.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent
- locations, and placed in the Nation's newspaper not less than ten (10) calendar days prior to the
- 537 Special Election.
- 538 102.12-8. In the event of an emergency, the Election Board may reschedule the election, provided
- that no less than twenty-four (24) hours notice of the rescheduled election date is given to the
- voters, by posting notices in the prominent locations.

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- Section C. Initiation of Special Elections
- 543 102.12-9. Special Elections may be initiated by a request or directive of the General Tribal Council
- or the Oneida Business Committee.
- 545 102.12-10. Special Election may be requested by a member of the Nation to the Business
- 546 Committee or General Tribal Council.
- 547 102.12-11. All Special Elections shall follow rules established for all other elections. This includes
- 548 positions for all Boards, Committees and Commissions.

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#### 102.13. Oneida Nation Constitution and By-law Amendments

- 102.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition of qualified voters. The requirements for the Oneida Business Committee's initiation of Constitutional amendments are as provided in the Constitution and as further detailed in the supporting standard operating procedures which the Oneida Business Committee shall adopt. Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting a petition to the Office of the Nation's Secretary which includes the full text of the proposed amendments and signatures that are equal in number to at least ten percent (10%) of all members qualified to vote.
  - (a) Qualified voters may request a petition form from the Office of the Nation's Secretary.
  - (b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall direct the Trust Enrollment Department to calculate the number of signatures currently required for a petition submittal, which shall be ten percent (10%) of all members qualified to vote on the date the petition form is requested from the Office of the Nation's Secretary. When the Nation's Secretary receives the calculation from the Trust Enrollment Department, the Nation's Secretary shall provide the requester with the petition form and the number of signatures that are currently required.
  - (c) Such petitions shall be circulated with all supporting materials and submitted a minimum of ninety (90) days prior to the election at which the proposed amendment is to be voted upon. If a petition includes supporting materials in addition to the petition form, each qualified voter signing the petition shall also acknowledge that the supporting materials were available for review at the time he or she signed the petition by initialing where required on the petition form.
  - (d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment Department for verification of signatures and to the Election Board to provide notice that the petition may need to be placed on an upcoming ballot.
  - (e) If the petition is verified by the Trust Enrollment Department to contain signatures from

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at least ten percent (10%) of all qualified voters, the Election Board shall make an official announcement of the proposed amendments to the Oneida Nation Constitution at least sixty (60) days prior to the election at which the proposed amendments are to be voted on.

102.13-2. The Election Board shall place any proposed amendments to the Oneida Nation Constitution that meet the requirements contained in 102.13-1 on the ballot at the next general election. Provided that, the Oneida Business Committee or General Tribal Council may order a special election be held to consider the proposed amendments. In such circumstances, the Election Board shall place any proposed amendments to the Oneida Nation Constitution on the ballot at the next special election.

102.13-3. The Election Board shall publish any proposed amendments by publishing a sample ballot no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing. Copies of such publications shall be prominently posted in each polling place and at administrative offices of the Nation and shall also be published in official Oneida media outlets, which the Oneida Business Committee shall identify by resolution. For the purposes of this section, Oneida administrative offices means the location where the Oneida Business Committee conducts business.

102.13-4. The Election Board shall ensure that the ballot contains a statement of the purpose of the proposed amendments prepared by the Oneida Law Office. The Oneida Law Office shall ensure that the statement of purpose is one hundred (100) words or less exclusive of caption, is a true and impartial statement and is written in such a manner that does not create prejudice for or against the proposed amendment.

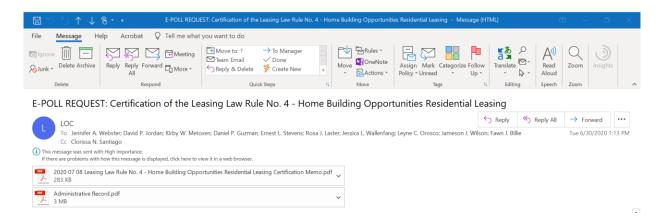
102.13-5. Pursuant to Article VI, Section 3 of the Oneida Nation Constitution, proposed amendments that are approved by sixty-five percent (65%) of the qualified voters that vote on that amendment shall become part of the Constitution and By-laws, and shall abrogate or amend existing provisions of the Constitution and By-laws at the end of thirty (30) days after submission of the final election report.

102.13-6. If two (2) or more amendments approved by the voters at the same election conflict, the amendment receiving the highest affirmation vote prevails.

End.

- Adopted June 19, 1993
- Amended June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)
- Presented for Adoption of 1997 Revisions GTC-7-6-98-A
- Amended- October 11, 2008 (General Tribal Council Meeting)
- 616 Amended-GTC-01-04-10-A
- 617 Amended BC-02-25-15-C
- 618 Amended GTC-04-23-17-A
- 619 Emergency Amended BC-03-17-20-B
- 620 Emergency Amended BC-05-13-20-H
- 621 Emergency Amended BC- - -

# June 30, 2020 Legislative Operating Committee E-Poll Certification of the Leasing Law Rule No. 4 – Home Building Opportunities Residential Leasing



## Good Afternoon Legislative Operating Committee,

This e-mail serves as the e-poll for the certification of the Leasing Law Rule No. 4 - Home Building Opportunities Residential Leasing. Please note: Due to issues with my remote software capabilities, you will have to respond with a written "approval" "denial" or "abstention".

#### **EXECUTIVE SUMMARY**

On June 23, 2020 the Comprehensive Housing Division submitted a certification packet to the Legislative Reference Office for Leasing law Rule No. 4 - Home Building Opportunities Residential Leasing (the "Rule"), seeking certification of the Rule from the Legislative Operating Committee in accordance with the Nation's Administrative Rulemaking law.

The Legislative Reference Office has since reviewed the certification packet and concluded, as set forth in the attached certification memo, that:

- The certification packet provided by the Comprehensive Housing Division contained all documentation required by the Administrative Rulemaking law for a complete administrative record;
- The promulgation of the Rule complied with the procedural requirements contained in the Administrative Rulemaking law; and
- The Rule did not exceed the rulemaking authority granted under the law for which the Rule is being promulgated.

The Leasing law Rule No. 4 - Home Building Opportunities Residential Leasing expands upon the language set forth in the Leasing law and other residential leasing rules promulgated thereunder with respect to the process for applying, selecting and entering into a Home Building Opportunity Residential Lease through the Comprehensive Housing Division. An e-poll is necessary for this

matter because Legislative Operating Committee meetings have been canceled due to the COVID-19 pandemic, and immediate action is required by the Legislative Operating Committee to certify the Rule so that it can be placed on the July 8, 2020 Oneida Business Committee meeting agenda for adoption.

## REQUESTED ACTION

Certify the Leasing law Rule No. 4 - Home Building Opportunities Residential Leasing and forward on to the Oneida Business Committee for consideration of the Rule's adoption during its July 8, 2020 meeting.

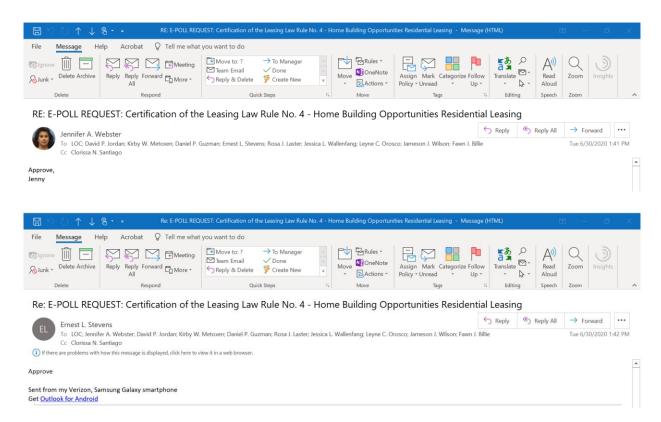
#### **DEADLINE FOR RESPONSE**

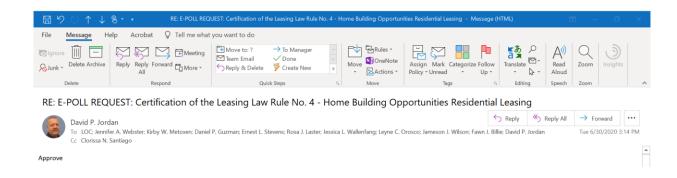
## June 30, 2020 at 3:30 p.m.

All supporting documentation has been attached to this email for your convenience.

#### **E-POLL RESULTS:**

The e-poll was approved by Jennifer Webster, Ernest Stevens III and David P. Jordan. Kirby Metoxen and Daniel Guzman King did not respond.









# Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



TO: Legislative Operating Committee (LOC)

FROM: Kristen M. Hooker, Legislative Reference Office Staff Attorney

DATE: June 29, 2020

RE: Certification of Leasing law Rule No. 4 – Home Building Opportunities Residential

Leasing

The Legislative Reference Office has reviewed the certification packet provided by the Oneida Comprehensive Housing Division for the Leasing law Rule No. 4 – Home Building Opportunities Residential Leasing ("the Rule"). This Rule supplements the Leasing law, as well as other laws and rules of the Nation governing the application, selection and entrance of a Home Building Opportunity Residential Lease through the Comprehensive Housing Division.

The Rule would become effective within ten (10) business days following its adoption by the Oneida Business Committee.

#### **Administrative Record**

The certification packet contains all documentation required by the Administrative Rulemaking law for a complete administrative record. The certification packet contains:

- Memorandum from the Comprehensive Housing Division's Residential and Finance Area Manager, Lisa Rauschenbach, containing the Rule's procedural timeline;
- Final draft of the Rule;
- Memorandum from the Department of Public Works Director, Jacque Boyle, approving the Rule;
- Minutes from the Oneida Land Commission, approving the Rule;
- Summary Report;
- Financial analysis showing a financial impact of sixty thousand dollars (\$60,000);
- Statement of Effect;
- Public meeting notice as it appeared in the Kalihwisaks;
- Public meeting sign-in sheet;
- Transcript from the public meeting;
- Memorandum reviewing and considering the public comments that were submitted on the Rule; and
- An additional draft of the Rule considered at the public meeting was not provided because no changes were made from the public meeting Rule to the final draft of the Rule.

#### **Procedural Requirements**

The certification packet demonstrates that the promulgation of the Rule complies with the procedural requirements contained in the Administrative Rulemaking law.

In accordance with the Administrative Rulemaking law:

- A public meeting notice for the Rule was published in the Kalihwisaks and on the Oneida Register on December 19, 2019;
- A public meeting for the Rule was held on January 9, 2020;
- The public comment period was held open until January 17, 2020;
- Written comments received during the public meeting comment period were reviewed and considered on February 10, 2020;
- The Oneida Land Commission approved the Rule on February 10, 2020.

#### **Rulemaking Authority**

The Leasing law delegates authority to the Oneida Land Commission and Land Management to jointly develop rules related to obtaining a residential, agricultural or business lease. [6 O.C. 602.5-1]. The Leasing law defines "Land Management" as "the Division of Land Management or other entity responsible for entering into leases of tribal land", and thus, includes the Comprehensive Housing Division as an entity with delegated rulemaking authority. [6 O.C. 602.3-1(i)]. The Rule did not exceed the rulemaking authority granted under the law for which the Rule is being promulgated.

#### **Conclusion**

Promulgation of the Leasing law Rule No. 4 – Home Building Opportunities Residential Leasing complies with all requirements of the Administrative Rulemaking law.



# **Comprehensive Housing Division**



TO:

Legislative Operating Committee

FROM:

Lisa Rauschenbach, Residential & Finance Area Manager

DATE:

June 23, 2020

SUBJECT:

Request for Certification of Procedural Compliance

Leasing Law #4, Home Building Opportunities

The Comprehensive Housing Division (CHD) and the Oneida Land Commission are exercising their joint rulemaking authority to implement a new Rule for Home Building Opportunities.

There were 11 people in attendance at the public meeting and written comments were submitted by 3. (attached). There have been no revisions to the draft presented for public meeting.

Rulemaking Timeline					
Required Action	<b>Date Completed</b>				
Public Meeting notice for the rule is posted in the Kaliwisaks and					
on the Oneida Register	December 19, 2019				
Public Meeting held	January 9, 2020				
Public Comment Period closed	January 17, 2020				

The following attachments are included for your review:

- 1. Leasing Law Rule No. 4 Home Building Opportunities
- 2. Department of Public Works Director Approval Memo
- 3. Oneida Land Commission Minutes approving Rule
- 4. Summary Report
- 5. Financial Analysis
- 6. Statement of Effect
- 7. Copy of Public Meeting Published in the Kaliwisaks December 19, 2019, issue page 39
- 8. Sign in sheet from the January 9, 2020 Public Meeting
- 9. Public meeting transcription and comments from the January 9, 2020 meeting.

Following certification and the Oneida Business Committee adoption, this rule shall become effective in ten (10) business days.



# Title 6. Property and Land – Chapter 602 LEASING Rule #4 – Home Building Opportunities Residential Leasing

- 1.1 Purpose and Authority
- 1.2 Adoption, Amendment and Repeal
- 1.3 Definitions
- 1.4 HBO Residential Lease Eligibility
- 1.5 Eligible Homes for Building or Transfer
- 1.6 HBO Advertising and Application
- 1.7 Entering an HBO Residential Lease

# 1.1 Purpose and Authority

- 1.1-1. *Purpose*. The purpose for this rule is to provide a transparent process that expands upon the Leasing Law and the general Residential Leasing Rule for the application, selection and entrance of a Home Building Opportunity (HBO) Residential Lease through the Comprehensive Housing Division.
- 1.1-2. Authority. The Leasing Law in section 602.5-1 delegates rulemaking authority to the Comprehensive Housing Division and the Oneida Land Commission pursuant to the Administrative Rulemaking law.

# 1.2. Adoption, Amendment and Repeal

- 1.2-1. This rule was adopted by the Comprehensive Housing Division and the Oneida Land Commission in accordance with the procedures of the Administrative Rulemaking law.
- 1.2-2. This rule may be amended or repealed by the Comprehensive Housing Division and the Oneida Land Commission and/or the Oneida Business Committee pursuant to the procedures set out in the Administrative Rulemaking law.
- 1.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.
- 1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule shall control.
- 1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to Home Building Opportunity (HBO) residential leasing.

#### 1.3. Definitions

- 1.3-1. This section shall govern the definitions of words and phrases used within this rule. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Builder's Contract" means an agreement between the residential lessee and a contractor that outlines the construction work to be done to build the improvements upon the HBO lot.
  - (b) "Business Day" means Monday through Friday from 8:00 a.m. to 4:30 p.m, excluding holidays recognized by the Nation.

- (c) "Formal Loan Commitment" means a letter from a lender stating that the applicant has met all of the qualifications for receiving a loan, and that the lender promises to lend a specific amount of money to the borrower.
- (d) "Manufactured Home" means a prefabricated housing that is largely assembles in factories and then transported to sites for use.
- (e) "Modular Home" means a prefabricated housing that consists of repeated sections called modules where the modules are constructed away from the building site and then assembled at the intended site.
- (f) "Stick-Build Home" means a housing constructed entirely or largely on site; that is built on the site which it is intended to occupy upon its completion rather than in a factory or similar facility.

# 1.4. HBO Residential Lease Eligibility

- 1.4-1. In addition to meeting the eligibility requirements of the Residential Leasing Rule and the Leasing Law, to be eligible for a residential lease through the Home Building Opportunities program, the applicant must meet the following additional requirements:
  - (a) Show preapproval or available financing for a minimum of \$100,000.00, unless Oneida Land Commission approval is received for preapproval or available financing for less than \$100,000.00; or
    - (1) Aside from a preapproval from a financial institution, acceptable forms to demonstrate available financing include, but are not limited to, the following:
      - (A) A letter from a financial institution demonstrating available liquid assets; or
      - (B) Proof of listing for residential sale with documentation that the home is owned outright without any existing liens or a copy of any/all mortgage and/or lien statements dated within thirty (30) calendar days of the HBO application.
  - (b) Proof of an available and compliant home to move to the proposed leased premises based on the requirements and assessments of applicable laws and tribal departments including but not limiting to the Oneida Zoning and Shoreland Protection Ordinance and the Building Code.

#### 1.5. Eligible Homes for Building or Transferring

- 1.5-1. Any home built or transferred to the residential lease site must be affixed to a permanent foundation (stick build, manufactured, and modular homes are acceptable so long as they are affixed to permanent foundation) and:
  - (a) Meet the following size requirements:
    - (1) For a one (1) to four (4) person family five hundred seventy square feet (570 sq. ft.);
    - (2) For a five (5) to seven (7) person family eight hundred fifty square feet (850 sq. ft.); and
    - (3) For a family of eight (8) or more one thousand twenty square feet (1,020 sq. ft.).
  - (b) Meet the requirements of all applicable laws and/or restrictive covenants including but not limiting to the Oneida Zoning and Shoreland Protection Ordinance and the Building Code.

# 1.6. HBO Advertising and Application

- 1.6-1. Advertising. All available HBO lots shall be advertised by CHD a minimum of once quarterly in Kalihwisaks and on available social media and shall be permanently posted on CHD's website. HBO lots that are newly available shall be advertised for a minimum of thirty (30) calendar days prior to applications for an HBO residential lease being accepted by CHD. The CHD loan officers shall be the point of contact for any parties interested in applying for an HBO lot.
  - (a) Advertisement listings shall include, at a minimum, the following:
    - (1) Lot acreage;
    - (2) Fee or trust status;
    - (3) Information on available infrastructure (i.e. well and septic/sewer and water);
    - (4) Address (if available);
    - (5) Ariel photo and notice that survey information is available upon request;
    - (6) Any known permits required (i.e. culvert permit, driveway permit);
    - (7) Notice that showings are available upon request and by appointment with a loan officer;
    - (8) Notice that applicants can submit applications for multiple lots/addresses, provided that a separate complete application is required for each lot/address;
    - (9) Dates and times applications will be accepted; and
    - (10) Date and time of scheduled lottery drawing for the premium application period.
  - (b) Following applicant selection, CHD shall remove all selected lots from its website.
  - (c) Any lots remaining available following two (2) years of advertisements shall be placed on a Land Commission agenda for possible re-evaluation of the land's designated use.
- 1.6-2. Premium Application Period and Selection. Once a quarter, following the quarterly HBO advertising, CHD shall accept applications for a two (2) business day period, referenced as the premium application period. During the premium application period, time of application submittal does not matter.
  - (a) All HBO applications submitted must be submitted in the envelope provided by CHD and must state on the outside of the sealed envelope only the address/lot for which the applicant is applying no other personally identifying information may be included on the outside of the sealed envelope.
  - (b) All application envelopes received by CHD during the premium application period shall be stapled with a raffle ticket with the corresponding raffle ticket placed into the drawing bin.
  - (c) If there are multiple applications received for the same lot/address during the premium application period, all such applications shall be placed into a lottery, with applicant selection based on the order assigned in the lottery drawing.
  - (d) Premium period applicants may attend the lottery drawing and order assignment, but need not attend the lottery drawing to be assigned an ordering number.
  - (e) In order to be selected, the applicant must meet all eligibility requirements and, if multiple applications are received for the same lot/address, must also be the applicant with the lowest assigned lottery number for the lot/address in question.

- 1.6-3. Standard Application Period and Selection. Following the premium application period, applications for any remaining lots may be submitted to the CHD front desk. The standard application period shall last from the date following the premium application period until the next quarter's premium application period begins.
  - (a) All HBO applications submitted must be submitted in the envelope provided by CHD and must state on the outside of the sealed envelope only the address/lot for which the applicant is applying no other personally identifying information may be included on the outside of the sealed envelope.
  - (b) All applications submitted during the standard application period shall be date and time stamped by CHD staff.
  - (c) In order to be selected during the standard application period, the applicant must meet all eligibility requirements and must also be the applicant with the earliest date and time stamped application for the lot/address in question.
- 1.6-4. *Notice to Applicants*. CHD shall notice all HBO residential lease applicants of whether they are selected for the lot/address applied for. If the applicant is not selected for the lot/address they applied for, the notice shall inform the applicant of any remaining HBO lots/addresses available.

#### 1.7. Entering an HBO Residential Lease

- 1.7-1. Residential Leasing Specialist. Following selection of the HBO residential lease applicant, the CHD Residential Leasing Specialist shall be the customer's point of contact for the remainder of HBO residential leasing process.
- 1.7-2. Residential Lease Timeline. The selected applicant has ten (10) business days from the date of the selection notice to enter an HBO residential lease by scheduling an appointment with the CHD Residential Leasing Specialist. If the HBO lot is for trust land, then within seven (7) calendar days from the date the lease is signed, the Residential Leasing Specialist shall provide both the lessee and the financial institution with a receipt stating the date the lease was sent for recording with the BIA.
- 1.7-3. Noncompliance with the Residential Lease Timeline. If an HBO residential lease is not entered within the prescribed timeframe, the applicant will be deemed noncompliant and ineligible. CHD will notice the next eligible applicant of their selection for said lot/address until an applicant successfully enters an HBO residential lease within the prescribed timeline. Any fees, permits or other costs paid by an applicant who is not successful in entering the lease or enters a lease and thereafter wishes to cancel the lease without building on the site are forfeited to the Comprehensive Housing Division.
- 1.7-4. Builder's Contract. Within thirty (30) calendar days from the date the residential lease is signed, the lessee shall submit both to CHD and, if financing, the financial institution, a copy of their signed builder's contract, which meets the requirements contained in section 1.5 hereof and any applicable laws, ordinances, codes.
- 1.7-5. Formal Loan Commitment. Within thirty (30) calendar days from the due date of the builder's contract, the lessee shall submit to CHD a copy of a formal loan commitment from their financial institution. In the event the formal loan commitment expires before the residential lease is recorded with the BIA, should the lot be trust land, then the lessee shall submit a new formal loan commitment within thirty (30) calendar days of the expiration date in order to ensure a continued ability to secure financing.

- 1.7-6. Owner Occupied. Unless otherwise approved by the CHD Residential and Finance Area Manager, all HBO lots must be ready to be owner occupied within two (2) years from the date the residential lease is signed.
- 1.7-7. Enforcement. Failure to comply with the timelines provided in this section shall be deemed a breach of the HBO residential lease and may result in termination of the residential lease. In the event the residential lease is terminated for noncompliance herewith, all costs and fees paid by the lessee along with any non-movable property affixed to the lot shall be forfeited to CHD.

End.

Original effective date: [add effective date established by authorized entity] (Certified by LOC on )

# Division of Public Works Administration



To:

**Legislative Operating Committee** 

From:

Jacque Boyle, Public Works Director

Date:

June 11, 2020

Re:

Leasing Rule

I approve of Leasing Rule #4 - Home Building Opportunities, which is presented in this packet and includes all supporting documentation. This is a new rule that specifically identifies the requirements to qualify for a Home Building Residential Lease.



# Oneida Land Commission

## Regular Meeting 5:00 p.m. Monday, February 10, 2020 Little Bear Conference Room

#### **Minutes**

**REGULAR MEETING** 

Present: Chair Rae Skenandore, Vice-Chair Rebecca Webster, Secretary Michael Mousseau,

Commissioners: Julie Barton, Sherrole Benton, Patricia Cornelius;

Not Present: Commissioners: Donald McLester;

Others Present: Joanie Buckley, Carla Clark, Louis Cottrell, Aliskwet Ellis, Lori Elm, Jennifer Garcia, Michelle Hill, Jeff House, Sheila Huntington, Melissa Johnson, Trish King, Dana McLester, James Petitjean, Lisa Rauschenbach, Nicole Rommel, Frank Vandehei, Charles Wheelock, Diane Wilson;

#### I. CALL TO ORDER AND ROLL CALL

Meeting called to order by Chair Rae Skenandore at 5:00 p.m.

Sherrole Benton arrived at 5:04 p.m.

#### II. ADOPT THE AGENDA

Motion by Michael Mousseau to approve the agenda with the addition of VIII. H. Reforestation, VIII. I. Naming Process SOP, VIII. J. Phase II Report, seconded by Patricia Cornelius. Motion carried unanimously:

Ayes:

Julie Barton, Sherrole Benton, Patricia Cornelius, Michael Mousseau,

Rebecca Webster

Not Present:

**Donald McLester** 

#### III. CITATION HEARINGS

No action taken.

#### IV. TASK LIST

No action taken.

#### V. READING OF MINUTES

#### A. Approve January 27, 2020 Regular Meeting Minutes

Motion by Michael Mousseau to approve the January 27, 2020 Regular Meeting Minutes, seconded by Patricia Cornelius. Motion carried unanimously:

Ayes:

Julie Barton, Sherrole Benton, Patricia Cornelius, Michael Mousseau,

Rebecca Webster

Not Present:

Donald McLester

#### VI. TABLED BUSINESS

A. Review NY Lands Update - Patrick Pelky

#### VII. OLD BUSINESS - NONE

#### VIII. NEW BUSINESS

#### A. Approve Sanitary Sewer Easement Agreement - HB-737-1

Motion by Rebecca Webster to approve the Sanitary Sewer Easement Agreement – HB-737-1, seconded by Patricia Cornelius. Motion carried unanimously:

Ayes:

Julie Barton, Sherrole Benton, Patricia Cornelius, Michael Mousseau,

Rebecca Webster

Not Present:

Donald McLester

#### B. Frank Vandehei

Motion by Rebecca Webster to support the pilot project to lease a one (1) – five (5) acre parcel of land for one (1) year and waive the lease for the first year with a five (5) year option at the standard lease rate, with the understanding that Planning will bring recommendations for parcels at the next Oneida Land Commission Meeting, seconded by Patricia Cornelius. Motion carried unanimously:

Ayes:

Julie Barton, Sherrole Benton, Patricia Cornelius, Michael Mousseau,

Rebecca Webster

Not Present:

Donald McLester

#### C. Administrative Rules

Motion by Rebecca Webster to approve Real Property Rule #1, Leasing Rule #4, & Leasing Rule #6 and to bring back Leasing Rule #5 and to not approve non-tribal member leases that are not tied to the HIP or THRIFTT programs for three (3) years from the date the first non-tribal HIP or THRIFTT leases is entered in, seconded by Patricia Cornelius. Motion carried:

Ayes:

Julie Barton, Michael Mousseau, Rebecca Webster

Opposed:

Patricia Cornelius

Abstained:

Sherrole Benton

Not Present:

Donald McLester

Motion by Michael Mousseau to defer the comments to the rules and the responses to the next Oneida Land Commission meeting, seconded by Patricia Cornelius. Motion carried unanimously:

Ayes:

Julie Barton, Sherrole Benton, Patricia Cornelius, Michael Mousseau,

Rebecca Webster

Not Present:

Donald McLester

Item VIII. H addressed next.

#### D. Enter e-poll: Request LOC to add OLC Bylaw to the Active Files List

No action taken.

## E. Probate Legal Opinion. (Hand Out)

No action taken.

#### F. Approve Probate Hearings

Motion by Sherrole Benton to approve the Probate Hearing date for April 13, 2020 at 3:30 p.m., seconded by Patricia Cornelius. Motion carried unanimously:

Ayes:

Julie Barton, Sherrole Benton, Patricia Cornelius, Michael Mousseau,

Rebecca Webster

Not Present:

**Donald McLester** 

#### G. Approve Citation Hearing Script

Motion by Rebecca Webster to approve the Citation Hearing Script with the changes to underscore the areas where the laws are and for Zoning to insert those areas in #5 in the script, seconded by Michael Mousseau. Motion carried unanimously:

Ayes:

Julie Barton, Sherrole Benton, Patricia Cornelius, Michael Mousseau,

Rebecca Webster

Not Present:

Donald McLester

Motion by Rebecca Webster to request the Zoning Administrator to provide the Oneida Land Commission with a list of laws that Oneida Land Commission retains hearing authority over to come back in thirty (30) days, seconded by Julie Barton. Motion carried unanimously:

Ayes:

Julie Barton, Sherrole Benton, Patricia Cornelius, Michael Mousseau,

Rebecca Webster

Not Present:

Donald McLester

Item IX. A. addressed next

#### H. Approve Reforestation Request

Motion by Patricia Cornelius to approval the reforestation and pollinator plantings in 2021 & 2022 for the following sites: 1. Nicodem on Seminary Rd 52+- acres for 2021 2. Honors Acres extension (former Mullen & Vanschydel properties) on Ranch Road+- 107 acres for 2021. 3. Duck creek east side restoration former Robertson west and OPD/sledding hill +-102 acres for 2022., seconded by Julie Barton. Motion carried unanimously:

Ayes:

Julie Barton, Sherrole Benton, Patricia Cornelius, Michael Mousseau,

Rebecca Webster

Not Present:

**Donald McLester** 

#### I. Approve Amended Tribal Area Name Designation Process

Motion by Sherrole Benton to approve the amended Tribal Area Name Designation Process SOP with the addition of 3.5.11 Oneida Police Department, seconded by Rebecca Webster. Motion carried unanimously:

Ayes:

Julie Barton, Sherrole Benton, Patricia Cornelius, Michael Mousseau,

Rebecca Webster

Not Present:

Donald McLester

#### J. Approve Part II Report

Motion by Rebecca Webster to approve the LUTU Part II Report, seconded by Julie Barton. Motion carried:

Ayes:

Julie Barton, Sherrole Benton, Michael Mousseau, Rebecca Webster

Opposed: Not Present: Patricia Cornelius Donald McLester

Item VIII. F. addressed next.

#### IX. REPORTS

#### A. Review 1st Quarter reports for Community & Economic Division

Motion by Michael Mousseau to approve the Community & Economic Division First Quarter Report, seconded by Patricia Cornelius. Motion carried unanimously:

Ayes:

Julie Barton, Sherrole Benton, Patricia Cornelius, Michael Mousseau,

Rebecca Webster

Not Present:

**Donald McLester** 

#### X. OTHER BUSINESS - NONE

#### XI. ADDITIONS - NONE

#### XII. EXECUTIVE SESSION

Motion by Michael Mousseau to go into Executive Session at 7:33 p.m., seconded by Julie Barton. Motion carried unanimously:

Ayes:

Julie Barton, Sherrole Benton, Patricia Cornelius, Michael Mousseau,

Rebecca Webster

Not Present:

**Donald McLester** 

Motion by Patricia Cornelius to come out of Executive Session at 7:59 p.m., seconded by Julie Barton. Motion carried unanimously:

Ayes:

Julie Barton, Sherrole Benton, Patricia Cornelius, Michael Mousseau,

Rebecca Webster

Not Present:

Donald McLester

#### A. Approve OBC Liaison Update

1. OLC/OBC Joint Meeting Notes

No action taken.

#### B. Other

### 1. Review Babcock LLC Stormwater Detention pond

Motion by Rebecca Webster to agree with Option Three (3) from Land Management, seconded by Patricia Cornelius. Motion carried:

Ayes:

Patricia Cornelius, Michael Mousseau, Rebecca Webster

Opposed:

Sherrole Benton

Abstained:

Julie Barton

Not Present:

Donald McLester

#### 2. Approve Quarterly Report

Motion by Rebecca Webster to approve and request Michael Mousseau to submit the quarterly report, seconded by Sherrole Benton. Motion carried unanimously:

Ayes:

Julie Barton, Sherrole Benton, Patricia Cornelius, Michael Mousseau,

Rebecca Webster

Not Present:

**Donald McLester** 

#### II. ADJOURNMENT

Motion by Patricia Cornelius to adjourn at 8:00 p.m., seconded by Julie Barton. Motion carried unanimously:

Ayes:

Julie Barton, Sherrole Benton, Patricia Cornelius, Michael Mousseau,

Rebecca Webster

Not Present:

**Donald McLester** 

Minutes prepared by Aliskwet Ellis, BCC Recording Clerk Minutes approved as presented/corrected on February 24, 2020.

Michael Mousseau, Secretary ONEIDA LAND COMMISSION

## **Summary Report for Home Building Opportunities Residential Leasing (HBO)**

Original effective date: N/A

Amendment effective date: N/A

Name of rule: Home Building Opportunities Residential Leasing (HBO)

Name of law being interpreted: Title 6 Property and Land Chapter 602 Leasing

Rule number: 4

Other laws or rules that may be affected: N/A

**Brief summary of the proposed rule:** The purpose of the rule is to identify requirements for eligible parcels of land for residential purchases. This will pertain to individual potential homeowners for programs including but not limited to HIP & THRIFTT.

**Statement of Effect:** Obtained after requesting from the Legislative Reference Office.

Financial Analysis: See Attached.

# Financial Analysis for Home Building Opportunities Residential Leasing (HBO)

Type of Cost	Description/Comment	Dollar Amount	
Start Up Costs	Would be absorbed within the current budget	\$0	
Personnel	An additional residential leasing specialist needed to assist in the management of increased number of residential leases.	\$60,000 (including fringe)	
Office	N/A	\$0	
Documentation Costs	N/A	\$0	
Estimate of time necessary for an individual or agency to comply with the rule after implementation	One week	\$0	
Other:	N/A	\$0	
Total Cost (Annual)	N/A	\$60,000	



# Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



#### Statement of Effect

Leasing Law Rule No. 4 – Home Building Opportunities Residential Leasing

#### Summary

Leasing Law Rule No. 4 – Home Building Opportunities Residential Leasing expands upon the language set forth in the Nation's Leasing law and general Residential Leasing Rule promulgated thereunder with respect to the process for applying, selecting and entering in to a Home Building Opportunity Residential Lease through the Comprehensive Housing Division. There may be a legal bar to the adoption of this Leasing Law Rule No. 4 – Home Building Opportunities Residential Leasing if it is referring to or relying upon Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing, which lacks the delegation of rulemaking authority required for its promulgation under the Administrative Rulemaking law, and/or Leasing Law Rule No. 5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT), which contains a conflict as it relies upon Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing.

Submitted by: Kristen M. Hooker, Staff Attorney, Legislative Reference Office Date: December 17, 2019

#### Analysis by the Legislative Reference Office

The Administrative Rulemaking law affords authorized agencies the opportunity to promulgate rules interpreting the provisions of any law enforced or administered by it; provided that, the rule does not exceed the rulemaking authority granted under the law for which the rule is being promulgated. [1 O.C. 106.4-1]. An authorized agency is any board, committee, commission, department, program, or officer of the Nation that has been granted rulemaking authority. [1 O.C. 106.3-1(a)].

The Leasing law (the "Law") was adopted for the purpose of setting out the Nation's authority to issue, review, approve and enforce leases. The Law delegates authority to the Oneida Land Commission and Land Management to jointly develop rules related to obtaining a residential, agricultural, or business lease. [6 O.C. 602.5-1]. Specifically, the Law provides that Land Management shall develop, and the Oneida Land Commission shall approve, the format and requirements set out in the lease document applications for different types of leases, as well as additional procedures and processes to be followed when offering and awarding lease documents. [6 O.C. 602.5-1(a)].

The purpose of this Leasing Law Rule No. 4 – Home Building Opportunities Residential Leasing ("Rule") is to provide a Home Building Opportunity (HBO) program that expands upon the process set by the Leasing law and "general Residential Leasing Rule" for applying, selecting and entering in to a HBO residential lease with the Comprehensive Housing Division. [Rule, 1.1-1]. It appears that the HBO program applies, at least in part, to land that is owned by the Nation. If this is true, the Rule's reference to a "general Residential Leasing Rule" and "eligibility requirements of the Residential Leasing Rule" [Rule, 1.1-1 and 1.4-1, respectively] may encompass the Leasing Law Rule No. 5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT)

("Leasing Law Rule No. 5") and/or the Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing ("Real Property Law Rule No. 1").

The Real Property Law Rule No. 1 states that it was promulgated under the authority granted to the Oneida Land Commission and Land Management by the Nation's Real Property law. The Real Property law, however, does not delegate rulemaking authority to the Oneida Land Commission or Land Management over the subject matter addressed within the Real Property Law Rule No. 1. Thus, legal bars exist with respect to its adoption.

The Leasing Law Rule No. 5 – relies upon certain requirements that are set forth within Real Property Law Rule No. 1. This creates a legal bar to the adoption of the Leasing Law Rule No. 5 as Real Property Law Rule No. 1 lacks the necessary delegation of rulemaking authority required by the Administrative Rulemaking law. Specifically, an authorized agency of the Nation must be delegated rulemaking authority by a law of the Nation in order to promulgate rules. [1 O.C. 106.3-1(a), 106.4-1]. The Real Property Law Rule No. 1 was promulgated without such authority.

#### Conclusion

If this Rule indeed references the Leasing Law Rule No. 5 and/or the Real Property Law Rule No. 1, legal bars exist with respect to its adoption. Although the Leasing law does delegate joint rulemaking authority to the Oneida Land Commission and Land Management for the promulgation of this Rule, any reliance this Rule places upon the Leasing Law Rule No. 5 and/or the Real Property Law Rule No. 1 creates a bar to its adoption as they conflict with the Administrative Rulemaking law.

<sup>&</sup>lt;sup>1</sup> The Legislative Operating Committee will consider a request for emergency amendments to the Real Property law on January 15, 2020. The purpose of the emergency amendments is to add in a delegation of rulemaking authority to the Oneida Land Commission and Land Management as it relates to the approval and denial, and processing of land acquisitions. Adoption of the emergency amendments would eliminate the legal bar to adopting the Real Property Law Rule No. 1 – Land Acquisition for Residential Leasing and the Leasing Law Rule No. 5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT). If this Rule does refer to the Real Property Law Rule No. 1 and/or the Leasing Law Rule No. 5, adoption of the emergency amendments would clear up the conflict. If no such reference was intended, this Statement of Effect may be revised accordingly.

# Chamber announces largest private employers in Greater Green Bay

Green Bay, WI - The Greater Green Bay Chamber's economic development verifies information by contacting arm has announced its annual list of human resources personnel at local the top 30 largest private employers in Greater Green Bay, and Bellin Health employers listing include: retains its hold on the top spot with 1. Bellin Health - 3,140 3,140 employees.

The list denotes the size of companies 3. Oneida Nation - 2,789 full-time employment for the companies' Brown County operations only.

"As Bellin Health has grown throughout Greater Green Bay and into Upper Michigan, we've worked hard to ensure we are good stewards of our resources, operating effectively and efficiently to provide the best in cost, quality and the patient experience for those we serve," said Chris Woleske, Bellin Health President & CEO. "Size doesn't mean much if we're not doing right by our customers and community, and we thank the people of this area for helping us make this a healthier place to live and thrive."

The economic development team companies. This year's 30 largest private

- 2. Humana 2,846
- equivalent 4. Schneider 2,626
  - 5. Aurora Health Care 2,470
  - 6. Georgia-Pacific 1,937
  - 7. UnitedHealthcare 1,823
  - 8. HSHS St. Vincent Hospital 1,668

  - 9. American Foods Group 1,592
  - 10. Prevea Health 1,299

"While employment growth is only one measurement of economic growth and sustainability in a community, it is a significant one," said Kelly Armstrong, vice president of economic development, Greater Green Bay Chamber. "It's one of the annual numbers we monitor in gauging our community's economic vitality.

# Tribal gaming 'illegal' without deal

OKLAHOMA CITY (AP) gambling games after Jan. 1 if they don't resolve a dispute over the tribes' compacts with the state, Gov. Kevin Stitt said.

In the latest salvo in the state government's dispute with the tribes over whether the tribes' current compacts will expire at the end of the year or renew automatically under the current terms, Stitt questioned how tribes could offer gaming without a "contract" that allows them to operate.

"Are they going to be operating illegally Class III games?" Stitt said Thursday. "That brings a whole host of issues with vendors.'

The state and several tribes have been sparring for months over whether the tribal gambling compacts automatically renew for another 15-year term on January 1.

The Republican governor insists that Oklahoma's Native American tribes they will expire at the end of the year, would be illegally operating certain and he wants to renegotiate the amount of money the tribes pay the state for their exclusive right to operate casinos in the state

> "The truth is on our side," Stitt said. "I feel so confident that Oklahomans can see right through a certain industry, the casino industry, saying, 'These go on forever.' That can't be true."

> But the tribes say the compacts automatically renew, and they won't enter negotiation talks unless Stitt acknowledges that. They plan to continue operating Class III games on Jan. 1.

> "The fact is, our compacts renew and that our gaming will be as lawful in January 2020 as it is in December 2019," said Stephen Greetham, senior counsel for the Chickasaw Nation. "Governor Stitt's position is not supported by law, logic or the compact's plain language.

NOTICE OF

# PUBLIC MEETING

TO BE HELD

January 9, 2020 at 9:00 A.M.

IN THE

**OBC Conference Room** 2nd Floor Norbert Hill Center

In accordance with the Administrative Rulemaking Law, the Oneida Comprehensive Housing Division (CHD), Land Management Area and Oneida Land Commission are hosting this Public Meeting Togather Red back from the community regarding the following rules. back from the community regarding the following

back from the community regarding the following fules.

Real Property Rule No. 1 — Land A capitation for Residential Leasing.

This is a proposal conducts or would will give yould?

I dentify requirement now uptile parcels of landing purchase on be missing the following will a purchase on be missing did with all homeowners following in cluding but should include the IPA independent of a proposal cut of the acquisition process and any required approvals.

Leasing Rule No. 45—Home Building Opposition (Child Child in a story and the significant of the purpose of the following story and the significant of the purpose of the following story and the story in a story and the significant of the purpose of the following story and the significant of the purpose of the following story and the story of the story

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Leasing Rule No. 6 — Homes

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have more than Open the process (1) property.

To obtain copies of the Rublic was the Register/ Salalosso Aings. please visit www.oneida-r

PUBLIC C OPEN UNTIL January 16, 2

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Comprehensive Housing Division by U.S. mail, interoffice mail, email or fax.

> Oneida Comprehensive Housing Division 2913 Commissioner Street, Oneida, WI 54155 tthomas@oneidanation.org Phone: 920-869-2227 or Fax: 920-869-2836

#### **Oneida Nation**

Comprehensive Housing Division Land Management Land Commission PO Box 365 • Oneida, WI 54155-0365



# COMPREHENSIVE HOUSING DIVISION, LAND MANAGEMENT AND LAND COMMISSION PUBLIC MEETING for

Real Property Rule #1: Land Acquisition for Residential Leasing

Leasing Rule #4: Home Building Opportunities (HBO)

Leasing Rule #5: Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT)

Leasing Rule #6: Home Ownership by Independent Purchase (HIP) Program

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center January 9, 2020 9:00 a.m.

#### **PUBLIC MEETING SIGN IN SHEET**

	Name: (Print clearly)	Email Address / Phone #	Department/Roll #	Oral Testimony (Y) or (N)
1.	BART CORNEllus.	920-246-8297.	0754	N
2.	JASON AGUERRE	525-45-6466 5m61 920-415-6466 5m61 DJOUNG @ WEW. Tr. com		V
3.	PATRICK Young	920-676-3389	_	$\sim$
4.	JEFF Young	jyz906@9tt.net 926-410-3/28	6614	W
5.	James Petitien	920-8694574	977Y	$\mathcal{N}$
6.	Amy HACKER	W1357 Tall Feather	8104	$\checkmark$
7.	Trish King		9BC	įv/
8.	CHUCK Ne CARRELL	Mc CHAREC 4860 @ 61 920 530 3693'	191C Zova	
9.	King Nishimoto	920-562-0176	921	N
10.	Laura laif you wurron	920/674.6202	9834	
11.	Frio Steven #		4382	4
12.				

## **Comprehensive Housing Division**



#### Comprehensive Housing Division Public Meeting Rule #1 – Residential Leasing Rule

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center January 9, 2020 9:00am

**Present:** Dana McLester, Comprehensive Housing Division; Kelly McAndrews, Attorney, Lisa Rauschenbach, Residential and Finance Area Manager, Jenny Garcia, Residential Leasing Specialist

Dana McLester: Good Morning, the time is 9:00 a.m. and today's date is January 9, 2020. I will now call the Public Meeting for the following Rules to order. Real Property Rule No. 1 Land Acquisition for Residential Leasing; Leasing Rule No. 4 Home Building Opportunities Residential Leasing; Leasing Rule No. 5 Tribal Housing Reacquisition of Individual Fee and Trust Title; Leasing Rule No. 6 Home Ownership by Independent Purchase Program. The Comprehensive Housing Division, Land Management, and the Land Commission are hosting this Public Meeting to gather feedback from the community regarding these Rules. All persons persons who wish to present oral testimony will need to register on the sign-in sheet at the back of the room. Written comments may be submitted to the Bus, to the Business Committee Support Office or to the Comprehensive Housing Division in person, by U.S. mail, interoffice mail, email or fax as provided on the Public Meeting Notice. The comments must be received by the close of business day on January 16, 2020. In attendance of the hosting entities is Dana McLester, Comprehensive Housing Division Director, Lisa Rauschenbach, Residential and Finance Area Manager, Jennifer Garcia, Residential Leasing Specialist. We will begin today's Public Meeting by accepting comments on Real Property Rule No. 1 - Land Acquisition for Residential Leasing. We'll be accepting comments only and not issuing responses here today. The Oneida Comprehensive Housing Division, Land Management and Land Commission will consider each comment received here and in writing and will issue a written memo in response. Real Property Rule No. 1 Land Acquisition for Residential Leasing is a new Rule which would identify requirements for eligible parcels of land for residential purchases on behalf of individual homeowners for programs including but not limited to HIP and THRIFTT; and set the acquisition process and any record required approvals. Is there anyone interested in commenting on the Real Property Rule No. 1 Land Acquisition for Residential Leasing? (Pause) Could you please come to the mic?

**Amy Hacker:** I was just wondering if there is like a list of land or where they can like find out where they can get the land to do for the HIP or the THRIFTT to try to build or?

**Dana McLester:** If you could just present you question as a comment we will answer that when we provide the comments on the Rules, as a response.

**Amy Hacker:** I'm trying to figure out how to make that a comment.

Dana McLester: You can leave it as a question and we will answer that when we provide comments.

Amy Hacker: So it's just looking for a like where to find a list of land to be able to lease or build on.

**Dana McLester:** Thank you. (*Pause*) Is there any additional comments or questions? Is there any additional comments or questions?

**Bart Cornelius:** My question is, I already own a house and it's not on tribal land but it's in the reservation boundaries. I know we were trying to make a plan before when I was on the Board for Oneida that the something about buying the house and the land and then leasing it back. Does this fall into this category? That's.

Dana McLester: Thank you.

Bart Cornelius: Okay.

Dana McLester: Is there any more questions or comments on Real Property Rule No. 1? (Pause) This is the final call for any questions or comments on Residential or Real Property Rule No. 1? (Pause) With all registered speakers having provided comments regarding Real Property Rule No. 1 Land Acquisition for Residential Leasing, we will now begin accepting comment for Leasing Rule No. 4 Home Building Opportunities Residential Leasing. We'll be accepting comment only and not issuing responses for here today. The Oneida Comprehensive Housing Division and Land Management and Land Commission will consider each comment received here and in writing and will issue a written memo in response. Leasing Rule no. 4 Home Building Opportunities Residential Leasing is a new rule, but formal former SOP, which would include modify the application slash selection process for parties to apply for vacant lots for the purpose of home building and setting timelines following selection to enter a residential lease and complete necessary loan, planning and construction phases. Is there anyone interested in commenting on Residential Leasing Rule No. 4 Home Building Opportunities Residential Leasing? (Pause) Is there anyone interested in commenting on Leasing Rule No. 4 Home Building Opportunities Residential Leasing? (Pause)

With all registered speakers having provided comments regarding Leasing Rule No. 4 Home Building Opportunities Residential Leasing, we will now begin accepting comments for Leasing Rule No. 5 Tribal Housing Reacquisition of Individual Fee and Trust Title. We will be accepting comments only and not issuing responses here today. The Comprehensive Housing Division, Land Management, and Land Commission will consider each comment received here and in writing and will issue a written memo in response. Leasing Rule No. 5 Tribal Housing Reacquisition of Individual Fee and Trust Title is a new Rule which would set the process and requirements for the Nation to buy land from interested parties and enter a residential lease with the selling party for condin continued use of the homesite. Is there anyone interested in commenting on Leasing Rule No. 5 Tribal Housing Reacquisition of Individual Fee and Trust Title? Could you please come to the mic?

**Chuck McCarol:** All just have a question. A because I just got this packet in the mail yesterday and I haven't really gone through any of this but, ah, the question is if I were to locate a parcel of land within



the tribal a boundaries, ah it's already owned by the tribe, would that property be available for me to lease so that I could in turn build a home?

Dana McLester: Thank you. Please state your name for the record?

Chuck McCarol: Pardon me?

Dana McLester: Um, Please state your name for the record and.

Chuck McCarol: Chuck McCarol.

Dana McLester: Thank you and we will provide a response in the memo. After we have received all the

comments.

Chuck McCarol: Okay.

**Dana McLester:** Thank you. (*Pause*) Is there anyone interested in commenting on Leasing Rule No. 5 Tribal Housing Reacquisition of Individual Fee and Trust Title? (*Pause*) Is there anyone interested in commenting on Leasing Rule No. 5?

With all registered speakers having provided comments regarding Leasing Rule No. 5 Tribal Housing Reacquisition of Individual Fee and Trust Title, we will now begin accepting comments for Leasing Rule No. 6 Home Ownership by Independent Purchase Program. We'll be accepting comments only and not issuing responses here today. The Oneia, Oneida Comprehensive Housing Division, Land Management, and Land Commission will consider each comment received here and in writing and will issue a written memo in response. Leasing Rule No. 6 Home Ownership by Independent Purchase Program is an amendment to existing homeownership program which would modify the existing HIP process based on the division of Comprehensive Houding Housing Division and Land Management, incorporate updated residential leasing rules allowing parties to have more than one lease at a time and open the process up to non-tribal members. Is there anyone interested in commenting on Leasing Rule No. 6 Home Ownership by Independent Purchase Program?

Patrick Young: Good Morning. For the record my name is Patrick Young. My wife is a tribal member, we own a tribal home. Ah, as it stands now with the HIP Process, if we want to use the HIP Process, we have to sell our home, move into an apartment or a duplex, and then use the HIP process to purchase a new home. Um, I'm also a Licensed Real Estate Broker. So I deal with this, and I've deal with the HIP Program a several times and this process and there's always an objection that comes up when the tribal member says okay right now I'm doing this well with my life. If I want to buy a bigger home or purchase a different home what is the process? Well that process is, you have to sell this home, move into a duplex or an apartment and then use the HIP Process to come back in or buy a tribal home to come back in. So allowing tribal members to have more than one lease would be advantageous to them because they could negotiate on selling their home and buying a new home and moving the transaction along like a regular real estate a process. Um, so I I think they should consider doing that because it's an objection that we encounter on a regular basis when we're selling a tribal homes and and HIP homes. And we have also



been involved in the first member to member a sale of of of a home. And that's another, that's the same question that comes up. If I want a bigger home or I want to move myself up to a a nicer home in the future what's the process? Again that object objection continues to come up. So I think that this by implementing this would be advantageous to the tribal member. Thank you.

**Dana McLester:** Thank you. Is there anyone interested in commenting on Leasing Rule No. 6 Home Ownership by Independent Purchase Program?

Patricia King: Morning. Trish King, Um I just have a comment on the educational information and training in regards to um Land Management and working with others involved in the parties. As far as the operations go that that's um very good and I appreciate the effort to try and do that to educate realtors and the bank and Land Management and the operations in how they work together a to accomplish this goal. Um, within this Rule, the only question I have is has there been any kind of public meetings in regards to how all of these Rules work together um, for the public for for rather than public hearing where we can only give comment? Um, so a two way communication to the member would be helpful and how these work and what the actual impact is. And I understand there's a deadline date of um January 16 to um make written comments. So I I haven't had a chance either to go thoroughly through all of these documents. But I would like to understand what the impact is. Um, it's confusing cause the LOC um Statement of Affect refers to Rule No. 1 and I'm thinking that the amendment in Rule No. 1 is changed to allow these other laws go together. But it's confusing because it says there are legal bars that doesn't allow for um rulemaking. So, I need clarification on that and I would um a definitely like to see a a a community event that helps people understand what the benefits are with these rules, and how they can apply and how it could affect them. Um, also I don't know if any of the rules just generally talk about single units verses a individual buying a multifamily complex and using the HIP Program. Is that allowable? A because then they would be allowed to sublease I understand. So if that's available um that might also help some of our tribal members to get housing that's more affordable um that fall between the cracks of Housing and HUD and um the General Assistance Programs that we have. So there're there're people out there that just miss that some some reason so um if people can help them get housing in that manner then I think a using our own members to do that as well as non-members to help us do that would be beneficial. Thank you.

Dana McLester: Thank you.

Ernie Stevens III: Morning, Ernie Stevens III. Um I have a couple ge, a few a general comments a I think they pertain I believe they pertain to a Rule No. 1, 5, and 6. Um, so one of them is, a in the law it states contingent I don't know the exact verbiage I forgot I'm sorry. It states um, I'll just, of course now I'm not going to find it. This regards um the the funding available funding. Um, just a recommendation to to kind of have that part figured out. The last time that was discussed there's no plan of what that looks like from Bay Bank to Land Management, um Housing and the options for financing and funding available for THRIFTT and HIP and and as if these are implemented, what fiscal impact this has is to have a better understanding of that and a communicate that thoroughly um cause that's that's the part that to me is very unclear and concerns me as I I support these. Um, but from a fiscal standpoint not just the financing



for membership to a to receive for housing a potential homeownership. But um, the impacts of tax um liability. So if this a THRIFTT for example is successful for membership and non-membership in acquiring properties in Hobart for example, tax bases, I will use the word, ridiculous, and and so we are going to take that on so if that's successful and suddenly we have a line of people um res assuming the funding is even there and whatever that level of funding is available if it's all utilized by membership and nonmembership, what's that tax liability going to be. Um, so that's one concern that I I think needs to be thoroughly figured out and communicated to the membership and and potential clients or customers I should say. Um, the other one is a, give me a sec here, I apologize. I think it also pertains to all three of them. Um, it was okay taxes I covered that one, um, I'm sorry I'm just blanking here. Oh, so um, I think this is also pertains to a list of a I guess that Bay Bank, Housing, Land Management, possibly other areas, could possible have and again as if and and when THRIFTT and HIP and these new rules are successful in there implementation, um, it would be helpful as as far as the a um restrictive covenant, having and understanding and list, map, a plat map or whatever that is, um for all entities to have, somewhere where they know exactly where to find it, so when membership, or a member comes in, and they want to find a home and they have a specific budget, specific location needs, specific tax payment abilities, all those factors, um, having an understanding of what homes have and don't have restrictive covenants I think it's going to be crucial timing. Because as we know we are competing with other people for these homes. We're going to lose that, um, a a if if if we don't have that process laid out infront of us as a a we a try to find a membership, I'm sorry, find homes. And then also um I think lastly, kinda going off of what Trish said, is the communication. Ah when we hold public meetings if we know the answer we just provide it. A I think the gentleman, Patrick, I believe, um, made the statement, but if he would've had asked, you know, does this fix that problem, it does. A but I think a he was aware of that. So I think things like that, but I think if it's a simple yes, a just let them know to ease their anxiety there at least because a I think that's the big one for me is, does it fix that problem? As a current homeowner who has been wanting to um, get a new home, but it's it's the competitiveness nature of it, I can't get a home because of that process. I know that it fixes that so those those kinds of things I think to what Trish was saying is a better way to communicate that. Um, this process happened pretty quickly. A gentleman back here um also mentioned that he just got this yesterday, so um, to be able to comment to to garner those com those those answers, needs to be improved. Um but in the mean time if we are able to provide that answer here in these meetings, then please do so. A thank you.

**Dana McLester:** Is there anyone interested in commenting on Leasing Rule No. 6 Home Ownership by Independent Purchase Program? (*Pause*) Is there anyone interested in commenting on Leasing Rule No. 6?

Patricia King: Again, Trish King again. Um, I just want to make one a positive comment because I think this is a a the four law or a rules a allow for um, some flexibility in the programming and it it allows us to get to our goals of providing homes for the membership. And so I think you know I want I support the all of them and the concept of what's trying to be accomplished. Um, but I really wanna just talk about the communication because that's, that's where we need most of the support. Um and this will be new Rules I am understanding, so ah then in a year from now we will be assessing how well they are working and we can consider the amendments, any amendments at that time. So I just want to offer um some support to



continue with the effort and keep working with Housing and the banks and um, I know it's just Bay Bank, so that that causes some um back log possibly. Um but the initiative overall is is beneficial for the people. So I think that is what I want to make um clear. Thank you.

Dana McLester: Thank you. Is there any other comments for Residential Leasing Rule No. 6? With all registered speakers having provided comments regarding Leasing Rule No. 6 Home Ownership by Independent Purchase Program, we will now call this public meeting to a chose at 9:31am. The Oneida Comprehensive Housing Division, Land Management and Land Commission thank you for your participation.

###

## **Comprehensive Housing Division**



# PUBLIC MEETING COMMENT RESPONSE MEMO ISSUED BY THE ONEIDA LAND COMMISSION, COMRPEHENSIVE HOUSING DIVISION and LAND MANAGEMENT on FEBRUARY 10, 2020

Real Property Rule #1 – Land Acquisition for Residential Leasing
Leasing Rule #4 – Home Building Opportunities (HBO) Residential Leasing
Leasing Rule #5 – Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT)
Leasing Rule #6 – Homeownership by Independent Purchase (HIP) Program

This public meeting was held at the Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center, on January 9, 2020 at 9:00 a.m. Following the meeting, public comment was held open until January 16, 2020 for written comments. Both verbal and written comments were received. Present at the meeting on behalf of the hosting parties was: Dana McLester, Comprehensive Housing Division; Kelly McAndrews, Attorney, Lisa Rauschenbach, Residential and Finance Area Manager, Jenny Garcia, Residential Leasing Specialist.

#### REAL PROPERTY RULE NO. 1 - LAND ACQUISITION FOR RESIDENTIAL LEASING

**Question:** Amy Hacker: I was just wondering if there is like a list of land or where they can like find out where they can get the land to do for the HIP or the THRIFTT to try to build or? So it's just looking for a like where to find a list of land to be able to lease or build on.

**Response:** There is no list for land not owned by Nation. The HIP and THRIFTT programs are created to acquire land not owned by the Nation within the boundaries and meets the requirements of the program for properties that already have a home on it. As far as building, we do not have a program where the Nation buys vacant land for the purpose of building. We do have a separate program, Home Building Opportunities that allows Tribal members to lease land already owned by the Nation for the purpose of building. When those lots are available, the HBO properties list will be maintained on the CHD website and includes advertising.

<u>Question:</u> Bart Cornelius: My question is, I already own a house and it's not on tribal land but it's in the reservation boundaries. I know we were trying to make a plan before when I was on the Board for Oneida that the something about buying the house and the land and then leasing it back. Does this fall into this category? That's.

Response: Yes, as long as the property meets the requirements of this rule, we would be authorized to purchase the land. The applicant will also have to meet the requirements of the Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT) Rule under the Leasing Law. Through this program, you sell the land and maintain ownership of the improvements and enter into a residential lease with the Nation to lease the land back.

<u>Question</u>: Fred Muscavitch (Written Comment): The back-up document says that the time expected to go through the process is 0. I would like to see a realistic timeline.

**Response:** That is a realistic timeline for the acquisition rule. Land Management is already performing this function, the only real change is removal of approvals from Land Commission.

Question: Fred Muscavitch: One issue which stands out for me is the suggestion that the Land Commission is slow-acting and will relinquish its ability to review individual applications by allowing these new rules to act as LC approval. Is there a belief that these rules will open the floodgates and have 10-20-30 applications a month? I do not agree with articles 1.5. b that relinquishes LC approval for each applicant. This is repeated in Title 6 Rule 5 1. 7-3 and 1. 7-6.

Response: The Oneida Land Commission has set their requirements for leases through the Leasing law which is HEARTH and rules so that there is no need to approve on a case by case basis (except that non-Tribal member leases require individual approval). The leasing law and rules include approval of financing. Based on the changes that were amended previously through leasing, the only thing Land Commission was still approving related to HIP was the acquisition of the land itself. The acquisition rule removes that approval, again because substantial requirements are included in the rule for land eligibility in relation to cost, location and potential title defects and encroachments.

#### LEASING RULE NO. 4 – HOME BUILDING OPPORTUNITIES

**Question:** Jason Aguirre (Written Comment) For the Home Builder Opportunity the major hurdle is little to no land available to members currently. Is there land currently available?

Response: There are not any lots currently available as CHD wanted to solidify the process before reoffering lots. We anticipate offering 36 HBO lots in September 2020 in Bread Creek Village (Overland and Florist) with another 36 anticipated to become available at a date to be determined in 2020 in Cattail Marsh (West of Chief Hill Drive). Will this program extend to non-tribal members? **No** 

<u>Question:</u> Jason Aguirre (Written Comment) Can tribal members work with non Bay Bank lenders for these programs? Particularly the section 184 program there are other eligible lenders that can lend here in WI.

**Response:** We are not aware of any other lenders that offer the 184 program that are willing to use the Residential Lease as collateral. The rule limits available lenders to Bay Bank and CHD.

**Question:** Jason Aguirre (Written Comment) Is there an annual budget for CHD financed properties? Is this made public?

Response: There is a budget for CHD approved by GTC. There is not an annual budget for CHD's loan program, it is a revolving program funded by loan payments from existing loans. Currently, CHD does not have loans generally available except for Veterans. Aside from the Veteran loans, the only loans currently available are for residential sales offered by CHD.

**Question: Jason Aguirre (Written Comment)** Are CHD residential sales going to be open to non-tribal members?

Response: No.



<u>Question:</u> Jason Aguirre (Written Comment) Regarding the down payment loan through the CHD for use in coordination with the section 184 loan program:

**Response:** When CHD is offering loans, there is a down payment loan available, see the Mortgage and Foreclosure law and corresponding rule. At present, aside from the Veteran loans, the only loans currently available are for residential sales offered by CHD.

**Question:** Jason Aguirre (Written Comment) What are the qualifications?

**<u>Response:</u>** The eligibility requirements can be found in the Mortgage and Foreclosure law and corresponding rule.

**Question:** Jason Aguirre (Written Comment) What is the maximum loan amount?

<u>Response:</u> Pursuant to the Mortgage and Foreclosure rule, section 1.10-2. Down Payments, "Tribal members applying for a TLC loan for the purpose of securing a down payment may receive a maximum loan amount of the 2.25% of the total purchase price, as required by HUD's section 184 loan program."

**Question: Jason Aguirre (Written Comment)** Are these loans directly through CHD or is this a loan through Bay Bank?

**Response:** If the loan is offered pursuant to the Mortgage and Foreclosure law and corresponding rule it is solely a CHD loan.

**Question:** Jason Aguirre (Written Comment) Is there a Register of Deeds department within the Oneida organization?

**Response:** Yes, the Oneida Nation Register of Deeds.

**Question:** Jason Aguirre (Written Comment) If so where is it located?

Response: The Oneida Nation Register of Deeds is managed by Land Management.

**Question:** Jason Aguirre (Written Comment) Who are the contacts?

**Response:** Land Management is the contact.

**Question: Jason Aguirre (Written Comment)** Is there a list of tribally owned properties that will be available to build on in the future?

<u>Response:</u> Once the proposed HBO rules are adopted, any vacant residential lots that become available specific to building a home will be advertised and the proposed HBO process will be followed. The HBO rules do not allow Tribal members to select *any* vacant lot owned by the Nation within the boundaries, they must be designated and prepared for HBO.

**Question: Jason Aguirre (Written Comment)** For the HBO program can the Tribal member use any builder they want?



**Response:** The HBO program requires check ins for the lessees to ensure the construction process is moving along, but does not restrict which builders maybe used.

#### LEASING RULE NO. 5 – TRIBAL REACQUISITION OF INDIVIDUAL FEE AND TRUST TITLE (THRIFTT)

<u>Question</u>: Chuck McCarol: All just have a question. A because I just got this packet in the mail yesterday and I haven't really gone through any of this but, ah, the question is if I were to locate a parcel of land within the tribal'a boundaries, ah it's already owned by the tribe, would that property be available for me to lease so that I could in turn build a home?

**Response:** The program you are talking about is Home Building Opportunity Program (HBO). Once the proposed HBO rules are adopted, any vacant residential lots that become available specific to building a home will be advertised and the proposed HBO process will be followed. The HBO rules do not allow Tribal members to select *any* vacant lot owned by the Nation within the boundaries, they must be designated and prepared for HBO.

<u>Question</u>: Justine Hill (Written Comment) Has the Nation considered all the impacts of opening land leases to non-tribal member in the THRIFTT Rule?

<u>Response</u>: The rule has followed the administrative rulemaking process for more information regarding policy considerations please see the Oneida Land Commission's policy statement regarding opening the HIP and THRIFTT programs to non-Tribal members.

<u>Question</u>: Fred Muscavitch (Written Comment): Clause 1.5 talks about liens on properties and tries to negate the liens with a few "unless"es. We should require that all liens be paid off (except the refinance). No liens.

<u>Response:</u> The intent was to allow only liens from lenders willing to provide a partial satisfaction (i.e. Bay Bank). We will provide a revision that clarifies that one of the following must be true to be eligible:

- A. There are no existing liens;
- B. The purchase of the land will satisfy any existing liens;
- C. There is an existing lien with either Bay Bank or CHD with adequate equity in the improvements to cover the value of the mortgaged improvements after a partial satisfaction of mortgage is provided for the land value; or
- D. The applicant is able to secure refinancing through Bay Bank or CHD.

<u>Question:</u> Jason Aguirre (Written Comment) Regarding the THRIFFT program and being open to non-tribal members: Will non tribal people be eligible for current homes owned by tribal members both on trust and non-trust properties?

<u>Response:</u> CHD has requested that for the time being Land Commission only approve residential leases to non-tribal members where the purchase of the improvements would also expand the Nation's land base.



# July 13, 2020, Legislative Operating Committee E-Poll Approval of the Extension of the Real Property Law Emergency Amendments

E-POLL REQUEST: Approval of the Extension of the Real Property Law Emergency Amendments



#### **Good Afternoon Legislative Operating Committee,**

This e-mail serves as the e-poll for the approval of the Extension of the Real Property Law Emergency Amendments packet.

#### **EXECUTIVE SUMMARY**

Emergency amendments to the Real Property law were adopted through resolution BC-01-22-20-B to add a provision which provides that the Comprehensive Housing Division, Oneida Land Commission, and Land Management are delegated rulemaking authority as needed to exercise the authority granted and manage the responsibilities bestowed upon each area as identified in this law. [6 O.C. 601.12-4]. The purpose of making the emergency amendment was to allow the Comprehensive Housing Division, Oneida Land Commission, and Land Management the ability to develop a rule under the Law to address the acquisition of land. The delegation of rulemaking authority was sought to address land acquisitions due to the transparency and oversight the process of the Administrative Rulemaking law provides.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5].

The Oneida Business Committee determined that the emergency amendment to this Law were necessary for the preservation of the general welfare of the Reservation population. The emergency amendment to the Law ensured that the homeownership and land acquisition strategies related to the HIP and THRIFTT programs were not jeopardized by allowing immediate updates to the program processing and required component that authorizes land acquisitions. Additionally, it was determined that observance of the requirements under the Legislative Procedures Act for the adoption of this amendment was contrary to public interest.

The emergency amendment to the Law was in effect for six (6) months and will expire on July 22, 2020. The Legislative Procedures Act allows the Oneida Business Committee to extend emergency amendments for a six (6) month time period. [1 O.C. 109.9-5(b)]. A six (6) month extension of the emergency amendments to the Law is being requested in order to allow the Comprehensive Housing Division, Oneida Land Commission, and Land Management additional time to adopt a land acquisition rule, as well as additional time for the Legislative Operating Committee to process the permanent amendments to the Law.

The extension of the emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for an additional six (6) month term which will end on January 22, 2021.

An e-poll is necessary for this matter because Legislative Operating Committee meetings have been canceled due to the COVID-19 pandemic, and immediate action is required by the Legislative Operating Committee to approve the materials for the Extension of the Real Property Law Emergency Amendments so it can submitted for inclusion on the July 22, 2020, Oneida Business Committee meeting agenda, so that the extension of the emergency amendments to the Election law can be considered before the emergency amendments expire on July 22, 2020.

#### **REQUESTED ACTION**

Approve the Extension of the Real Property law Emergency Amendments packet and forward to the Oneida Business Committee for consideration at the July 22, 2020, Oneida Business Committee meeting.

#### **DEADLINE FOR RESPONSE**

July 13, 2020 at 5:00 p.m.

All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by Jennifer Webster, David P. Jordan, and Ernest Stevens III. Kirby Metoxen and Daniel Guzman King did not provide a response within the e-poll timeframe, but did approve the e-poll after the deadline.







# Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson 🔯

DATE: July 22, 2020

RE: Extension of the Real Property Law Emergency Amendments

Please find the following attached backup documentation for your consideration of the extension of the Real Property Law Emergency Amendments:

1. Resolution: Extension of the Real Property Law Emergency Amendments

2. Statement of Effect: Extension of the Real Property Law Emergency Amendments

3. Real Property Law

#### Overview

Emergency amendments to the Real Property law (the "Law") were adopted through resolution BC-01-22-20-B to add a provision which provides that the Comprehensive Housing Division, Oneida Land Commission, and Land Management are delegated rulemaking authority as needed to exercise the authority granted and manage the responsibilities bestowed upon each area as identified in this law. [6 O.C. 601.12-4]. The purpose of making the emergency amendment was to allow the Comprehensive Housing Division, Oneida Land Commission, and Land Management the ability to develop a rule under the Law to address the acquisition of land. The delegation of rulemaking authority was sought to address land acquisitions due to the transparency and oversight the process of the Administrative Rulemaking law provides.

The Oneida Business Committee can temporarily enact legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5].

The Oneida Business Committee determined that the emergency amendment to this Law were necessary for the preservation of the general welfare of the Reservation population. The emergency amendment to the Law ensured that the homeownership and land acquisition strategies related to the HIP and THRIFTT programs were not jeopardized by allowing immediate updates to the program processing and required component that authorizes land acquisitions. Additionally, it was determined that observance of the requirements under the Legislative Procedures Act for the adoption of this amendment was contrary to public interest.

The emergency amendment to the Law was in effect for six (6) months and will expire on July 22, 2020. The Legislative Procedures Act allows the Oneida Business Committee to extend emergency amendments for a six (6) month time period. [1 O.C. 109.9-5(b)]. A six (6) month extension of the emergency amendments to the Law is being requested in order to allow the Comprehensive

Housing Division, Oneida Land Commission, and Land Management additional time to adopt a land acquisition rule, as well as additional time for the Legislative Operating Committee to process the permanent amendments to the Law.

The extension of the emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for an additional six (6) month term which will end on January 22, 2021.

### **Requested Action**

Approve the Resolution: Extension of the Real Property Law Emergency Amendments.



# **Oneida Nation**

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution #		_
<b>Extension of the Real Propert</b>	y Law Emergency	- Amendments

- **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- whereas, the Real Property law ("the Law") was adopted by the Oneida Business through resolution BC-05-29-96-A, amended by resolutions BC-03-01-06-D, BC-04-28-10-E, BC-02-25-15-C, BC-05-13-15-B, BC-02-08-17-A, and BC-05-09-18-A, and most recently amended on an emergency basis through resolution BC-01-22-20-B; and
- whereas, the Law provides regulations and procedures for the transfer, control and management of the territory within the Reservation and all Tribal land; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the Reservation; and to establish licensing and certification requirements for the Nation's employees dealing with real property transactions; and
- WHEREAS, the Law provides that the Oneida Land Commission shall approve or deny all acquisitions of Tribal land, and that Land Management shall process land acquisition transactions as approved by the Oneida Land Commission; and
- WHEREAS, prior to the emergency amendments the Law did not delegate rulemaking authority to the Oneida Land Commission or Land Management to develop rules addressing land acquisitions; and
- whereas, the Administrative Rulemaking law provides that any entity of the Nation that has been granted rulemaking authority by a law of the Nation may promulgate rules interpreting the provisions of a law enforced or administered by it, provided that the rule does not exceed the rulemaking authority granted under the law for which the rule is being promulgated; and
- whereas, the Oneida Land Commission and Land Management wanted to develop a rule under the Law to address the acquisition of land, but the lack of a delegation of authority to develop rules regarding land acquisitions meant the process of administrative rulemaking as provided by the Administrative Rulemaking law could not be used by the Oneida Land Commission or Land Management for this issue; and

- whereas, the Law was then amended on an emergency basis to provide a delegation of rulemaking authority to address land acquisitions in an effort to ensure transparency, opportunity for community input, and oversight that the administrative rulemaking process provides; and
- whereas, the delegation of rulemaking authority was also sought to mirror and be consistent with rules for the Homeownership through Independent Purchase (HIP) Program and the Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT) Program currently being developed by the Oneida Land Commission and Land Management under the Leasing law; and
- WHEREAS, the HIP and THRIFTT programs rely upon the acquisition power and processing of the Oneida Land Commission and Land Management, so since the acquisition component is an essential part of the process for HIP and THRIFTT, it is desired that the land acquisition process also be codified as a rule; and
- whereas, the emergency amendment to the Law added a provision which provided that the Comprehensive Housing Division, Oneida Land Commission, and Land Management are delegated rulemaking authority as needed to exercise the authority granted and manage the responsibilities bestowed upon each area as identified in this law; and
- WHEREAS, the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis, to be in effect for a period of six (6) months, renewable for an additional six (6) months; and
- whereas, emergency adoption of legislation is allowed when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act; and
- whereas, the Oneida Business Committee determined that the emergency adoption of these amendments to the Law were necessary for the preservation of the general welfare of the Reservation population in order to ensure that homeownership and land acquisition strategies related to the HIP and THRIFTT programs were not jeopardized by allowing immediate updates to the program processing and required component that authorizes land acquisitions; and
- **WHEREAS,** observance of the requirements under the Legislative Procedures Act for adoption of this amendment was contrary to public interest; and
- **WHEREAS,** the emergency amendments to the Law will expire on July 22, 2020, but the land acquisition rule has yet to be brought forward for adoption, and permanent amendments have not yet been developed; and
- **WHEREAS,** a six (6) month extension of the emergency amendments would enable the emergency amendments to remain in effect while they are processed for permanent adoption; and

**NOW THEREFORE BE IT RESOLVED,** that the emergency amendments to the Real Property law are hereby extended for an additional six (6) month period, effective immediately, and shall expire on January 22, 2021.



### Oneida Nation **Oneida Business Committee**

Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



#### Statement of Effect

Extension of the Real Property Law Emergency Amendments

#### Summary

This resolution extends the emergency amendment to the Real Property law adopted through resolution BC-01-22-20-B for an additional six (6) months in accordance with the Legislative Procedures Act.

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

Date: July 13, 2020

### Analysis by the Legislative Reference Office

This resolution extends the emergency amendment to the Real Property law ("the Law") for an additional six (6) month term. The purpose of the Law is to provide regulations and procedures for the transfer, control and management of the territory within the Reservation and all Tribal land; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the Reservation; and to establish licensing and certification requirements for the Nation's employees dealing with real property transactions. [6 O.C. 601.1-1].

The emergency amendment to the Law was adopted by the Oneida Business Committee through resolution BC-01-22-20-B. The emergency amendment to the Law added a provision which provides that the Comprehensive Housing Division, Oneida Land Commission, and Land Management are delegated rulemaking authority as needed to exercise the authority granted and manage the responsibilities bestowed upon each area as identified in this law. This was an effort to delegate rulemaking authority to the Oneida Land Commission and Land Management for the development of rules addressing the acquisition of land. The emergency amendment to the Law was set to be effective for a six (6) month period and will expire on July 22, 2020.

The Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is "necessary for the immediate preservation of the public health, safety or general welfare of the reservation population" and when "enactment or amendment of legislation is required sooner than would be possible under the Legislative Procedures Act." [1 O.C. 109.9-5].

The Oneida Business Committee determined that the emergency amendment to the Law was necessary for the preservation of the general welfare of the Reservation population in order to ensure that the homeownership and land acquisition strategies related to the Homeownership through Independent Purchase (HIP) Program and the Tribal Housing Reacquisition of Individual Fee and Trust Title (THRIFTT) Program are not jeopardized by allowing for immediate updates to the program processing and required component that authorizes land acquisitions.

The Legislative Procedures Act authorizes the Oneida Business Committee to extend the adoption of emergency amendments for an additional six (6) months. [1 O.C. 109.9-5(b)]. An extension of the emergency amendment is being requested due to the fact that the land acquisition rule has not yet been brought forward for adoption, and permanent amendments have not yet been developed This resolution extends the emergency amendments to the Law so that the Law will remain in effect for an additional six (6) month term, expiring on January 22, 2021.

#### **Conclusion**

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



Real Property Law Emergency Amendments Adopted by Resolution BC-01-22-20-B OBC Consideration of an Extension of the Emergency Amendments 2020 07 22

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## Title 6. Property and Land – Chapter 601 Tokáske Kayanláhsla Tsi? Ni?yohuntsya:té

## The real/certain laws of the territory of the nation REAL PROPERTY

601.1.	Purpose and Policy	601./.	Title Transfer
601.2.	Adoption, Amendment, Repeal	601.8.	Probate
601.3.	Definitions	601.9.	Leasing of Real Property
601.4.	General Provisions	601.10.	Records
601.5.	Holding of Ownership	601.11.	Real Estate Education Requirements and Certifications
601.6.	Legal Descriptions	601.12.	Organization

601.1-1. Purpose. The purpose of this law is to provide regulations and procedures for the

#### **Purpose and Policy** 601.1.

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3 transfer, control and management of the territory within the Reservation and all Tribal land; to 4 integrate these regulations and procedures with the real property laws and practices of other federal 5 and state sovereigns which may hold jurisdiction within the Reservation; and to establish licensing 6 and certification requirements for the Nation's employees dealing with real property transactions. 7 601.1-2. Policy. It is the policy of the Nation to set out the responsibilities and expectations for 8 persons purchasing and/or managing real property on behalf of the Nation and/or within the 9 Reservation and to provide real property holder's rights and responsibilities. In addition, it is the 10 Nation's policy that probated estates shall be settled expeditiously and without undue delay.

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#### 601.2. Adoption, Amendment, Repeal

- 13 601.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-29-96-A 14 and amended by resolutions BC-3-01-06-D, BC-04-28-10-E, BC-02-25-15-C, BC-05-13-15-B and 15 BC-02-08-17-A, BC-05-09-18-A, and emergency amended by BC-01-22-20-B.
- 601.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the 16 17 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 18 601.2-3. Should a provision of this law or the application thereof to any person or circumstances
- 19 be held as invalid, such invalidity shall not affect other provisions of this law which are considered 20 to have legal force without the invalid portions.
- 601.2-4. In the event of a conflict between a provision of this law and a provision of another law, 21
- 22 the provisions of this law shall control. Provided that, the Land Ordinance is applicable only to 23 valid land assignments existing as of January 1, 2016 and is hereby repealed upon the expiration
- 24 of the last existing land assignment.
- 25 601.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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#### 601.3. **Definitions**

- 601.3-1. 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, subject to 601.4-5.
  - (a) "Broker" means a person who acts as an agent and negotiates the sale, purchase or rental of real property on behalf of others for a fee.
  - (b) "Certified survey map" means a map which provides the legal description of real property and is officially filed and approved by the county, Tribal or municipal
- (c) "Comprehensive Housing Division" means the division within the Nation under the direction of the Comprehensive Housing Division Director which consists of all residential

- services offered by the Nation, including but not limited to, all rental programs, the rentto-own program, and the residential sales and mortgages programs.

  (d) "Easement" means a real property right to cross or otherwise utilize the land of another
  - (d) "Easement" means a real property right to cross or otherwise utilize the land of another for a specified purpose.
  - (e) "Estate" means a person's interest in real property or other property.
  - (f) "Fiduciary" means a person required to act for the benefit of another person on all matters within the scope of their relationship and by such a relationship owes another duties of good faith, trust, confidence and candor. For the purposes of this law, both brokers and salespersons are "fiduciaries."
  - (g) "Guardian ad litem" means a guardian appointed by the Judiciary on behalf of an incompetent or minor party.
  - (h) "Individual fee land" means real property held in fee status by an individual or group of individuals.
  - (i) "Individual trust land" means individual Tribal land held in trust by the United States of America for the benefit of a Tribal member.
  - (j) "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
  - (k) "Land Management" means the entity within the Nation responsible for maintaining the Oneida Nation Register of Deeds, entering into and administering agricultural and commercial leases on behalf of the Nation, processing trust transactions and land acquisition transactions, and for fulfilling other responsibilities as identified within this law.
  - (l) "Land use license" means an agreement entered into by the Nation providing a party the right to occupy and/or utilize a specified piece of Tribal land for a specific purpose and a specific duration, which may require the Nation to be compensated for such use.
  - (m)"Leasehold mortgage" means a mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.
  - (n) "Nation" means the Oneida Nation.

- (o) "Personal representative" means a person to whom authority to administer a decedent's estate have been granted by Land Management or the Judiciary.
- (p) "Probate" or "Administration" means any proceeding relating to a decedent's estate, whether there is or is not a will.
- (q) "Real property" means land and anything growing on, attached to, or erected on the land, excluding anything that may be severed without injury to the land.
- (r) "Reservation" means all the property within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (s) "Restricted fee status" means an interest in real property which includes a provision in the deed or will that, upon the happening or failure to happen of a certain event, the title of the purchaser or devisee shall be limited, enlarged, changed or terminated.
- (t) "Rule" means a set of requirements, including fee schedules, enacted by the Comprehensive Housing Division, Land Management, Oneida Planning Department and/or the Oneida Land Commission in accordance with the Administrative Rulemaking law, based on authority delegated in this law in order to implement, interpret and/or enforce this law.

Real Property Law Emergency Amendments Adopted by Resolution BC-01-22-20-B OBC Consideration of an Extension of the Emergency Amendments 2020 07 22

(u) "TAAMS" (Trust Asset and Accounting Management System) means the Bureau of Indian Affairs system for maintaining and tracking land title documents and all legal documents relating to land transactions.

- (v) "Title status report" means a report issued by the Bureau of Indian Affairs after a title examination which shows the proper legal description of a tract of Tribal land; current ownership, including any applicable conditions, exceptions, restrictions or encumbrances on records; and whether the land is in unrestricted, restricted, trust, or other status as indicated by the records in a Land Titles and Records Office.
- (w) "Tribal fee land" means land held in fee status by the Nation.
- (x) "Tribal land" means Tribal fee land and Tribal trust land.
- (y) "Tribal member" means an individual who is an enrolled member of the Nation.
- (z) "Tribal trust land" means the surface estate of land or any interest therein held by the United States in trust for the Nation; land held by the Nation subject to federal restrictions against alienation or encumbrance; land reserved for federal purposes; and/or land held by the United States in trust for the Nation under Section 17 of the Indian Reorganization Act, 25 U.S.C §477, et. seq.

#### 601.4. **General Provisions**

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- 601.4-1. Applicable Real Property. The provisions of this law extend to all Tribal member's 102 103 individual fee land and Tribal member's individual trust land within the Reservation boundaries 104 and all Tribal land.
- 105 601.4-2. Tribal Land Base. Land Management shall administer all transactions which add real 106 property to the Tribal land base under the provisions of this law.
- 107 601.4-3. Sale of Tribal Land Prohibited. The sale of Tribal land is specifically prohibited by this 108 law, unless the intent of the transaction is the consolidation or partition of Tribal trust land and/or 109 individual trust land.
- 110 601.4-4. New Land Assignments Prohibited. The Nation may not acknowledge any new land 111 assignments. Further, in order to be eligible for a Tribal loan issued against a real property interest
- held as a land assignment, the land assignment shall first be converted to a residential lease. 112
- 113 601.4-5. Wisconsin Probate Code and its Related Chapters. In instances where the Nation lacks
- definition, procedure, or legal precedent in a probate matter, the Nation shall use Wisconsin's 114 115 Probate Code and its related chapters for guidance.
- 116 601.4-6. Wisconsin Real Property Law. The Nation shall follow all applicable portions of the 117 Wisconsin Real Property law when acquiring individual fee land.
- 118 601.4-7. No Waiver of Sovereign Immunity. Nothing in this law may be construed as a waiver of 119 the Nation's sovereign immunity. 120

#### 601.5. **Holding of Ownership**

- 601.5-1. Interests in real property by more than one (1) person may be held in the following ways: 122 123 (a) Joint Tenancy with the Right of Survivorship. Pursuant to this ownership mechanism each owner has an equal, undivided interest in the real property. When an owner dies, 124 125 his/her share is divided among the remaining owners; the last living owner owns the entire 126 property.
  - (1) Real property owned by married persons is held under this mechanism unless they have executed a valid marital property agreement specifically stating that the real property in question is held as tenants in common.

Real Property Law Emergency Amendments Adopted by Resolution BC-01-22-20-B OBC Consideration of an Extension of the Emergency Amendments 2020 07 22

(b) *Tenancy in Common*. Pursuant to this ownership mechanism each owner has a percentage of divided interest in the real property. When an owner dies, his/her interest is divided among his/her devisees or heirs.

(1) Real property owned by more than one (1) person, other than married persons, is owned under this mechanism unless a deed or transfer document specifically states the real property is held as joint tenants with rights of survivorship.

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## 601.6. Legal Descriptions

- 601.6-1. The legal description for any real property transferred under this law shall be derived from a certified survey map or survey completed by a registered land surveyor according to currently accepted minimum industry standards for property surveys. If the plat of survey changes the legal description of the certified survey map for the same piece of property, the certified survey map's legal description shall be used on transfer documents along with the survey description, which shall be designated as "Also Known As ..." Section, township, range and fourth principal meridian shall be included in all legal descriptions.
- 601.6-2. Every land survey shall be made in accordance with the county register of deeds' records for fee land, and in accordance with the Oneida Nation Register of Deeds' records for Tribal trust lands and individual trust lands. The surveyor shall acquire data necessary to retrace record title boundaries such as deeds, maps, certificates of title, title status reports, Tribal leases, Tribal home
- purchase agreements, center line and other boundary line locations.
- 601.6-3. Legal descriptions defining land boundaries shall be complete, providing unequivocal identification of line or boundaries.
- 601.6-4. All surveys prepared for the Nation shall comply with survey requirements outlined in the Wisconsin Administrative Code, Chapter A-E7 and indicate setbacks, building locations and encroachments, as applicable.
- 601.6-5. Legal descriptions shall be used on transfer documents formalizing a purchase, real estate sale, lease, foreclosure, probate transfer, trust acquisition and Tribal resolutions.
- 601.6-6. When real estate is listed, noticed and/or advertised as available for sale, rent or lease to Tribal members, the address is an adequate legal description of the real property.

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#### 601.7. Title Transfer

- 601.7-1. *Trust Acquisition*. Land Management shall use title companies duly registered with the Department of Interior and approved by the Land Management to update abstracts or provide title insurance on real property scheduled for trust acquisition.
  - (a) Title companies shall follow general guidelines provided by the federal government in terms of form, content, period of search, destroyed or lost records and abstracter's certificate.
  - (b) When researching land title for real property within the Reservation which is being considered for trust acquisition, Land Management shall request the title company to search the title back to the original allottee, in order to ensure that patents or Indian deeds were legally issued.
  - (c) Any valid liens or encumbrances shown by the commitment for title insurance shall be eliminated before the title is transferred into trust.
  - (d) After land is in trust both a title search of county records and a title status report requested by Land Management from the Bureau of Indian Affairs shall verify all valid encumbrances, if any, on the title. For the purposes of this section, a valid encumbrance is

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- one that has been preapproved, in writing, by Land Management based on a standard operating procedure that is effective upon approval by the Oneida Land Commission.
  - (e) Land Management applications to convert Tribal fee land into Tribal trust land require an Oneida Land Commission resolution approving the conversion.
  - 601.7-2. Deeds. A deed is the formal document used by the Land Management to transfer title from one (1) party to another.
    - (a) A valid deed shall:

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- (1) Be in writing:
- (2) Identify the grantor (seller) and grantee (buyer);
- (3) Provide the legal description of the real property;
- (4) Identify the interest conveyed, as well as any conditions, reservations, exceptions, or rights of way attached to the interest;
- (5) Be signed by or on behalf of each of the grantors (sellers);
- (6) Be signed by or on behalf of each spouse of each of the grantors (sellers), if applicable; and
- (7) Be delivered to the grantee (buyer).
- (b) In addition to the requirements listed in section 601.7-2(a), a deed prepared for trust acquisition shall include:
  - (1) The federal authority for trust acquisition;
  - (2) Any exceptions or exclusions from the State of Wisconsin's fees or other transfer requirements;
  - (3) The approximate acreage of the real property being transferred to trust; and
  - (4) The authority and signature of the appropriate Department of Interior official who accepts the real property into trust.
- (c) A deed transferring fee simple title shall be recorded in the appropriate register of deeds office, provided that, once the real property is in trust, the title shall be recorded with the Oneida Nation Register of Deeds and the Bureau of Indian Affairs Land Titles and Records
- 601.7-3. Involuntary Transfer of Title. All involuntary transfers of title require a hearing and order from the Judiciary, and may occur in the following ways:
  - (a) Eminent Domain. Eminent domain is the right of the Nation's government to acquire Tribal member individual fee land within the Reservation for public uses without the consent of private owners.
    - (1) For the purposes of this section, public uses include, but are not limited to, environmental protection, streets, highways, sanitary sewers, public utility/sites, waste treatment facilities and public housing.
    - (2) Prior to exercising eminent domain, the Nation shall first attempt to negotiate an agreeable taking by making an offer to purchase based on an appraisal of the real property. The appraisal amount may be based on an appraisal provided by the Nation. In the event the property owner objects to the Nation's appraisal, they may obtain an independent appraisal at their own cost. For the purposes of this section, an appraisal means process for estimating a piece of real property's value.
    - (3) The Nation's exercise of eminent domain may be appealed to the Judiciary.
  - (b) Foreclosure. Foreclosures may occur subject to the Mortgage and Foreclosure law when a Tribal member ceases payment on a leasehold mortgage.
  - (c) Tribal Land Consolidation. Section 207 of the Indian Land Consolidation Act (Pub.L. No. 97-459, 96 Stat. 2515, and amended on October 30, 1984 by Pub.L. No. 98-608, 98

Real Property Law Emergency Amendments Adopted by Resolution BC-01-22-20-B OBC Consideration of an Extension of the Emergency Amendments

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Stat. 3171) is incorporated into this law, which provides a mechanism for real property within the Reservation to escheat, or pass, to the Nation.

- (1) Pursuant to section 207 of the Indian Land Consolidation Act, an ownership interest in real property escheats, or passes, to the Nation under the following circumstances, provided that the Nation shall provide just compensation for the interest:
  - (A) The real property is within the Reservation boundaries;
  - (B) The decedent's ownership in the given parcel of land is two percent (2%) or less of the total acreage; and
  - (C) The interest is incapable of earning one hundred dollars (\$100) in any one (1) of the five (5) years immediately following the decedent's death.
- (2) A decedent's heirs may appeal a land consolidation under this section to the Judiciary.
- (3) Land consolidation is subject to the probate requirements, as included in this law and accompanying rules.
- (d) Transferring Interests Inherited by Non-Tribal Members. If the owner of an interest of real property which is held in trust or restricted fee status located within the Reservation devises such interest to a non-Tribal member, the Nation may acquire the interest by paying the fair market value of the interest determined as of the date of the decedent's death. Such transfer is effective upon receipt of an order transferring inherited interests from the Judiciary pursuant to section 205 of the Indian Land Consolidation Act.
  - (1) An order transferring inherited interests may not be granted if:
    - (A) While the decedent's estate is pending, the non-Indian devisee denounces his or her interest in favor of a Tribal member person:
    - (B) The interest is part of a family farm that is devised to a member of the immediate family of the decedent, provided that such a restriction shall be recorded as part of the deed relating to the interest involved; or
    - (C) The devisee agrees in writing that the Nation may acquire the interest for fair market value only if the interest is offered for sale to a person or entity that is not a member of the immediate family of the owner of the
- (e) Easements for Landlocked Properties. Land Management and the Oneida Land Commission shall jointly develop rules regarding requests for easements for landlocked properties.
- 601.7-4. Land Management shall work with the Oneida Law Office in order to pursue an involuntary transfer of title.

#### 601.8. **Probate**

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- 601.8-1. Land Management shall process and administer probate estates and, where necessary, shall refer probate estates to the Oneida Judiciary for formal administration. Land Management and the Oneida Land Commission shall jointly create any rules necessary to administer probate estates. Land Management shall:
  - (a) Process applications for probate administration;
  - (b) Receive proof of heirship demonstrating a party is entitled to receive an intestate decedent's property pursuant to applicable laws and rules;
  - (c) Receive consent to serve forms and in undisputed matters, issue domiciliary letters;
  - (d) Require and receive affidavits of service;

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- (e) Receive waiver and consent to probate administration forms and any related affidavits;
- (f) Issue notice to creditors of the probate's administration, receive creditor claims for consideration and settlement, and issue discharge of creditors when appropriate;
- (g) Receive and process all estate inventories;
- (h) Receive and process, when possible, land transactions in accordance with this law and receive proof of recording documents;
- (i) Receive estate receipts;
- (j) In undisputed matters, receive and process statement of personal representative to close estate and issue discharge of personal representative; and
- (k) Refer disputed matters to the Judiciary, transfer probate and related documents, and participate in the Judiciary's proceedings as necessary.
- 601.8-2. The Judiciary shall hear and administer disputed probate estates or matters requiring appointment of a guardian ad litem and shall have all the above powers conferred upon Land Management in such cases. In addition, the Judiciary shall hear and administer probate estates in which Land Management seeks appointment as a personal representative.

## 601.9. Leasing of Real Property

601.9-1. In accordance with the Leasing law, Land Management shall administer and process all leasing of Tribal land for agricultural and commercial purposes and the Comprehensive Housing Division shall administer and process all leasing of Tribal land for residential purposes. The Leasing law definition of Tribal land does not include Tribal fee land; however, pursuant to this law, the responsible parties designated herein shall administer and process leases of both Tribal fee land and Tribal trust land in accordance with the Leasing law.

#### **601.10.** Records

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- 601.10-1. *Purpose*. Land Management shall oversee the administration of the Oneida Nation Register of Deeds which shall accept and record documents related to real property located within the Reservation, as well as documents related to all Tribal fee land, regardless of where it is located. 601.10-2. *Types of Records*. The Oneida Nation Register of Deeds may only accept documents that provide evidence of activities affecting real property title, preserve the record of a title document and give constructive notice of changes to a title document. Further, such documents shall be originals, signed duplicates or certified copies. The following documents may be accepted by the Oneida Nation Register of Deeds.
  - (a) Deeds;
  - (b) Probate orders;
  - (c) Mortgages and other valid liens;
  - (d) Easements, covenants, and restrictions;
  - (e) Certified survey maps and plats of survey;
  - (f) Patents;
  - (g) Declarations of involuntary transfer or taking;
  - (h) Satisfactions;
  - (i) Leases made pursuant to the Leasing law;
  - (i) Home ownership agreements made pursuant to the Landlord-Tenant law;
    - (k) Marriage agreements; and
  - (1) Correction of title defects.
- 315 601.10-3. *Accessibility*. The Oneida Nation Register of Deeds shall provide open access to land records and title documents.

Real Property Law Emergency Amendments Adopted by Resolution BC-01-22-20-B OBC Consideration of an Extension of the Emergency Amendments

- 317 601.10-4. Trust Land. All documents pertaining to Tribal trust land and individual trust land shall 318 be recorded with the Oneida Nation Register of Deeds and the Bureau of Indian Affairs Land Titles
- 319 and Records Office.
- 320 601.10-5. Tribal Seal. The Nation's Secretary shall provide Land Management with the Nation's
- 321 seal to be used to authenticate documents which are certified by the Oneida Nation Register of

322 Deeds.

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#### **Real Estate Education Requirements and Certifications** 601.11.

- 601.11-1. Wisconsin Real Estate Education and Exam Required. All persons engaging in the acquisition of Tribal fee land on behalf of the Nation, specifically those performing real estate closings, shall pass the Wisconsin Real Estate License Exam. Such persons are not required to obtain a Wisconsin Real Estate License, but shall fulfill the pre-license education requirement, pass the licensing exam and fulfill a minimum of twelve (12) hours or four (4) courses of continuing education requirements as required of Wisconsin real estate licensees. The Land Management director shall select which continuing education courses are required and the Oneida Law Office shall provide the director with a recommendation. In addition to Wisconsin's minimum education requirements as applied to the Nation's real estate employees in this law, Land Management shall require such employees to attend real estate training specific to the Nation's goals and unique positions as the Oneida Law Office shall offer on an as-needed basis.
  - (a) While Wisconsin real estate law allows persons engaged in the sale of real estate to earn a commission, persons acquiring Tribal fee land on behalf of the Nation are regular employees of the Nation and, therefore, shall waive any commission for which they might otherwise be eligible.
  - (b) It is critical to the Oneida Nation's goal to reacquire property within the original Reservation boundaries to have employees educated and experienced in executing real estate transactions. Accordingly, Land Management shall employ a minimum of one (1) employee whose primary focus is real estate acquisitions and shall ensure that a minimum of two (2) employees are educated and trained as backups to the primary.
- 601.11-2. TAAMS Certification Required. All persons responsible for encoding leasing information shall obtain a TAAMS certification, which includes, but is not limited to, the following positions:
  - (a) Residential and Commercial Leasing Specialists;
  - (b) Land Title and Trust Manager; and
  - (c) Title Examiner.

601.11-3. Fiduciary Responsibility. All persons engaged in the buying or selling of Tribal land shall, at all times, act as a fiduciary to the Nation. Further, all such persons shall comply with all applicable Tribal and federal laws.

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#### 601.12. **Organization**

601.12-1. Comprehensive Housing Division. The Comprehensive Housing Division shall oversee all residential transactions within the Reservation and shall process and administer such transactions using the applicable of the Landlord-Tenant law, the Mortgage and Foreclosure law, the Leasing law and/or the Eviction and Termination law; including any corresponding rules. In addition, the Oneida Land Commission and the Comprehensive Housing Division shall exercise joint rulemaking authority to provide process requirements, including but not limited to advertising, notice, prequalification, and selection, that apply in all circumstances when the Nation is selling a residential property.

Real Property Law Emergency Amendments Adopted by Resolution BC-01-22-20-B OBC Consideration of an Extension of the Emergency Amendments 2020 07 22

- 601.12-2. *Oneida Land Commission*. The Oneida Land Commission is comprised of seven (7) elected Tribal members and shall:
  - (a) Interpret the provisions of this law and create policy to guide Land Management in implementing the same;
  - (b) Approve or deny all easements and land use licenses;
  - (c) Review and adopt Land Management's standard operating procedures for entering into agriculture and commercial leases pursuant to the Leasing law;
  - (d) Approve or deny all acquisition of Tribal land;
  - (e) Allocate and assign land uses to all Tribal land, except those uses governed by the Public Use of Tribal Land law, based on the Land Use Technical Unit rules which the Oneida Planning Department shall develop in collaboration with affected Oneida divisions and departments and the Oneida Land Commission; and
  - (f) Name all buildings, roads, parks and the like on Tribal land.
  - 601.12-3. *Land Management*. Land Management shall implement this law in accordance with the policy directives provided by the Oneida Land Commission. Land Management shall:
    - (a) Forward requests for easements and land use licenses to the Oneida Land Commission based on the easement and land use license rules jointly developed by Land Management and the Oneida Land Commission;
    - (b) Administer and oversee the Oneida Nation Register of Deeds;
    - (c) Enter into and administer agricultural and commercial leases pursuant to the Leasing law and the Eviction and Termination law and any corresponding rules;
    - (d) Prepare title reports and process trust transactions; and
    - (e) Process land acquisition transactions as approved by the Oneida Land Commission.
  - 601.12-4. Administrative Rulemaking Authority. The Comprehensive Housing Division, Oneida Land Commission, and Land Management are delegated rulemaking authority as needed to exercise the authority granted and manage the responsibilities bestowed upon each area as identified in this law.

End.

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- Adopted-BC-05-29-96-A
- 397 Amended-BC-03-01-06-D
- 398 Amended-BC-04-28-10-E
- 399 Amended-BC-02-25-15-C
- 400 Amended-BC-05-13-15-B
- 401 Amended-BC-02-08-17-A
- 402 Emergency Amended BC-06-14-17-A
- 403 Amended-BC-05-09-18-A
- 404 Emergency Amended BC-01-22-20-B

# July 16, 2020, Legislative Operating Committee E-Poll Approval of the Boards, Committees, and Commissions Law Amendments Public Comments Materials, and FIS Request Memorandum

E-POLL REQUEST: Approval of the Boards, Committees, and Commissions Law Amendments Public Comments Materials, and FIS Request Memorandum

LOC
To Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen
Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Clorissa N. Santiago

3 Vote by dicking Vote in the Respond group above.
This message was sent with High importance.

2020 07 16 BCC Amendments PM Comment Review Memo (With Attachments).pdf
949 KB
2020 07 16 Boards, Committees, and Commissions Draft 2 (Redline to Draft 1).pdf
335 KB
2020 07 16 BCC Amendments PM Commissions Draft 2 (Redline to Last Permanent).pdf
314 KB
2020 07 16 BCC Legislative Analysis Draft 2.pdf

#### Good Afternoon Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the Boards, Committees, and Commissions law amendments public comment materials, and fiscal impact statement request memorandum.

#### **EXECUTIVE SUMMARY**

The Legislative Operating Committee has been developing amendments to the Boards, Committees, and Commissions law. A public comment period on the proposed amendments to the Boards, Committees, and Commissions law was held open until July 9, 2020, in accordance with the Legislative Procedures Act and the Nation's COVID-19 Core Decision Making Team's "Suspension of Public Meetings Under the Legislative Procedures Act" declaration. The "Suspension of Public Meetings under the Legislative Procedures Act" declaration was issued on March 27, 2020, and suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

Five (5) individuals submitted written comments during the public comment period, for a total of twenty-four (24) comments received on the proposed amendments to the Boards, Committees, and Commissions law. On July 9, 2020, and July 16, 2020, the Legislative Operating Committee reviewed and considered every written comment that was received. A public comment review memorandum was drafted to demonstrate the Legislative Operating Committee's consideration, and revisions to the Boards, Committees, and Commissions law were made based on the comments that were received.

The proposed amendments to the Boards, Committees, and Commissions law are now ready to continue through the legislative process. The next step in the legislative process is to request a fiscal impact statement. 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 can 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)].

Attached to this e-poll please find the follow documentation for the proposed amendments to the Boards, Committees, and Commissions law:

- Public comment period review memorandum;
  - A copy of the public meeting draft and all written comments that were received is attached to this memorandum:
- Boards, Committees, and Commissions law Draft 2 (Redline to Draft 1);
  - This draft demonstrates the changes that were made to the Law after the public meeting;
- Boards, Committees, and Commissions law Draft 2 (Clean);
- Boards, Committees, and Commissions law Draft 2 (Redline to Last Permanent Draft);
  - o This draft demonstrates all the proposed amendments made to the Law;
- Updated Boards, Committees, and Commissions law legislative analysis; and
- Fiscal impact statement request memorandum.

The Legislative Operating is now being asked to approve by e-poll the public comment period review memorandum, draft, legislative analysis, and fiscal impact statement request memorandum, and to forward the fiscal impact statement request memorandum to the Finance Department directing that a fiscal impact statement of the proposed amendments to the Boards, Committees, and Commissions law be prepared and submitted to the Legislative Operating Committee by July 31, 2020.

An e-poll is necessary for this matter because Legislative Operating Committee meetings have been canceled due to the COVID-19 pandemic, and immediate action is required by the Legislative Operating Committee to approve these materials so a fiscal impact statement from the Finance Department can be requested.

#### **REQUESTED ACTION**

- Accept the public comments for the proposed amendments to the Boards, Committees, and Commissions law;
- Approve the public comment review memorandum, updated draft and legislative analysis, and fiscal impact statement request memorandum;
- Forward the fiscal impact statement request memorandum to the Finance Department directing that a fiscal impact statement of the proposed amendments to the Boards, Committees, and Commissions law be prepared and submitted to the Legislative Operating Committee by July 31, 2020.

#### **DEADLINE FOR RESPONSE**

July 16, 2020 at 4:30 p.m.

All supporting documentation has been attached to this email for your convenience.



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

## **E-POLL RESULTS:**

The e-poll was approved by Jennifer Webster, David P. Jordan, Kirby Metoxen, and Daniel Guzman King. Ernest Stevens III did not provide a response to the e-poll.

# RE: E-POLL REQUEST: Approval of the Boards, Committees, and Commissions Law Amendments Public Comments Mater...



Jennifer A. Webster

To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Clorissa N. Santiago ← Reply ≪ Reply All → Forward ...

Thu 7/16/2020 1:37 PM

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Reply

Approve, Jenny

#### RE: E-POLL REQUEST: Approval of the Boards, Committees, and Commissions Law Amendments Public Comments Mater...



David P. Jordan

To LOC; Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Clorissa N. Santiago

Thu 7/16/2020 1:42 PM

→ Forward

→ Forward

Thu 7/16/2020 1:58 PM

Approve

## Re: E-POLL REQUEST: Approval of the Boards, Committees, and Commissions Law Amendments Public Comments Mater...



Kirby W. Metoxen

To David P. Jordan; LOC; Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster

Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Clorissa N. Santiago

i) If there are problems with how this message is displayed, click here to view it in a web browser.

Approve

#### RE: E-POLL REQUEST: Approval of the Boards, Committees, and Commissions Law Amendments Public Comments Mater...



Daniel P. Guzman

To LOC; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Clorissa N. Santiago

Approve



# Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54:15-2365



TO: Legislative Operating Committee (LOC)

FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney

DATE: July 16, 2020

RE: Boards, Committees, and Commissions Law Amendments: Public Comment

Review

A public comment period for the proposed amendments to the Boards, Committees, and Commissions law ("the Law") was held open until July 9, 2020. A public meeting for the proposed amendments to this Law was not held due to the COVID-19 pandemic.

On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. The Public Health State of Emergency was extended to August 11, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, and BC-07-08-20-A.

On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. The "Safer at Home" declaration was modified to allow for gaming and golf operations to resume on April 21, 2020, through the "Updated Safer at Home" declaration and then modified again on May 19, 2020, through the "Safer at Home Declaration, Amendment, Open for Business" to allow businesses to re-open under certain safer business practices with social distancing practiced by all persons, but still directs that individuals continue to stay at home. On June 10, 2020, the COVID-19 Core Decision Making Team issued a "Stay Safer at Home" declaration which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.

On March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

Although the Nation's COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration suspended public meetings and therefore no public meeting was scheduled for the amendments to the Boards, Committees, and Commissions law, a public comment period was still held open until July 9, 2020, to allow members of the

community to provide written submissions of comments or questions to the Legislative Operating Committee through e-mail.

This memorandum is submitted as a review of the written comments received within the public meeting and public comment period. The public meeting draft and written comments received are attached to this memorandum for review.

# **Comments 1 through 2 – Reposting for Insufficient Applications:**

# 105.5. Applications

- 105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Business Committee Support Office may repost for an additional time period.
  - (a) The Business Committee Support Office shall notify the Oneida Business Committee if a position will be reposted for an additional time period.
  - (b) In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.
  - (c) The Oneida Business Committee may elect to include within the pool of appointed persons late applications.

[Public Meeting Notice stated "1. Allow the Business Committee Support Office to repost a vacancy for an additional time period if insufficient applications are received, as long as notification is provided to the Oneida Business Committee."]

**Brooke Doxtator (written):** Lines 126-135 – Would like to see these amendments become permanent as it will make the process more efficient.

**Richard Baird (written):** 1. It seem to me that's the way that worked anyway. If there were no applications or only one application then there would be insufficient persons to choose from. Too many times I've seen an only candidate chosen only to resign.

## Response

Both commenters express support for the proposed amendment in section 105.5-5 to allow the Business Committee Support Office to repost a vacancy for an additional time period when insufficient applications are received, in an effort to make the appointment process more efficient. The Legislative Operating Committee is proposing that this amendment be considered by the Oneida Business Committee for permanent adoption. Therefore, there is no recommended revision based on these comments.

# LOC Consideration

The Legislative Operating Committee believes that the proposed amendment in section 105.5-5 to allow the Business Committee Support Office to repost a vacancy for an additional time period when insufficient applications are received will make the appointment process more efficient. The Legislative Operating Committee discussed that the Law should be clarified to describe what



amount of applications received qualifies as "insufficient applications" so that the Business Committee Support Office will have more guidance as to when they would be expected to repost. The Legislative Operating Committee wants to ensure consistency when reposting a vacancy for insufficient applications.

The Legislative Operating Committee directed that the following amendment be made to the Law to clarify what qualifies as insufficient applicants:

# 105.5. Applications

- 105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Business Committee Support Office may repost for an additional time period.
  - (a) If the number of applicants is equal to or less than the number of vacancies then it shall be determined to be an insufficient number of applicants.
  - (ab) The Business Committee Support Office shall notify the Oneida Business Committee if a position will be reposted for an additional time period.
  - (bc) In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.
  - (ed) The Oneida Business Committee may elect to include within the pool of appointed persons late applications.

# **Comments 3 through 4 – Timelines for Appointment Selection Process:**

# 105.7. Appointment to an Entity

- 105.7-1. Appointment Selection. The following procedures shall be used to determine how the applicant for an appointed position is selected:
  - (a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
    - (1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and
    - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made; or
    - (3) if delays in compiling the applications, summary of qualifications, or results of any investigations exist, request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2).

[Public Meeting Notice stated "2. Allow the Business Committee Support Office to request additional time from the Oneida Business Committee in compiling the applications, summary of qualifications, or results of any investigation."]



**Brooke Doxtator (written):** Lines 195-197 — Would like to see these amendments become permanent as situations have arisen where we weren't able to meet the deadline due to factors that were outside our control.

**Richard Baird (written):** 2. I don't have a problem with the support office requesting more time. Once the applications go up to the office, and a candidate is not chosen due to background check or other reason, the support staff is charged with notifying the entity the reason a candidate has not been selected for whatever reason.

# Response

Both commenters express support for the proposed amendment in section 105.7-1(a)(3) to allow the Business Committee Support Office to request additional time from the Oneida Business Committee to complete processing and delivering applications if delays in compiling the applications, summary of qualifications, or results of any investigations exist. Additionally, it was pointed out that requesting additional time to process applications should be permissible because section 105.7-2 of the Law requires the Nation's Secretary to notify all applicants of the final status of their application once the Oneida Business Committee selects an individual for appointment.

The Legislative Operating Committee is proposing that this amendment be considered by the Oneida Business Committee. Therefore, there is no recommended revision based on this comment.

#### LOC Consideration

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

# **Comment 5 – Timeframe for Entity Chair to Submit Recommendation:**

# 105.7. Appointment to an Entity

- 105.7-1. Appointment Selection. The following procedures shall be used to determine how the applicant for an appointed position is selected:
  - (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
    - (1) The entity's Chairperson may review the application materials and submit to the Business Committee Support Office a recommendation to the Oneida Business Committee of an applicant for appointment.
      - (A) The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida Business Committee meeting in which the appointment is intended to be made.

[Public Meeting Notice stated "3. Clarify a deadline for when a Chair of an entity has to submit a recommendation for an appointment to the entity for the Oneida Business Committee's consideration."]



**Richard Baird (written):** 3. The Chair has the responsibility to chose a candidate and should do expeditiously, in order for the entity to continue to conduct business. Sometime an entity doesn't have a quorum due to insufficient members, so its imperative that the Chair act quickly to fill vacancies.

# Response

The commenter expresses that the Chairperson of a board, committee, or commission has the responsibility to choose a candidate to fill a vacancy, and that the vacancy should be filled quickly to ensure there is no loss of quorum. Although it is true that a vacancy should be filled as expeditiously as possible, the commenter's statements are not completely accurate as to where the responsibility of filling a vacancy lies within the appointment process.

The Law provides the process that shall be used when making an appointment to fill a vacancy on a board, committee, or commission. The Oneida Business Committee is the body that is given the responsibility to make appointments to a board, committee, or commission of the Nation. [1 O.C. 105.7-1]. Although the Chairperson of the entity does not select the applicant, the Chairperson does have an opportunity to provide the Oneida Business Committee with a recommendation. The Chairperson of an entity is provided a copy of all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required. [1 O.C. 105.7-1(a)(1)]. The entity's Chairperson may review the application materials and submit to the Business Committee Support Office a recommendation to the Oneida Business Committee of an applicant for appointment. [1 O.C. 105.7-1(b)(1)]. The Chairperson is required to submit his or her recommendation to the Business Committee Support Office in accordance with the submission deadlines for the Oneida Business Committee meeting in which the appointment is intended to be made. [1 O.C. 105.7-1(b)(1)(a)]. The deadline for submitting a recommendation ensures that input from the Chairperson is received as expeditiously as possible as to not slow down the appointment process. Then the Oneida Business Committee is required to have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. [1 O.C. 105.7-1(c)]. After completing a thorough discussion, the Oneida Business Committee then moves into open session to formally select an applicant for appointment, or re-notice the vacancy because of ineligible, unqualified, or under qualified applicants. [1 O.C. 105.7-1(c)(1)-(2)].

In an effort to avoid a discontinuation of business or a loss of quorum for an entity due to a vacancy, at the end of an member's term the Law allows a member of the entity to remain in office until the member's successor has been sworn in by the Oneida Business Committee. [1 O.C. 105.6-2(a)(1)].

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

## LOC Consideration

The Legislative Operating Committee discussed the role of a recommendation by an entity's Chairperson during the appointment process. Some members of the Legislative Operating Committee had concerns that having the Law specifically state that the Chairperson can make a



recommendation could be confusing and misleading for entities, since they want the Law to be clear that it is the Oneida Business Committee that actually selects an applicant, and questioned whether this provision should be removed from the Law.

After much discussion, the Legislative Operating Committee determined that this provision should remain in the Law. The Law provides that the entity's Chairperson *may* submit a recommendation to the Oneida Business Committee of an applicant for appointment. [1 O.C. 105.7-1(b)(1)]. The use of the term "may" in the Law means that the Chairperson of an entity has the option of submitting this recommendation, it is not a requirement. If a Chairperson provides a recommendation, then the Oneida Business Committee uses the recommendation as a tool and source of information when making a decision as to which applicant to select. But the Law is clear that it is the Oneida Business Committee that actually selects an applicant for appointment after a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity. [1 O.C. 105.7-1(c)(1)].

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

# **Comment 6 – Joint Authority to Fill a Vacancy:**

# 105.7. Appointment to an Entity

105.7-1. *Appointment Selection*. The following procedures shall be used to determine how the applicant for an appointed position is selected:

(d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.

Brent Truttmann (written): Section 105.7-1 (d) of the BCC Law states that the Oneida Business Committee appoints the individual to fill the vacancy of an elected or appointed boards, committee, or commission (after an application process listed in earlier sections). The BCC Law does not guarantee the actual board, committee, or commission with the vacancy will have any input in this process. This lack of guarantee is concerning. While I understand the Oneida Business Committee may have sweeping understanding of all BCCs through their BC Liaisons, the individual board, committee, and commissions have a much or intimate knowledge of their responsibilities and needs. Therefore, the individual board, committee and commission would have an intimate understanding of what to look for in applicants of a vacancy. If there is concern for a conflict of interest, the same concern could be raised to the Oneida Business Committee when appointing an individual to a vacant position as their appointment may be self-serving to the Oneida Business Committee without consideration to the board, committee, or commission with said vacancy. Therefore I recommend the BCC Law to include the board, committee, or commission with the vacancy in the appointment process. Preferably, the appointment to fulfill a vacancy should be decided jointly between both the Oneida Business Committee and the entity with a vacancy.

## Response



The commenter requests that the Legislative Operating Committee consider amending the Law so that the Oneida Business Committee shares the responsibility of selecting an applicant to fill a vacancy with the entity that the vacancy is on.

It is the policy of the Nation to have consistent and standard procedures for choosing and appointing the most qualified persons to boards, committees and commissions. [I O.C. 105.1-1]. An appointed member of a board, committee, or commission serves at the discretion of the Oneida Business Committee. [1 O.C. 105.7-4]. Therefore, it is the Oneida Business Committee who has the authority to select an applicant for an appointment, just as it is the Oneida Business Committee who has the authority to terminate the appointment of a member. [1 O.C. 105.1-7(c), 105.7-4]. Delegating the authority to select an applicant for an appointment to one body, the Oneida Business Committee, instead of having it shared amongst nearly twenty (20) bodies helps ensure consistent and standard procedures for appointing a person to a board, committee, or commission.

Although the decision as to which applicant to select to fill a vacancy is not shared with the entity, the Chairperson of an entity may provide the Oneida Business Committee with a recommendation that the Oneida Business Committee may use in the consideration of the applicants before a selection decision is made. [1 O.C. 105.7-1(b)(1), 105.7-1(c)].

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, since boards, committees, and commissions do have an opportunity to have its voice heard through the submission of a recommendation to the Oneida Business Committee.

# **Comment 7 – Failure to Take Oath of Office During Designated Timeframe:**

# 105.7. Appointment to an Entity

105.7-3. *Declination of Appointment*. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.

- (a) An individual may decline an appointment to an entity in the following ways:
  - (1) Delivery of a letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or
  - (2) The failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee.

**Brooke Doxtator (written):** \*Lines 251-252 – After working with this process we found that 30 days isn't sufficient, months that have 5 weeks and meetings being cancelled often put us out of this window for administering oaths. Could this be updated to something like "The failure to take the oath of office within two (2) regular Oneida Business Committee meetings of being selected for appointment by the Oneida Business Committee."

## Response



The commenter states that the thirty (30) day timeframe provided for in section 105.7-3(a)(2) for an individual to take the oath of office before it is considered that the individual declined the appointment is not an sufficient amount of time. The commenter explains that situations have arose where the Business Committee Support Office faced administering the oath outside that timeframe due to the insufficient amount of time provided by this deadline.

The Legislative Operating Committee was aware of the Business Committee Support Office's concern about the insufficient amount of time provided by the thirty (30) day timeframe provided for in section 105.7-3(a)(2) when developing the proposed amendments to the Law. Previously, the oaths of office were required to be taken at an Oneida Business Committee meeting, which only provided for one (1) or two (2) opportunities for an oath to be taken within thirty (30) days, depending on how many weeks were in the month, or if any Oneida Business Committee meetings were canceled. In the proposed amendments to the Law, the Legislative Operating Committee wanted to provide more flexibility and opportunities for an oath of office to be taken by providing that an oath of office can be taken during a regular or special Oneida Business Committee meeting, or at an alternative time and location as determined by the Secretary. [1 O.C. 105.9-1]. The Secretary can also grant permission for an individual to appear by videoconferencing equipment at an Oneida Business Committee meeting to take an oath. [1 O.C. 105.9-1(a)].

With the added flexibility of allowing an oath of office to occur at an alternative time and location other than an Oneida Business Committee meeting at the discretion of the Secretary, the Legislative Operating Committee intended that the thirty (30) day timeframe remain in place but now be a sufficient amount of time to ensure that a person has the opportunity to take his or her oath of office.

The Legislative Operating Committee may choose to reconsider the thirty (30) day timeframe provided by section 105.7-3(a)(2). The Legislative Operating Committee may make one of the following determinations:

- 1. The Law should remain as currently drafted and section 105.7-3(a)(2) shall provide that failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee shall constitute a declination of appointment.
- 2. The Law should be revised so that the thirty (30) day timeframe provided in section 105-7-3(a)(2) is increased in some manner. If the Legislative Operating Committee makes this determination then a decision as to the amount of time for this timeframe should be made, and the following revision to the Law is recommended:
  - 105.7-3. *Declination of Appointment*. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.
    - (a) An individual may decline an appointment to an entity in the following ways:
      - (1) Delivery of a letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or
      - (2) The failure to take the oath of office within thirty (30) days (add timeframe) of being selected for appointment by the Oneida Business Committee.

LOC Consideration



The Legislative Operating Committee determined that the Law should remain as currently drafted and section 105.7-3(a)(2) shall provide that failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee shall constitute a declination of appointment, due to the fact that more flexibility was added in section 105.9-1 to allow for an oath of office to be taken outside of an Oneida Business Committee meeting.

When discussing the fact that an oath of office could be taken at an alternative time and location other than an Oneida Business Committee meeting at the discretion of the Secretary, the Legislative Operating Committee still wanted to ensure that a quorum of the Oneida Business Committee was present to witness the oath. The Legislative Operating Committee therefore directed that the following revision be made to the Law:

#### 105.9. Oath of Office

- 105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an <u>alternate alternative</u> time and location as determined by the Secretary. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.
  - (a) When taking an oath at an Oneida Business Committee meeting, the appointed or elected member shall appear in person to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.
  - (b) If an oath is administered outside of an Oneida Business Committee meeting, a quorum of Oneida Business Committee members shall be present to witness the oath.

# **Comment 8 – Requirement to be Physically Present When Taking an Oath:**

#### 105.9. Oath of Office

- 105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternate time and location as determined by the Secretary. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.
  - (a) When taking an oath at an Oneida Business Committee meeting, the appointed or elected member shall appear in person to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.

**Brooke Doxtator (written):** Line 288-291 – 105.9 (a) When taking an oath 1.at an Oneida Business Committee meeting, the appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by 2.video conferencing equipment.

- 1. Delete, on line 284 it says they can take their oath at an alternate time and location
- 2. Replace with through videoconferencing, or through other telecommunications.

# Response



The commenter requests that section 105.9-1(a) be revised to remove the reference to the oath occurring at an Oneida Business Committee meeting since section 105.9-1 allows for the oath to be taken at an alternative time and location as determined by the Secretary. The commenter also requests that section 105.9-1(a) include a reference to other telecommunications in addition to videoconferencing.

The following revision to the Law is recommended based on this comment to better clarify this provision of the Law:

105.9-1(a) When taking an oath at an Oneida Business Committee meeting, the appointed or elected member shall appear in person to take his or her oath, except if granted permission by the Secretary to appear by through video conferencing, equipment or through other telecommunications.

# LOC Consideration

The Legislative Operating Committee agreed that the following revision should be made to the Law to provide more clarification on how an oath of office may be administered:

105.9-1(a) When taking an oath at an Oneida Business Committee meeting, the appointed or elected member shall appear in person to take his or her oath, except if granted permission by the Secretary to appear by through video conferencing, equipment or through other telecommunications.

The Legislative Operating Committee understands that the Oneida Business Committee or other boards, committees, and commissions may use teleconferencing through Microsoft Teams to conduct meetings during the COVID-19 pandemic. The Legislative Operating Committee intends for this provision to allow for an oath of office to be taken through Microsoft Teams or other telecommunications if necessary due to the pandemic.

## **Comment 9 – Location for Oath of Office:**

## 105.9. Oath of Office

- 105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternate time and location as determined by the Secretary. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.
  - (a) When taking an oath at an Oneida Business Committee meeting, the appointed or elected member shall appear in person to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.

[Public Meeting Notice stated "4. Allow for the oath of office to be taken at an alternative time and location than during a regular or special Oneida Business Committee meeting as determined by the Secretary."]

**Richard Baird (written):** 4. The oath of office is usually done by the Secretary, so it could be done in the Secretaries office anytime. No need to have it done at a BC meeting.



# Response

The commenter expresses support for the oath of office to be completed at an alternate time and location than an Oneida Business Committee meeting. Previously, the Law required that an oath of office be taken at a regular or special Oneida Business Committee meeting. The proposed amendments to the Law allow for an oath of office to be taken at a regular or special Oneida Business Committee meeting, or at an alternate time and location as determined by the Secretary. [1 O.C. 105.9-1]. This provides more flexibility as to where and when an oath of office can be taken to make it more convenient for the member who has to take the oath. Therefore, there is no revision to the Law recommended based on this comment.

## LOC Consideration

The Legislative Operating Committee intended that the amendment to section 105.9-1 of the Law to allow for the oath of office to be taken outside of an Oneida Business Committee meeting will provide more flexibility and convenience for members who take an oath. The Legislative Operating Committee determined there is no recommended revision based on this comment.

# Comment 10 – Budgetary Sign Off Authority for Boards, Committees, and Commissions:

105.10. Bylaws

105.10-3. Sections. Articles shall be divided into "sections" as set out.

- (b) "Article II. Officers" shall consist of the following:
  - (6) Budgetary Sign-Off Authority and Travel. This section shall identify the entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and how the entity shall handle approving travel on behalf of the entity.
    - (A) An entity shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.
    - (B) An entity shall approve a member's request to travel on behalf of the entity by majority vote at a regular or emergency meeting of the entity.

**Patrick Stensloff (written):** Nearly all of the areas within the Nation are following the automated purchasing process. The areas which report to boards, committees or commissions are following the manual paper order form procurement process. It is the goal of the Purchasing Department to automate procurement activity for all areas within the Nation. Automating the procurement activity for all areas will provide a consistent procurement process throughout the Nation that results in process efficiencies and automated authorizations.

Areas reporting to boards, committees, and commissions are following the manual procurement process because the authorizing members are not employees. Non-employees are not granted access to the Financial System. In addition, some authorizing members of boards, committees or commissions could be performing procurement activity as an employee of the Nation. Adding the approving ability to current users could pose issues with internal controls.



The Purchasing Department is respectfully inquiring about a change in the sign off authority practices for boards, committees and commissions when it pertains to purchasing. This change would eliminate members of boards, committees, or commissions from the automated sign off for purchases. Additionally, the sign off authority for purchases would include employees at the business unit level and route through the Treasurer and Finance Committee accordingly. The BCC supervisor could also be incorporated into the sign off authority if needed.

It is desired to have this change in sign off for purchases encompass all boards, committees and commissions. However, there are some boards, committees and commissions that do not purchase much if anything at all. On the other end of the spectrum, the volume of purchases for the Schools is high.

**Brooke Doxtator (written):** I was asked to reach out to you in regards to adding an amendment to the BCC law that would require the BCC's to approve purchases in their meetings but the BCC Staff would have the final Sign Off Authority (SOA) to add more checks and balances. I included Patrick Stensloff from Purchasing on this email in case he has any comments/feedback to provide regarding the SOA levels. I included our hierarchy below for reference.

BCSO Area Manager

BCC Supervisor BCC Clerk

If you have any questions, please let me know.

# Response

The commenters are requesting that the Legislative Operating Committee consider revising the procurement process and sign off authority for boards, committees, and commissions. The commenters request that boards, committees, and commissions follow the automated purchasing process instead of the manual paper order form procurement process that they currently use. In order to achieve access to the automated purchasing process the official sign-off authority practices for boards, committees, and commissions would have to be changed so that it is an employee of the Nation – and it recommended that the employee be within the Business Committee Support Office- and not member of an entity that has the official sign off authority.

The Legislative Operating Committee may consider whether budgetary sign off authority for boards, committees, and commissions should be adjusted so that official sign off authority lies with the Business Committee Support Office so that the automated procurement process can be utilized. The Legislative Operating Committee may make one of the following determinations:

- 1. The Law should remain as currently drafted and require that the bylaws of an entity provide for the entity's varying levels of budgetary sign off authority and the members that are authorized to sign off on each level.
- 2. The Law should be revised to require that an entity describe in its bylaws how purchases will be formally approved, but that official budgetary sign off authority for the entity lies with the Business Committee Support Office so that the automated procurement process can be utilized. If the Legislative Operating Committee makes this determination then the following revision to the Law is recommended:



# 105.10. Bylaws

- 105.10-3. Sections. Articles shall be divided into "sections" as set out.
  - (b) "Article II. Officers" shall consist of the following:
    - (6) <u>Budgetary Sign Off Authority Purchases</u> and Travel. This section shall identify the entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and how the entity shall handle approving approve purchases or travel on behalf of the entity.
      - (A) An entity shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.
      - (B) <u>Upon formal approval of a purchase by an entity, the Business</u> <u>Committee Support Office shall have official budgetary sign off authority for the entity.</u>
      - (C) An entity shall approve a member's request to travel on behalf of the entity by majority vote at a regular or emergency meeting of the entity.

#### LOC Consideration

The Legislative Operating Committee determined that he Law should be amended to require that an entity describe in its bylaws how purchases will be formally approved, but that official budgetary sign off authority for the entity lies with the Business Committee Support Office so that the automated procurement process can be utilized. The Legislative Operating Committee directed that the following revision be made to the Law based on this comment:

# 105.10. Bylaws

- 105.10-3. Sections. Articles shall be divided into "sections" as set out.
  - (b) "Article II. Officers" shall consist of the following:
    - (6) <u>Budgetary Sign-Off Authority Purchases</u> and Travel. This section shall identify the entity's varying levels of budgetary sign off authority, the members that are authorized to sign off at each level, and how the entity shall handle approving approve purchases or travel on behalf of the entity.
      - (A) An entity shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.
      - (B) <u>Upon formal approval of a purchase by an entity, the Business</u> Committee Support Office shall have official budgetary sign off authority for the entity.
      - (C) An entity shall approve a member's request to travel on behalf of the entity by majority vote at a regular or emergency meeting of the entity.

# **Comment 11 – Responding to an E-Poll:**

#### 105.11. Electronic Polling

105.11-3. Response to an E-Poll. Only the member of an entity shall respond to an e-poll. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.



[Public Meeting Notice stated "5. Clarify that only a member of an entity shall respond to e-polls."]

**Richard Baird (written):** 5. Absolutely! No one but the member should be voting.

# Response

The commenter expresses support for the proposed amendment to section 105.11-3 which clarifies that only a member of the entity shall respond to an e-poll. Therefore, there is no recommended revision based on this comment.

#### LOC Consideration

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

# **Comments 12 through 13 – Stipend Eligibility Based on Presence During Meeting:**

# 105.13. Stipends, Reimbursement and Compensation

105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.

- (a) Meeting Stipends for an Appointed Entity. An individual serving on an appointed entity shall be paid no more than twelve (12) meeting stipends per year.
- (b) Meeting Stipends for an Elected Entity. An individual serving on an elected entity shall be paid no more than twenty-four (24) meeting stipends per year.
- (c) Demonstrating Presence During a Meeting. An entity shall demonstrate presence during an entire meeting by taking roll call on the record at both the beginning and conclusion of a meeting.

105.13-4. Joint Meeting Stipends. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.

[Public Meeting Notice stated "6. Eliminate the requirement that a member of an entity be physically present during the entirety of a meeting or joint meeting in order to be eligible to receive a meeting stipend, but still require that the member to be present and participate in the entire meeting through some means."]

**Brooke Doxtator (written):** Line 568 - in the current law approved 3/17/20 "present for the entire meeting." was removed. Would like to see this line added back in. As we had members that were not present for entire meeting trying to collect stipends.



**Richard Baird (written):** 6. No problem. Just make sure the members are present by some means and there should be a way to confirm that they were. When you're paying a stipend someone needs to be held accountable to insure everyone who said they were present actually were.

# Response

Both commenters express support for the amendments to the Law in section 105.13-3 and 105.13-4 to eliminate the requirement that a member of an entity be *physically* present during the entirety of a meeting or joint meeting in order to be eligible to receive a meeting stipend, but still require that the member to be present and participate in the entire meeting through some means. The requirement for a member of a board, committee, or commission to be present for an entire meeting in order to be eligible for a stipend was removed in the emergency amendments adopted through resolution BC-03-17-20-C. The commenters state that the presence requirement should be included in the permanent amendments as the Business Committee Support Office has had to address members that were not present for an entire meeting but still sought stipends, and the Law should provide some way to ensure the member was present during the meeting since accountability is important when a member is receiving a stipend.

This Law requires that in order for a member of a board, committee, or commission to be eligible to receive a meeting stipend for a regular or emergency meeting a quorum must be established in accordance with the duly adopted bylaws of that entity, the meeting has to last for at least one (1) hour, and the member collecting the stipend has to be present for the entire meeting. [1 O.C.105.13-3]. Although presence for the entire meeting is required, the Law no longer requires that the member be *physically* present because meetings may occur by telephone, through videoconferencing, or through other telecommunications in addition to meetings held in person. [1 O.C. 105.13-3]. An entity shall demonstrate the presence of its members during a meeting by taking roll call on the record at both the beginning and conclusion of a meeting. [1 O.C. 105.13-3(c)].

The proposed amendments to the Law require that a member be present for the entirety of a meeting in order to be eligible for a stipend, and provides a mechanism for demonstrating presence, so there is no recommended revision based on this comment.

#### LOC Consideration

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

# **Comments 14 through 15 – Use of Telecommunications for Meetings:**

## 105.13. Stipends, Reimbursement and Compensation

105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Meetings can occur in person, by



telephone, through videoconferencing, or through other telecommunications.

105.13-4. Joint Meeting Stipends. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.

[Public Meeting Notice stated "7. Provide that meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications."]

**Brooke Doxtator (written):** Lines 568-569 - Would like to see this become permanent so the members have options to meet especially given the current circumstances.

**Richard Baird (written):** 7. No problem. Accountability, same No. 6.

# Response

Both commenters express support for the proposed amendment in section 105.13-3 to allow for meetings to occur in person, by telephone, through videoconferencing, or through other telecommunications. Therefore, there is no recommended revision based on this comment.

## LOC Consideration

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

# **Comment 16 – Technical Difficulties with Use of Telecommunications for Meetings:**

# 105.13. Stipends, Reimbursement and Compensation

105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.

105.13-4. Joint Meeting Stipends. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.

**Brent Truttmann (written):** Greetings Legislative Operating Committee (LOC) and Legislative Reference Office (LRO). As an eligible voting member of the General Tribal Council, please consider and implement the following suggestions to the proposed amendments to the Boards, Committees, and Commissions (BCC) Law:



Section 105.13-2 of the proposed amendments allows meetings held through video conferencing or other means of telecommunications stipend eligible as long as the meeting lasts for at least 1 hour and for the participant to be present for the full meeting. As an employee of the Oneida Nation, I have experienced technical difficulties when hosting these types of meetings. On multiple occasions participants of a video teleconference meeting were dropped from the call, and they had to re-log into the meeting. There is concern that these instances may disqualify participating members from a stipend through no fault of their own based on the current proposed language.

I request the LOC to include additional language to section 105.13-2 to accommodate for the technological limitations of video/teleconference meetings. For example, if a video/teleconference meeting is held, a stipulation that all members need to be logged onto the conference call for 95% of the full meeting to be eligible for a stipend may guarantee that all participants are present for the bulk of the meeting while accommodating for technical glitches.

# Response

The commenter requests the Legislative Operating Committee consider amending the Law to address how technological problems will be addressed if meetings are held through video conferencing or other telecommunications. The commenter expresses concern that if a member experiences technical issues that caused the member not to be present for the entire meeting, then the member would be barred from receiving a meeting stipend, even if the member was present for majority of the meeting.

The Law allows for meetings to occur in person, by telephone, through videoconferencing, or through other telecommunications. [1 O.C. 105.13-3, 105. 13-4]. In order to be eligible for a stipend for attendance and participation in a meeting the member must be present for the entire meeting. [1 O.C. 105.13-3, 105. 13-4].

As boards, committees, and commissions transition into using video conferencing or other telecommunications as a result of the COVID-19 pandemic, it is understandable that technological problems may arise. It is recommended that the following revision be added to the Law to allow for technological problems to be addressed.

105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.

- (a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than twelve (12) meeting stipends per year.
- (b) *Meeting Stipends for an Elected Entity*. An individual serving on an elected entity shall be paid no more than twenty-four (24) meeting stipends per year.
- (c) Demonstrating Presence During a Meeting. An entity shall demonstrate presence during an entire meeting by taking roll call on the record at both the beginning and conclusion of a meeting.
- (d) Technological Issues Affecting Presence During a Meeting. If a member of an entity experiences technological issues during a regular or emergency meeting held by telephone,



through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the meeting, the member shall notify the Business Committee Support Office of the technical issue as soon as possible. The Business Committee Support Office may grant an exemption to the requirement to be present for the entire meeting if the member can demonstrate presence for a majority of the meeting.

- 105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
    - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
  - (b) <u>Technological Issues Affecting Presence During a Joint Meeting</u>. If a member of an entity experiences technological issues during a joint meeting, and the technological issue disrupts the member's presence during the meeting, the member shall notify the Business Committee Support Office of the technical issue as soon as possible. The Business Committee Support Office may grant an exemption to the requirement to be present for the entire joint meeting if the member can demonstrate presence for a majority of the joint meeting.

## LOC Consideration

The Legislative Operating Committee understands that as boards, committees, and commissions transition into using video conferencing or other telecommunications as a result of the COVID-19 pandemic, technological problems may arise. The Legislative Operating Committee wants to provide flexibility to members of a board, committee, and commission who substantially comply with the requirement to be present during an entire meeting but had an issue with technology that disrupted their presence. The Legislative Operating Committee directed that the following amendment be added to the Law to allow for technological problems to be addressed:

- 105.13-3. Meeting Stipends. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) Meeting Stipends for an Appointed Entity. An individual serving on an appointed entity shall be paid no more than twelve (12) meeting stipends per year.
  - (b) Meeting Stipends for an Elected Entity. An individual serving on an elected entity shall be paid no more than twenty-four (24) meeting stipends per year.
  - (c) Demonstrating Presence During a Meeting. An entity shall demonstrate presence during an entire meeting by taking roll call on the record at both the beginning and conclusion of a meeting.
  - (d) Technological Issues Affecting Presence During a Meeting. If a member of an entity experiences a technological issue during a regular or emergency meeting held by telephone,



through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the meeting, the member shall notify the entity of the technological issue as soon as possible.

- (1) An exemption to the stipend eligibility requirement to be present for the entire meeting may be granted if the entity certifies by a majority vote that the member was present for a majority of the meeting despite the technological issue which disrupted the member's presence during the meeting.
- 105.13-4. Joint Meeting Stipends. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
    - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
  - (b) Technological Issues Affecting Presence During a Joint Meeting. If a member of an entity experiences a technological issue during a joint meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the joint meeting, the member shall notify the entity of the technological issue as soon as possible.
    - (1) An exemption to the stipend eligibility requirement to be present for the entire joint meeting may be granted if the entity certifies by a majority vote that the member was present for a majority of the joint meeting despite the technological issue which disrupted the member's presence during the joint meeting.

# **Comment 17 – Limitation of Meeting and Joint Meeting Stipends Per Year:**

## 105.13. Stipends, Reimbursement and Compensation

- 105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) Meeting Stipends for an Appointed Entity. An individual serving on an appointed entity shall be paid no more than twelve (12) meeting stipends per year.
  - (b) Meeting Stipends for an Elected Entity. An individual serving on an elected entity shall be paid no more than twenty-four (24) meeting stipends per year.

**Brooke Doxtator (written):** Lines 571 and 573 – Could this read per fiscal year? This is our current practice because the stipends are easier to track and report when they are on the same cycle as the budget.

Response



The commenter requests that section 105.1303(a)-(b) provide that the limitation on the number of stipends per year be clarified to state fiscal year so that the allocation of stipends is on the same cycle as the budget.

The following revision to the Law is recommended based on this comment: 105.13-3.

- (a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than twelve (12) meeting stipends per <u>fiscal</u> year.
- (b) *Meeting Stipends for an Elected Entity*. An individual serving on an elected entity shall be paid no more than twenty-four (24) meeting stipends per <u>fiscal</u> year.

## LOC Consideration

The Legislative Operating Committee determined that section 105.13-3 should be clarified to provide that the limitation on the number of stipends a member of an entity is eligible to receive is per fiscal year. The Legislative Operating Committee directed the following revision be made to the Law:

105.13-3.

- (a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than twelve (12) meeting stipends per <u>fiscal</u> year.
- (b) *Meeting Stipends for an Elected Entity*. An individual serving on an elected entity shall be paid no more than twenty-four (24) meeting stipends per <u>fiscal</u> year.

# **Comment 18 – Stipend Eligibility Based on Presence During Joint Meeting:**

## 105.13. Stipends, Reimbursement and Compensation

105.13-4. Joint Meeting Stipends. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.

- (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
  - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).

**Brooke Doxtator (written):** Lines 580-581 - in the current law approved 3/17/20 "present for the entire meeting." was removed. Would like to see this line added back in. As we had members that were not present for entire meeting trying to collect stipends.

## Response

The commenter provides that the requirement for a member of a board, committee, or commission to be present for an entire joint meeting in order to be eligible for a stipend, which was removed in the emergency amendments adopted through resolution BC-03-17-20-C, should be included in



the permanent amendments as the Business Committee Support Office has had to address members that were not present for an entire joint meeting but still sought stipends.

This Law requires that in order for a member of a board, committee, or commission to be eligible to receive a stipend for joint meeting with the Oneida Business Committee a quorum must be established in accordance with the duly adopted bylaws of that entity, the meeting has to last for at least one (1) hour, and the member collecting the stipend has to be present for the entire meeting. [1 O.C.105.13-4]. Although presence for the entire joint meeting is required, the Law no longer requires that the member be *physically* present because meetings may occur by telephone, through videoconferencing, or through other telecommunications in addition to meetings held in person. [1 O.C. 105.13-4].

The proposed amendments to the Law already require that a member of a board, committee, or commission be present for the entirety of a joint meeting in order to be eligible for a stipend, but it is recommended that a provision which mirrors section 105.13-3(c) be added to section 105.13-4 to provide specifications for how an entity shall demonstrate the presence of its members during a joint meeting. It is recommended that the following revision be made to the Law based on this comment:

105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.

- (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
  - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
- (b) Demonstrating Presence During a Joint Meeting. An entity shall demonstrate the presence of its members during for the entirety of a joint meeting by taking roll call on the record at both the beginning and conclusion of a joint meeting.

# LOC Consideration

The Legislative Operating Committee determined that a provision be added to the Law that clarifies how a member of an entity can demonstrate presence during a joint meeting. The Legislative Operating Committee directed that the following revision be made to the Law:

105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.

- (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
  - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
- (b) Demonstrating Presence During a Joint Meeting. An entity shall demonstrate the



presence of its members during a joint meeting by taking roll call on the record at both the beginning and conclusion of a joint meeting.

# **Comment 19 – Standardizing Meeting Stipends:**

# 105.13. Stipends, Reimbursement and Compensation

105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.

- (a) Meeting Stipends for an Appointed Entity. An individual serving on an appointed entity shall be paid no more than twelve (12) meeting stipends per year.
- (b) Meeting Stipends for an Elected Entity. An individual serving on an elected entity shall be paid no more than twenty-four (24) meeting stipends per year.
- (c) Demonstrating Presence During a Meeting. An entity shall demonstrate presence during an entire meeting by taking roll call on the record at both the beginning and conclusion of a meeting.

105.13-4. Joint Meeting Stipends. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.

[Public Meeting Notice stated "8. Revise and clarify how the limitation on meeting stipend is calculated, as well as how stipends for conferences and trainings are determined."]

**Richard Baird (written):** 8. I don't know why the BC has never standardized the meeting stipend across the board. It shouldn't be about the stipend, it should be about conducting the Nation's business because you have an interest in participating and helping to move the Nation forward.

## Response

The commenter states a lack of understanding on why the Oneida Business Committee has never standardized meeting stipends across the board for all boards, committees, and commissions of the Nation. He also states that participation on a board, committee, or commission of the Nation should be about an interest in conducting the Nation's business and helping to move the Nation move forward, and not about a stipend.

The Law provides that the Oneida Business Committee shall set stipend amounts by resolution. [1 O.C. 105.13-2]. The Oneida Business Committee adopted resolution BC-09-26-18-D, which was amended by resolutions BC-05-08-19-B and BC-03-17-20-D, to set forth specific dollar amounts for stipends members of a board, committee, or commission may be eligible for.

In regard to meeting stipends, a member is eligible to collect a meeting stipend when a quorum has been established for the meeting, the meeting lasts for at least one (1) hour, and the member



collecting the stipend is present for the entire meeting. [1 O.C. 105.13-3]. Resolution BC-03-17-20-D standardizes the specific meeting stipend amount a member of a board, committee, or commission is eligible to receive based on whether the member is a part of an appointed or an elected entity. Resolution BC-03-17-20-D provides that a member of an appointed entity is eligible to receive a seventy-five dollar (\$75) stipend for attendance at a duly called meeting, while a member of an elected entity is eligible to receive a one hundred dollar (\$100) stipend for attendance at a duly called meeting.

Although stipends are not standardized completely amongst all boards, committees, and commissions, resolution BC-03-17-20-D does provide specific stipend amounts that members of boards, committees, and commissions are eligible to receive. The Law also requires that that Oneida Business Committee periodically review the amounts provided for stipends and, based on the availability of funds, adjust those amounts accordingly by amending the resolution. [1 O.C. 105.13-2]. Therefore, 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.

# **Comment 20 – Exemption for E-mail Requirement:**

#### 105.14. Confidential Information

105.14-3. Official Oneida Nation E-mail Address. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.

- (a) If a member is also an employee of the Nation, he or she shall receive a separate e-mail address from his or her regular work e-mail address.
- (b) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
- (c) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.
- (d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

**Brooke Doxtator (written):** 105.14-3 Official Oneida Nation E-mail Address. 1. Can we make alternates and ad hoc's an exception to this rule? It says "Each member of an entity" so maybe they already are exempt but I wanted to comment on it because the time, effort and resources needed to assign them an "official" email is not really feasible for their use.

#### Response



The commenter requests that the Legislative Operating Committee consider making alternates and ad hoc members of a board, committee, or commission exempt from the requirement to have an official Oneida e-mail address due to the amount of the time, effort, and resources needed to assign ad hoc or alternate members an official e-mail address.

The Law requires that each member of an entity be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically. [1 O.C. 105.14-3]. A member of an entity is prohibited from using a personal or work e-mail address to electronically conduct any business of the entity. [1 O.C. 105.14-3(c)]. Immediately upon notice of a vacancy in an entity, the Nation's Secretary is required to instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position. [1 O.C. 105.14-3(d)]. Requiring all members of a board, committee, or commission to be provided an e-mail address ensures there is a consistent method of communication with all members of boards, committees, and commissions. The use of an official e-mail address also helps ensure that the work of the board, committee, or commission – such as any discussions, sharing of documents, or e-polls- remains confidential and separate from an individual's work or personal accounts.

The Law requires that all members of an entity maintain in a confidential manner all information obtained through their position on the entity, and that confidential information is kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee. [1 O.C. 105.14-1].

The Legislative Operating Committee may consider whether alternates or ad hoc members of a board, committee, or commission should be subject to the requirement to be provided an official Oneida e-mail address. If an ad hoc or alternate to a board, committee, or commission serves a short-term purpose or is not expected to conduct business electronically then it may be a poor utilization of time, resources, and e-mail address license usage to assign an e-mail address to the alternate or ad hoc member. But if the alternate or ad hoc member is required to conduct business electronically or may serve a long-term purpose then the use of an official e-mail address may be necessary to ensure a consistent form of communication and encourage confidentiality.

The Legislative Operating Committee may make one of the following determinations:

- 1. The Law should remain as currently drafted and all members of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically. [1 O.C. 105.14-3].
- 2. The Law should be revised to provide an exemption for alternate and ad hoc members of a board, committee, and commission, from the requirement to be provided an official e-mail address. If the Legislative Operating Committee makes this determination then the following revision to the Law is recommended:
  - 105.14-3. *Official Oneida Nation E-mail Address*. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
    - (a) If a member is also an employee of the Nation, he or she shall receive a separate e-mail address from his or her regular work e-mail address.



- (b) An individual who holds a position as an ad hoc or alternate member of an entity shall be exempt from the requirement to be provided an official e-mail address, unless determined that an e-mail address is necessary for the role and responsibilities of the ad hoc or alternate member.
- (bc) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
- (ed) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.
- (de) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

#### LOC Consideration

The Legislative Operating Committee determined that the Law should be revised to provide an exemption for alternate and ad hoc members of a board, committee, and commission, from the requirement to be provided an official e-mail address. The Legislative Operating Committee directed that the following amendment to the Law be made:

- 105.14-3. *Official Oneida Nation E-mail Address*. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
  - (a) If a member is also an employee of the Nation, he or she shall receive a separate email address from his or her regular work e-mail address.
  - (b) An individual who holds a position as an ad hoc or alternate member of an entity shall be exempt from the requirement to be provided an official e-mail address, unless determined that an e-mail address is necessary for the role and responsibilities of the ad hoc or alternate member.
  - (bc) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
  - (ed) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.
  - (de) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

# **Comment 21 – Consequences for Not Utilizing E-mail Account:**

#### 105.14. Confidential Information

- 105.14-3. Official Oneida Nation E-mail Address. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
  - (a) If a member is also an employee of the Nation, he or she shall receive a separate



e-mail address from his or her regular work e-mail address.

- (b) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
- (c) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.
- (d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

**Brooke Doxtator (written):** 105.14-3 Official Oneida Nation E-mail Address. 2. Can we give them a timeframe to activate the account or a consequence happens? Time and effort are being put into this only for the members to not activate and/or use their accounts.

# Response

The commenter requests that the Legislative Operating Committee consider including a timeframe for when an elected or appointed member of an entity has to activate the e-mail account, because currently the Business Committee Support Office faces the challenge of members not activating or using their accounts.

The goal of requiring an official e-mail address to be provided to every member of a board, committee, or commission of the Nation is to ensure there is a consistent communication method for members, and to encourage and ensure confidentiality when conducting business electronically. Neither measure can be met if a member of a board, committee, or commission does not activate or use his or her official e-mail address.

The Legislative Operating Committee may consider whether the Law should provide a timeframe for a member of a board, committee, or commission to activate his or her official e-mail account. The Legislative Operating Committee may make one of the following determinations:

- 1. The Law should remain as currently drafted and not address a timeframe for a member of a board, committee, or commission to activate his or her official e-mail account.
- 2. The Law should be revised to include a timeframe for a member of a board, committee, or commission to activate his or her official e-mail account. If the Legislative Operating Committee makes this determination then the following revision to the Law is recommended.
  - 105.14-3. *Official Oneida Nation E-mail Address*. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
    - (a) If a member is also an employee of the Nation, he or she shall receive a separate e-mail address from his or her regular work e-mail address.
    - (b) A member of an entity shall have \_\_(timeframe)\_\_ upon election or appointment to an entity to activate his or her official e-mail address.
    - (bc) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media



related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.

- (ed) A member of an entity shall exclusively use his or her official e-mail address to electronically conduct any business of the entity, and shall not use any personal or work e-mail address to electronically conduct any business of the entity.
- (de) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

## LOC Consideration

The Legislative Operating Committee determined that the Law should be revised to include a timeframe for a member of a board, committee, or commission to activate his or her official e-mail account. The Legislative Operating Committee based this decision on the importance of having a consistent communication method for members of boards, committees, and commissions, and to encourage and ensure confidentiality when members are conducting business electronically.

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

- 105.14-3. *Official Oneida Nation E-mail Address*. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
  - (a) If a member is also an employee of the Nation, he or she shall receive a separate email address from his or her regular work e-mail address.
  - (b) A member of an entity shall have thirty (30) days upon election or appointment to an entity to activate his or her official e-mail address.
  - (bc) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
  - (ed) A member of an entity <u>shall exclusively use his or her official e-mail address to electronically conduct any business of the entity, and shall not use any personal or work e-mail address to electronically conduct any business of the entity.</u>
  - (de) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

# **Comment 22 – Email Address Provided by the Nation:**

# 105.14. Confidential Information

- 105.14-3. Official Oneida Nation E-mail Address. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
  - (a) If a member is also an employee of the Nation, he or she shall receive a separate e-mail address from his or her regular work e-mail address.
  - (b) A member of an entity shall sign an acknowledgment form provided by the



Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.

- (c) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.
- (d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

**Sylvia Cornelius (written):** Hello, I would like to address the use of a nation only email. This may work for members that do not work for the Nation. However, I have run into many issues having 2 nation emails, with appts being emailed to my school board account. And have to remind staff that i have two emails, not to pick the OSB email to pick my work title. Is there a way to address this? Like not being able to look up members by name but by board? It seems like there should be a technological easy fix for this issue, it continues to happen to me. I would like to see this addressed. Maybe by not including board members in the address book by name but by board and then name? If you could find a way to address this, it is very irritating. Especially if people just pick the first name they see and dont look at the title. This is an ongoing issue for me being an employee of the Nation and on a Board.

# Response

The commenter expresses frustration over having both an Oneida Nation employee e-mail address and an e-mail address as a member of the Oneida Nation School Board, and the subsequent confusion in receiving e-mails on one account that were meant for the other account.

The Law requires that a member of an entity be provided an official Oneida e-mail address upon election or appointment to a board, committee, or commission of the Nation for the purpose of conducting business of the entity electronically, and specifies that this e-mail address must be different than the member's employee e-mail address if that member is also an employee of the Nation. [1 O.C. 105.14-3]. The Law does not provide specifics for how the e-mail address is formulated or organized.

It is recommended that the Legislative Operating Committee share this concern with the Nation's Management Information Systems (MIS) Department to see if there are any technological adjustments that could be made to how the board, committee, and commission e-mail addresses are formulated or organized to avoid the confusion created by the problem described by the commenter.

## LOC Consideration

The Legislative Operating Committee determined that the issue described by the commenter does not necessarily have a solution that can be achieved through legislation, but that the Legislative Operating Committee will send communication to the Nation's Management Information Systems (MIS) Department to see if there are any technological adjustments that could be made to how the



board, committee, and commission e-mail addresses are formulated or organized to avoid the issue described by the commenter.

# **Comment 23 – Ineligibility Due to Conflicts of Interest:**

#### 105.15. Conflicts of Interest

105.15-3. *Ineligibility Due to Conflicts of Interest.* Due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed or elected entity:

- (a) political appointees;
- (b) an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, or Intergovernmental Affairs and Communications; and
- (c) an employee who serves as a direct report to the Oneida Business Committee.

**Brooke Doxtator (written):** 105.15-3. Ineligibility Due to Conflicts of Interest. 1.Can we add d and e?

- d) an employee of the Business Committee Support Office (The BCSO staff (specifically the Info Management Specialist) fall in the same category as Audit, Finance, Law, Intergovernmental Affairs and Communications. In addition, the BCC staff offer admin support to the BCC's which could cause a conflict of interest.
- e) an employee who serves as a direct report to the General Manager (need to confirm with GM, but it's my understanding the GM's direct reports are not supposed to serve on BCC's)

# Response

The commenter requests that the Legislative Operating Committee consider including Business Committee Support Office staff, as well as any direct reports to the General Manager, in section 105.15-3 which provides certain positions and areas where staff shall not be eligible to serve on an appointed or elected entity due to the potential for a real or perceived conflict of interest to exist.

The Legislative Operating Committee may consider whether Business Committee Support Office staff or any direct reports to the General Manager should be included in section 105.15-3 and thereby prohibited from serving on an appointed or elected entity of the Nation. The Legislative Operating Committee may make one of the following determinations.

- 1. The Law should remain as currently drafted and not include staff of the Business Committee Support Office or direct reports of the General Manager in the prohibition from serving on an appointed or elected entity of the Nation provided for by section 105.15-3.
- 2. The Law should be revised include staff of the Business Committee Support Office and/or direct reports of the General Manager in the prohibition from serving on an appointed or elected entity of the Nation provided for by section 105.15-3. If the Legislative Operating Committee makes this determination then the following revision to the Law is recommended:
  - 105.15-3. *Ineligibility Due to Conflicts of Interest*. Due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed or elected entity:



- (a) political appointees;
- (b) an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, <u>Business Committee Support Office</u>, or Intergovernmental Affairs and Communications; and
- (c) an employee who serves as a direct report to the Oneida Business Committee or General Manager.

#### LOC Consideration

The Legislative Operating Committee determined that the Law should include staff of the Business Committee Support Office and any direct reports of the General Manager in the prohibition from serving on an appointed or elected entity of the Nation provided for by section 105.15-3. The Legislative Operating Committee determined that the following amendment to the Law should be made based on this comment:

- 105.15-3. *Ineligibility Due to Conflicts of Interest*. Due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed or elected entity:
  - (a) political appointees;
  - (b) an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, <u>Business Committee Support Office</u>, or Intergovernmental Affairs and Communications; and
  - (c) an employee who serves as a direct report to the Oneida Business Committee or General Manager.

# **Comment 24 – Ineligibility Due to Conflict of Interest:**

#### 105.15. Conflicts of Interest

105.15-3. *Ineligibility Due to Conflicts of Interest.* Due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed or elected entity:

- (a) political appointees;
- (b) an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, or Intergovernmental Affairs and Communications; and
- (c) an employee who serves as a direct report to the Oneida Business Committee.

# 105.5. Applications

105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

- (a) All applications shall include:
  - (1) a statement explaining the attendance requirements of section 105.12-3; and
  - (2) a section regarding disclosures of conflicts of interest.



[Public Meeting Notice stated "9. Specify that certain employment positions within the Nation are ineligible to serve on an entity due to the potential for a real or perceived conflict of interest to exist."]

**Richard Baird (written):** 9. I believe that is already specified on the application for BCC candidates.

# Response

The commenter states that he believes that the fact that certain employment positions within the Nation are ineligible to serve on an entity due to the potential for a real or perceived conflict of interest to exist is already specified on the application for a board, committee, or commission position.

The Law requires that all applications to serve on a board, committee, or commission of the Nation include a section regarding disclosures of conflicts of interest. [1 O.C. 105.5-1]. The Law then identifies that employment in certain positions and departments is prohibited when serving on a board, committee, or commission due to the potential for a real or perceived conflict of interest to exist. [1 O.C. 105.15-3]. Therefore, employment in an area identified in section 105.15-3 would be a conflict of interest that would need to be disclosed on the application.

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

#### LOC Consideration

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



# Title 1. Government and Finances – Chapter 105 Laotiyanlahsla?shúha katyohkwaya'tú'se? Their laws of the groups we have BOARDS, COMMITTEES, AND COMMISSIONS

105.10. Bylaws
105.11 Electronic Polling
105.12. Reporting Requirements
105.13. Stipends, Reimbursement and Compensation
105.14. Confidential Information
105.15. Conflicts of Interest
105.16. Use of the Nation's Assets
105.17. Dissolution of an Entity
105.18. Enforcement

# 105.1. Purpose and Policy

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105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

- (a) This law shall not apply to the Oneida Business Committee, or standing committees of the Oneida Business Committee.
- (b) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.
- 105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

# 105.2. Adoption, Amendment, Repeal

- 105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C and amended by BC- - .
- 105.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 105.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered
- 24 to have legal force without the invalid portions.
- 105.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 27 105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

# 105.3. Definitions

- 105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Application" means the form by which a person seeks to be appointed to fill a vacancy

on an entity.

- (b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.
  - (c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
  - (d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.
  - (e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.
  - (f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.
  - (g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.
  - (h) "Direct report" means a position which requires direct contact and supervision by the Oneida Business Committee because of the position, the duties, or the services provided. Direct reports shall be identified by the Oneida Business Committee through resolution
  - (i) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.
  - (j) "E-poll" means an electronic poll, which is the act of delivering an e-mail to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.
  - (k) "Joint meeting" means a meeting with the Oneida Business Committee.
  - (1) "Nation" means the Oneida Nation.
  - (m) "Per Diem" means the payment made by the Nation to offset the costs of being on travel on behalf of the Oneida Nation.
  - (n) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member's daily activities and operations.
  - (o) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used

in an unauthorized or unlawful manner.

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- (p) "Stipend" means the amount paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation.
- (q) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.
- (r) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by clear and convincing evidence.
- (s) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.
- (t) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

## 105.4. Creation of an Entity

- 105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.
- 105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.
- 99 105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

## 105.5. Applications

- 105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.
  - (a) All applications shall include:
    - (1) a statement explaining the attendance requirements of section 105.12-3; and
    - (2) a section regarding disclosures of conflicts of interest.
  - (b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.
- 105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date.
- 117 105.5-3. Within eight (8) days after the posted deadline for filing applications, the Business
- 118 Committee Support Office shall notify all persons who have filed an application of the date his or
- her application was received and if his or her application met the deadline to be considered for the election or appointment.

- 121 105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. Applications for appointed positions shall be verified by the Business Committee Support Office as needed or as required in the bylaws of the entity.
  - 105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Business Committee Support Office may repost for an additional time period.
    - (a) The Business Committee Support Office shall notify the Oneida Business Committee if a position will be reposted for an additional time period.
    - (b) In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.
    - (c) The Oneida Business Committee may elect to include within the pool of appointed persons late applications.

### 105.6. Vacancies

- 105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.
- 105.6-2. A position on an entity shall be considered vacant in the following situations:
  - (a) *End of Term*. A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.
    - (1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.
  - (b) *Removal*. Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.
  - (c) Termination of Appointment. A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.
  - (d) Resignation. A resignation is effective upon:
    - (1) Deliverance of a letter to the Business Committee Support Office and to the Chairperson of the entity, or designee; or
    - (2) Acceptance by motion of the entity of a verbal resignation.
  - (e) New Positions. Vacancies on new entities are effective upon adoption of bylaws.
- 105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.
- 105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The Business Committee Support Office shall post notice of vacancies at the following times:
  - (a) End of Term. Automatically sixty (60) days prior to completion of the term.
  - (b) *Removal*. No later than the next Oneida Business Committee meeting following the effective date of the removal.

- (c) Resignation. No later than the next Oneida Business Committee meeting following the Business Committee Support Office's receipt of notice of an effective resignation from the entity.
- (d) New Positions. Upon one of the following conditions:
  - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
  - (2) upon date specified when creating the entity.
- (e) *Termination of appointment*. No later than the next Oneida Business Committee meeting following the effective date of the termination.
- 105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

## 105.7. Appointment to an Entity

- 105.7-1. *Appointment Selection*. The following procedures shall be used to determine how the applicant for an appointed position is selected:
  - (a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
    - (1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and
    - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made; or
    - (3) if delays in compiling the applications, summary of qualifications, or results of any investigations exist, request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2).
  - (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
    - (1) The entity's Chairperson may review the application materials and submit to the Business Committee Support Office a recommendation to the Oneida Business Committee of an applicant for appointment.
      - (A) The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida Business Committee meeting in which the appointment is intended to be made.
  - (c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:
    - (1) select an applicant for appointment, or

- (2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.
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- (d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.

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(e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:

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(1) accept the selected applicant and vote to appoint the individual to the vacant position, or

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(2) reject the selected applicant and vote to oppose the appointment of the individual.

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(f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.

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105.7-2. *Notification of Appointment*. Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.

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(a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.

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(b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: "The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

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105.7-3. *Declination of Appointment*. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.

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(a) An individual may decline an appointment to an entity in the following ways:

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Delivery of a letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or
 The failure to take the oath of office within thirty (30) days of being selected

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for appointment by the Oneida Business Committee.

(b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined in section 105.7-1 to select another applicant for appointment.

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105.7-4. Termination of Appointment. An appointed member of an entity serves at the discretion

of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.

- (a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.
- (b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

## 105.8. Election to an Entity

- 105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or apply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.
  - (a) When the Election Board notifies an applicant or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: "The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."
- 105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

#### 105.9. Oath of Office

- 105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternate time and location as determined by the Secretary. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.
  - (a) When taking an oath at an Oneida Business Committee meeting, the appointed or elected member shall appear in person to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.
- 105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.
- 105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded to the new member of the entity and the entity.
- 105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will
- with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will carry out the duties and responsibilities as a member of the [entity name], and all recommendations
- shall be made in the best interest of the Oneida Nation as a whole.

105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware of their duty to the Nation and as members of the entity.

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## 105.10. Bylaws

- 105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.
  - (a) All existing entities shall comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law.
  - (b) Bylaws shall contain at least the minimum information required by law, although more information is not prohibited.
  - (c) *Exception*. Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities shall have, at minimum, mission or goal statements for completion of the task.
- 105.10-2. Articles. Bylaws shall contain, at a minimum, the following Articles:
  - (a) Article I. Authority.
  - (b) Article II. Officers.
  - (c) Article III. Meetings.
  - (d) Article IV. Expectations.
  - (e) Article V. Stipends and Compensation.
  - (f) Article VI. Records and Reporting.
  - (g) Article VII. Amendments.
- 105.10-3. Sections. Articles shall be divided into "sections" as set out.
  - (a) "Article I. Authority" shall consist of the following:
    - (1) *Name*. The full name of the entity shall be stated, along with any short name that will be officially used.
    - (2) *Establishment*. This section shall state the citation and name, if any, of the creation document.
    - (3) *Authority*. This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.
    - (4) Office. There shall be listed the official office or post box of the entity.
    - (5) *Membership*. The following information shall be in this section:
      - (A) Number of members on the entity;
      - (B) If members on the entity are elected or appointed, and how a member is elected or appointed;
      - (C) How vacancies are filled; and
      - (D) Qualifications for membership on the entity.
        - (i) In order to qualify for membership on an entity, a person shall meet the minimum age requirements set forth for status as a qualified voter of the Nation, unless a law, policy, or directive sets forth a minimum age requirement.
    - (6) Termination or Removal. This section shall identify causes for termination or removal, if any, in addition to those already identified in laws and/or policies of the

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- (7) *Trainings and Conferences*. This section shall describe any trainings and/or conferences that the entity deems necessary for members to responsibly serve the entity, if any.
- (b) "Article II. Officers" shall consist of the following:
  - (1) Chairperson and Vice-Chairperson. This section creates the chairperson and vice-chairperson positions of the entity. Other officer positions may also be created here.
  - (2) Responsibilities of the Chairperson. Because of the importance of this position, all duties and responsibilities of the chairperson, as well as limitations of the chairperson shall be specifically listed here.
  - (3) Responsibilities of the Vice-Chairperson. Because of the importance of this position, all duties and responsibilities of the vice-chairperson, as well as limitations of the vice-chairperson shall be specifically listed here.
  - (4) Responsibilities of Additional Officers. There may be additional sections as needed for every officer position created in subsection one (1) above. These sections shall state all duties and responsibilities of the officer, as well as any limitations of the officer.
  - (5) Selection of Officers. This section shall identify how a member of the entity shall be selected for an official officer position in the entity.
  - (6) Budgetary Sign-Off Authority and Travel. This section shall identify the entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and how the entity shall handle approving travel on behalf of the entity.
    - (A) An entity shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.
    - (B) An entity shall approve a member's request to travel on behalf of the entity by majority vote at a regular or emergency meeting of the entity.
  - (7) *Personnel*. This section shall state the entity's authority for hiring personnel, if any, and the duties of such personnel.
- (c) "Article III. Meetings" shall consist of the following:
  - (1) Regular meetings. This section shall identify when and where regular meetings shall be held, and how the entity shall provide notice of the meeting agenda, documents, and minutes.
  - (2) *Emergency meetings*. This section shall identify what constitutes an emergency meeting, how emergency meetings shall be called, and how the entity shall provide notice of the emergency meeting.
    - (A) All bylaws shall include a provision requiring that within seventy-two (72) hours after an emergency meeting, the entity shall provide the Nation's Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular meeting.
  - (3) *Joint Meetings*. This section shall identify if joint meetings shall be held, the frequency and location of joint meetings, and how the entity shall provide notice of the meeting agenda, documents, and minutes.

- (4) Quorum. This section shall identify how many members of an entity create a quorum.
- (5) Order of Business. This section sets out how the agenda will be set up.
- (6) *Voting*. This section shall identify voting requirements, such as, but not limited to:
  - (A) the percentages that shall be needed to pass different items;
  - (B) if, and when, the chairperson is allowed to vote;
  - (C) if the use of an e-poll is permissible; and
  - (D) if the use of and e-poll is permissible, who will serve as the Chairperson's designee for the responsibility of conducting an e-poll, if a designee is utilized.
- (d) "Article IV. Expectations" shall consist of the following information:
  - (1) Behavior of Members. This section shall identify the behavioral expectations and requirements of a member of the entity, and identify how the entity shall enforce these behavioral expectations.
  - (2) *Prohibition of Violence*. This section shall prohibit any violent intentional act committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property, and set forth any further expectations regarding the prohibition of violence.
  - (3) Drug and Alcohol Use. This section shall prohibit the use of alcohol and prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and alcohol.
  - (4) *Social Media*. This section shall identify expectations for the use of social media in regards to official business of the entity.
  - (5) Conflict of Interest. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities resulting from disclosed conflicts of interest, and means by which a party can alleviate or mitigate the conflict of interest.
- (e) "Article V. Stipends and Compensation" shall consist of the following information:
  - (1) Stipends. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.
  - (2) Compensation. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.
- (f) "Article VI. Records and Reporting" shall consist of the following information:
  - (1) Agenda Items. Agenda items shall be maintained in a consistent format as identified by this section.
  - (2) *Minutes*. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the

429	Business Committee Support Office.
430	(3) Attachments. Handouts, reports, memoranda, and the like may be attached to
431	the minutes and agenda, or may be kept separately, provided that all materials can
432	be identified to the meeting in which they were presented. This section shall
433	identify how records of attachments shall be kept.
434	(4) Oneida Business Committee Liaison. Entities shall regularly communicate with
435	the Oneida Business Committee member who is their designated liaison. This
436	section shall identify a format and frequency for communication which may be as
437	the liaison and entity agree to, but not less than that required in any law or policy
438	on reporting developed by the Oneida Business Committee or Oneida General
439	Tribal Council. The purpose of the liaison relationship is to uphold the ability of
440	the liaison to act as a support to that entity.
441	(5) Audio Recordings. An entity shall audio record all meetings. This section shall
442	state how the entity shall audio record meetings, and how the entity shall maintain
443	the audio records.
444	(A) Exception. Audio recordings of executive session portions of a meeting
445	shall not be required.
446	(g) "Article VII. Amendments" consists of:
447	(1) Amendments to Bylaws. This section shall describe how amendments to the
448	bylaws are made. Any amendments to bylaws shall conform to the requirements
449	of this and any other policy of the Nation. Amendments to bylaws shall be
450	approved by the Oneida Business Committee, in addition to the General Tribal
451	Council when applicable, prior to implementation.
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453	105.11. Electronic Polling
454	105.11-1. An entity may utilize an e-poll when approval of an action may be required before the
455	next available meeting agenda of the entity.
456	105.11-2. Conducting an E-Poll. The Chairperson of the entity, or designee, shall e-mail the e-
457	poll to all members of the entity. Requests for an e-poll shall be sent only from an official e-mail
458	address of the entity. The e-poll's message shall include the following information:
459	(a) The e-mail subject line shall begin with "E-poll Request:" and include a short title
460	describing the purpose of the request.
461	(b) The body of the e-poll shall contain the following elements:
462	(1) An executive summary of the reason for the request and why the request cannot
463	be presented at the next available meeting of the entity;
464	(2) A proposed motion which shall be in bold and identified in a separate paragraph
465	by the words "Requested Action;"
466	(3) All attachments in *.pdf format, which are necessary to understand the request
467	being made; and
468	(4) A deadline date for a response to be returned regarding the results of the
469	electronic poll which shall be in bold and identified in a separate paragraph by the
470	words "Deadline for Response."
471	(A) E-poll requests shall be open for response not less than one (1) hour
472	and no more than twenty-four (24) hours.

(B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.

105.11-3. Response to an E-Poll. Only the member of an entity shall respond to an e-poll. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.

(a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.

(b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.

 (c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.

 (d) The Chairperson, or designee, shall monitor all responses and deadline dates for responses.
 11-4 Entering an E-Poll in the Record. Both approved and denied e-poll requests shall be

105.11-4. *Entering an E-Poll in the Record*. Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:

(a) Original e-poll request and all supporting documentation;

(b) A summary of the e-poll results identifying each member of the entity and his or her response; and

 (c) A copy of any comment by a member of the entity if comments are made beyond a vote.

# 105.12. Reporting Requirements

105.12-1. *Minutes*. All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.

 (a) Actions taken by an entity are valid upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.

 (b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.(c) No action or approval of minutes is required by the Oneida Business Committee on

minutes submitted by an entity unless specifically required by the bylaws of that entity. 105.12-2. *Standard Operating Procedures*. All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.

105.12-3. Quarterly Reports to the Oneida Business Committee. Entities shall provide quarterly reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda

- item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:
  - (a) Contact Information. The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.
  - (b) *Meetings*. When and how often the entity is holding meetings and whether any emergency meetings have been held.
    - (1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.
  - (c) Accomplishments. Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.
  - (d) Goals. Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.
  - (e) *Budget*. The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.
  - (f) Requests. Details of any requests to the Oneida Business Committee.
  - (g) Other. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.
- 105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.
  - (a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.
  - (b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.
- 105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

## 105.13. Stipends, Reimbursement and Compensation

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- 550 105.13-1. Stipends and reimbursement for expenses shall follow the procedures as set out in this 551 section and according to procedures for payment as set out by the Nation, unless otherwise declined 552 by the entity through its bylaws, or declined by a member.
- 553 105.13-2. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the
- availability of funds, shall adjust those amounts accordingly by amending the resolution. Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards.
- 557 105.13-3. Meeting Stipends. A member of an entity shall only receive a meeting stipend for a
- regular or emergency meeting where a quorum has been established in accordance with the duly
- adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the
- stipend is present for the entire meeting. Meetings can occur in person, by telephone, through

videoconferencing, or through other telecommunications.

- (a) Meeting Stipends for an Appointed Entity. An individual serving on an appointed entity shall be paid no more than twelve (12) meeting stipends per year.
- (b) Meeting Stipends for an Elected Entity. An individual serving on an elected entity shall be paid no more than twenty-four (24) meeting stipends per year.
- (c) Demonstrating Presence During a Meeting. An entity shall demonstrate presence during an entire meeting by taking roll call on the record at both the beginning and conclusion of a meeting.
- 105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
    - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
- 105.13-5. *Oneida Judiciary Hearings*. A member of an entity shall receive a Judiciary hearing stipend if the member's attendance at the Judiciary hearing is required by official subpoena.
- 105.13-6. Hearings of an Entity. A member of an entity that maintains hearing authority may obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.
- 105.13-7. Other Stipends. The Oneida Business Committee shall determine if, and when, any other stipends are appropriate to compensate members of entities for their official actions. All possible stipends shall be included in the Oneida Business Committee resolution which sets stipend amounts.
- 105.13-8. *Conferences and Training*. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:
  - (a) A member shall be eligible for a stipend for attending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
    - (1) The amount of the stipend a member is eligible to receive for attendance at a conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a conference or training.
  - (b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.
  - (c) No stipend payments shall be made for those days spent traveling to and from the conference or training.
- 105.13-9. *Business Expenses*. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.
- 604 105.13-10. Task Force and Ad Hoc Subcommittees. Members of task force, ad hoc committees

and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

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#### 105.14. Confidential Information

- 105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order to protect the interest of the Nation and ensure that no persons engaged in by the Nation, nor their relatives or associates, benefit from the use of confidential information.
  - (a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.
  - (b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Nation and the entity.
  - (c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.
  - (d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.
- 105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and shall only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents shall be made in accordance with the Nation's laws and policies governing open records and open meetings.
- 105.14-3. *Official Oneida Nation E-mail Address*. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
  - (a) If a member is also an employee of the Nation, he or she shall receive a separate e-mail address from his or her regular work e-mail address.
  - (b) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
  - (c) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.
  - (d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

## 649 **105.15.** Conflicts of Interest

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- 650 105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.
- 652 105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as 653 soon as the conflict arises and update a conflict of interest disclosure form with the Nation's 654 Secretary on an annual basis.
  - (a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action shall be taken by the Nation regarding the status of the official.
  - 105.15-3. *Ineligibility Due to Conflicts of Interest*. Due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed or elected entity:
    - (a) political appointees;
    - (b) an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, or Intergovernmental Affairs and Communications; and
    - (c) an employee who serves as a direct report to the Oneida Business Committee.

#### 105.16. Use of the Nation's Assets

- 105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.
- 105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:
  - (a) all transactions are executed in accordance with management's authorization; and
  - (b) access to assets is permitted only in accordance with management's authorization; and
  - (c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.
- 105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

# 105.17. Dissolution of an Entity

- 105.17-1. Dissolution of a Task Force or Ad Hoc Committee. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.
- 686 105.17-2. *Dissolution of an Entity*. All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee.
- 688 105.17-3. Notice of Dissolution. Within five (5) business days of the Oneida General Tribal
- Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida
- Business Committee shall provide the entity written notice of the dissolution.
- 691 105.17-4. Management of Records and Materials. All chairpersons and secretaries of dissolved
- entities shall be responsible for closing out open business of the entity and forwarding all materials

# Draft 1 – Public Comment Draft 2020 07 09

and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.

(a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

#### 105.18. Enforcement

- 105.18-1. Any member of an entity found to be in violation of this law may be subject to:
  - (a) sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;
  - (b) removal pursuant to any laws or policies of the Nation's governing removal, if the individual is a member of an elected entity; or
  - (c) termination of appointment by the Oneida Business Committee, if the individual is a member of an appointed entity.

End.

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       Adopted - BC-08-02-95-A
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       Amended - BC-05-14-97-F
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       Emergency Amended - BC-04-12-06-JJ
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       Amended - BC-09-27-06-E (permanent adoption of emergency amendments)
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       Amended - BC-09-22-10-C
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       Amended - BC-09-26-18-C
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       Emergency Amended – BC-03-11-20-B
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       Emergency Amended – BC-03-17-20-C
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       Amended – BC-_--_-
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From: Sylvia Cornelius

To: LOC

Subject: nation email requirement

Date: Sunday, June 7, 2020 5:37:58 PM

### Hello,

I would like to address the use of a nation only email. This may work for members that do not work for the Nation. However, I have run into many issues having 2 nation emails, with appts being emailed to my school board account. And have to remind staff that i have two emails, not to pick the OSB email to pick my work title.

Is there a way to address this? Like not being able to look up members by name but by board? It seems like there should be a technological easy fix for this issue, it continues to happen to me. I would like to see this addressed. Maybe by not including board members in the address book by name but by board and then name?

If you could find a way to address this, it is very irritating. Especially if people just pick the first name they see and dont look at the title.

This is an ongoing issue for me being an employee of the Nation and on a Board.

Thank you,
Sylvia Cornelius
Oneida Nation School Board Member

July 9, 2020

Brent Truttmann Enrollment #11373 920-915-1999 brenlty.truttmann@gmail.com

Public Comment for Proposed Amendments to Boards, Committees, and Commissions Law

Greetings Legislative Operating Committee (LOC) and Legislative Reference Office (LRO). As an eligible voting member of the General Tribal Council, please consider and implement the following suggestions to the proposed amendments to the Boards, Committees, and Commissions (BCC) Law:

• Section 105.13-2 of the proposed amendments allows meetings held through video conferencing or other means of telecommunications stipend eligible as long as the meeting lasts for at least 1 hour and for the participant to be present for the full meeting. As an employee of the Oneida Nation, I have experienced technical difficulties when hosting these types of meetings. On multiple occasions participants of a video teleconference meeting were dropped from the call, and they had to re-log into the meeting. There is concern that these instances may disqualify participating members from a stipend through no fault of their own based on the current proposed language.

I request the LOC to include additional language to section 105.13-2 to accommodate for the technological limitations of video/teleconference meetings. For example, if a video/teleconference meeting is held, a stipulation that all members need to be logged onto the conference call for 95% of the full meeting to be eligible for a stipend may guarantee that all participants are present for the bulk of the meeting while accommodating for technical glitches.

• Section 105.7-1 (d) of the BCC Law states that the Oneida Business Committee appoints the individual to fill the vacancy of an elected or appointed boards, committee, or commission (after an application process listed in earlier sections). The BCC Law does not guarantee the actual board, committee, or commission with the vacancy will have any input in this process. This lack of guarantee is concerning. While I understand the Oneida Business Committee may have sweeping understanding of all BCCs through their BC Liaisons, the individual board, committee, and commissions have a much or intimate knowledge of their responsibilities and needs. Therefore, the individual board, committee and commission would have an intimate understanding of what to look for in applicants of a vacancy. If there is concern for a conflict of interest, the same concern could be raised to the Oneida Business Committee when appointing an individual to a vacant position as their appointment may be self-serving to the Oneida Business Committee without consideration to the board, committee, or commission with said vacancy.

Therefore I recommend the BCC Law to include the board, committee, or commission with the vacancy in the appointment process. Preferably, the appointment to fulfill a vacancy should be decided jointly between both the Oneida Business Committee and the entity with a vacancy.

From: <u>Brooke M. Doxtator</u>

To: <u>Clorissa N. Santiago</u>; <u>Patrick W. Stensloff</u>

Cc: LOC

Subject: BCC Law Amendment - SOA

Date: Thursday, July 9, 2020 1:14:33 PM

Hi Clorissa,

I was asked to reach out to you in regards to adding an amendment to the BCC law that would require the BCC's to approve purchases in their meetings but the BCC Staff would have the final Sign Off Authority (SOA) to add more checks and balances. I included Patrick Stensloff from Purchasing on this email in case he has any comments/feedback to provide regarding the SOA levels. I included our hierarchy below for reference.

BCSO Area Manager

BCC Supervisor

BCC Clerk

If you have any questions, please let me know.

Brooke Doxtator BCC Supervisor Business Committee Support Office (BCSO)



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

office 920.869.4452 fax 920.869.4040

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### Boards, Committees, and Commissions Law Comments - Referring to Redline Draft

Lines 126-135 – Would like to see these amendments become permanent as it will make the process more efficient.

Lines 195-197 – Would like to see these amendments become permanent as situations have arisen where we weren't able to meet the deadline due to factors that were outside our control.

\*Lines 251-252 – After working with this process we found that 30 days isn't sufficient, months that have 5 weeks and meetings being cancelled often put us out of this window for administering oaths. Could this be updated to something like "The failure to take the oath of office within <a href="two:(2) regular Oneida Business Committee meetings">two:(2) regular Oneida Business Committee meetings</a> of being selected for appointment by the Oneida Business Committee."

Line 288-291 – 105.9 (a) When taking an oath 1.at an Oneida Business Committee meeting, the appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by 2.video conferencing equipment.

- 1. Delete, on line 284 it says they can take their oath at an alternate time and location
- 2. Replace with through videoconferencing, or through other telecommunications.

Line 568 - in the current law approved 3/17/20 "present for the entire meeting." was removed. Would like to see this line added back in. As we had members that were not present for entire meeting trying to collect stipends.

Lines 568-569 - Would like to see this become permanent so the members have options to meet especially given the current circumstances.

Lines 571 and 573 – Could this read per <u>fiscal</u> year? This is our current practice because the stipends are easier to track and report when they are on the same cycle as the budget.

Lines 580-581 - in the current law approved 3/17/20 "present for the entire meeting." was removed. Would like to see this line added back in. As we had members that were not present for entire meeting trying to collect stipends.

#### 105.14-3 Official Oneida Nation E-mail Address

- 1. Can we make alternates and ad hoc's an exception to this rule? It says "Each member of an entity" so maybe they already are exempt but I wanted to comment on it because the time, effort and resources needed to assign them an "official" email is not really feasible for their use.
- 2. Can we give them a timeframe to activate the account or a consequence happens? Time and effort are being put into this only for the members to not activate and/or use their accounts.

#### 105.15-3. Ineligibility Due to Conflicts of Interest

- 1. Can we add d and e?
  - d) an employee of the Business Committee Support Office (The BCSO staff (specifically the Info Management Specialist) fall in the same category as Audit, Finance, Law, Intergovernmental Affairs and Communications. In addition, the BCC staff offer admin support to the BCC's which could cause a conflict of interest.
  - e) an employee who serves as a direct report to the General Manager (need to confirm with GM, but it's my understanding the GM's direct reports are not supposed to serve on BCC's)

#### Boards, Committees, and Commissions Law / Public Comment

ELECTED	APPOINTED		
<ul> <li>Oneida Election Board</li> </ul>	Anna John Resident Centered Care Community		
<ul> <li>Oneida Gaming Commission</li> </ul>	Board (AJRCC)		
<ul> <li>Oneida Land Claims Commission</li> </ul>	<ul> <li>Oneida Community Library Board</li> </ul>		
<ul> <li>Oneida Land Commission</li> </ul>	<ul> <li>Oneida Environmental Resource Board (ERB)</li> </ul>		
<ul> <li>Oneida Nation Commission on</li> </ul>	<ul> <li>Oneida Nation Arts Board</li> </ul>		
Aging (ONCOA)	<ul> <li>Oneida Personnel Commission</li> </ul>		
<ul> <li>Oneida Nation School Board</li> </ul>	<ul> <li>Oneida Police Commission</li> </ul>		
<ul> <li>Oneida Trust Enrollment</li> </ul>	<ul> <li>Oneida Pow Wow Committee</li> </ul>		
Committee	<ul> <li>Oneida Nation Veterans Affairs Committee (ONVAC)</li> </ul>		
	<ul> <li>Pardon and Forgiveness Screening Committee</li> </ul>		
	Southeastern WI Oneida Tribal Services Advisory		
	Board (SEOTS)		

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369	(6) Budgetary Sign-Off Authority and Travel. This section shall identify the
370	entity's varying levels of budgetary sign-off authority, the members that are
371	authorized to sign-off at each level, and how the entity shall handle approving travel
372	on behalf of the entity.
373	(A) An entity shall follow the Nation's policies and procedures regarding

(A) An entity shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.

Nearly all of the areas within the Nation are following the automated purchasing process. The areas which report to boards, committees or commissions are following the manual paper order form procurement process. It is the goal of the Purchasing Department to automate procurement activity for all areas within the Nation. Automating the procurement activity for all areas will provide a consistent procurement process throughout the Nation that results in process efficiencies and automated authorizations.

Areas reporting to boards, committees, and commissions are following the manual procurement process because the authorizing members are not employees. Non-employees are not granted access to the Financial System. In addition, some authorizing members of boards, committees or commissions could be performing procurement activity as an employee of the Nation. Adding the approving ability to current users could pose issues with internal controls.

The Purchasing Department is respectfully inquiring about a change in the sign off authority practices for boards, committees and commissions when it pertains to purchasing. This change would eliminate members of boards, committees, or commissions from the automated sign off for purchases. Additionally, the sign off authority for purchases would include employees at the business unit level and route through the Treasurer and Finance Committee accordingly. The BCC supervisor could also be incorporated into the sign off authority if needed.

It is desired to have this change in sign off for purchases encompass all boards, committees and commissions. However, there are some boards, committees and commissions that do not purchase much if anything at all. On the other end of the spectrum, the volume of purchases for the Schools is high.

From: Richard Baird
To: LOC

Subject: Comments on BCC Law

**Date:** Wednesday, July 1, 2020 12:11:30 PM

## Boards, Committees & Commissions:

1. It seem to me that's the the way that worked anyway. If there were no applications or only one application

then there would be insufficient persons to choose from. Too many times I've seen an only candidate chosen only to resign.

2. I don't have a problem with the support office requesting more time. Once the applications go up to the office,

and a candidate is not chosen due to background check or other reason, the support staff is charged with notifying

the entity the reason a candidate has not been selected for whatever reason.

3. The Chair has the responsibility to chose a candidate and should do expeditiously, in order for the entity to

continue to conduct business. Sometime an entity doesn't have a quorum due to insufficient members, so its imperative

that the Chair act quickly to fill vacancies.

4. The oath of office is usually done by the Secretary, so it could be done in the Secretaries office anytime. No need to have it done at a BC meeting.

- 5. Absolutely! No one but the member should be voting.
- 6. No problem. Just make sure the members are present by some means and there should be a way to confirm that they

were. When you're paying a stipend someone needs to be held accountable to insure everyone who said they were present actually were.

- 7. No problem. Accountability, same No. 6.
- 8. I don't know why the BC has never standardized the meeting stipend across the board. It shouldn't be about the stipend,

it should be about conducting the Nation's business because you have an interest in participating and helping to move the Nation forward.

9. I believe that is already specified on the application for BCC candidates.

# Title 1. Government and Finances – Chapter 105 Laotiyanlahsla?shúha katyohkwaya'tú'se? Their laws of the groups we have BOARDS, COMMITTEES, AND COMMISSIONS

105.1. Purpose and Policy	105.10. Bylaws
105.2. Adoption, Amendment, Repeal	105.11 Electronic Polling
105.3. Definitions	105.12. Reporting Requirements
105.4. Creation of an Entity	105.13. Stipends, Reimbursement and Compensation
105.5. Applications	105.14. Confidential Information
105.6. Vacancies	105.15. Conflicts of Interest
105.7. Appointment to an Entity	105.16. Use of the Nation's Assets
105.8. Election to an Entity	105.17. Dissolution of an Entity
105.9. Oath of Office	105.18. Enforcement

# 105.1. Purpose and Policy

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105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

- (a) This law shall not apply to the Oneida Business Committee, or standing committees of the Oneida Business Committee.
- (b) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.
- 105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

## 105.2. Adoption, Amendment, Repeal

- 105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C and amended by BC- - .
- 105.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 105.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered
- 24 to have legal force without the invalid portions.
- 25 105.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 27 105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

## 105.3. Definitions

- 105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Application" means the form by which a person seeks to be appointed to fill a vacancy

on an entity.

- (b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.
  - (c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
- (d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.
- (e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.
- (f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.
- (g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.
- (h) "Direct report" means a position which requires direct contact and supervision by the Oneida Business Committee because of the position, the duties, or the services provided. Direct reports shall be identified by the Oneida Business Committee through resolution
- (i) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.
- (j) "E-poll" means an electronic poll, which is the act of delivering an e-mail to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.
- (k) "Joint meeting" means a meeting with the Oneida Business Committee.
- (1) "Nation" means the Oneida Nation.
- (m) "Per Diem" means the payment made by the Nation to offset the costs of being on travel on behalf of the Oneida Nation.
- (n) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member's daily activities and operations.
- (o) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used

in an unauthorized or unlawful manner.

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- (p) "Stipend" means the amount paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation.
- (q) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.
- (r) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by clear and convincing evidence.
- (s) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.
- (t) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

## 105.4. Creation of an Entity

- 105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.
- 105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.
- 99 105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

# 105.5. Applications

- 105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.
  - (a) All applications shall include:
    - (1) a statement explaining the attendance requirements of section 105.12-3; and
    - (2) a section regarding disclosures of conflicts of interest.
  - (b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.
- 105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date.
- 117 105.5-3. Within eight (8) days after the posted deadline for filing applications, the Business
- 118 Committee Support Office shall notify all persons who have filed an application of the date his or
- her application was received and if his or her application met the deadline to be considered for the election or appointment.

- 121 105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. Applications for appointed positions shall be verified by the Business
- 123 Committee Support Office as needed or as required in the bylaws of the entity.
  - 105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Business Committee Support Office may repost for an additional time period.
    - (a(a) If the number of applicants is equal to or less than the number of vacancies then it shall be determined to be an insufficient number of applicants.
    - (b) The Business Committee Support Office shall notify the Oneida Business Committee if a position will be reposted for an additional time period.
    - (bc) In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.
    - (ed) The Oneida Business Committee may elect to include within the pool of appointed persons late applications.

#### 105.6. Vacancies

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- 105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.
- 105.6-2. A position on an entity shall be considered vacant in the following situations:
  - (a) *End of Term*. A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.
    - (1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.
  - (b) *Removal*. Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.
  - (c) Termination of Appointment. A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.
  - (d) Resignation. A resignation is effective upon:
    - (1) Deliverance of a letter to the Business Committee Support Office and to the Chairperson of the entity, or designee; or
    - (2) Acceptance by motion of the entity of a verbal resignation.
- (e) New Positions. Vacancies on new entities are effective upon adoption of bylaws.
- 105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.
- 105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The Business Committee Support Office shall post notice of vacancies at the following times:
  - (a) End of Term. Automatically sixty (60) days prior to completion of the term.

- (b) Removal. No later than the next Oneida Business Committee meeting following the effective date of the removal.
   (c) Resignation. No later than the next Oneida Business Committee meeting following
  - (c) Resignation. No later than the next Oneida Business Committee meeting following the Business Committee Support Office's receipt of notice of an effective resignation from the entity.
  - (d) New Positions. Upon one of the following conditions:
    - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
    - (2) upon date specified when creating the entity.
  - (e) *Termination of appointment*. No later than the next Oneida Business Committee meeting following the effective date of the termination.
  - 105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

## 105.7. Appointment to an Entity

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- 105.7-1. *Appointment Selection*. The following procedures shall be used to determine how the applicant for an appointed position is selected:
  - (a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
    - (1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and
    - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made; or
    - (3) if delays in compiling the applications, summary of qualifications, or results of any investigations exist, request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2).
  - (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
    - (1) The entity's Chairperson may review the application materials and submit to the Business Committee Support Office a recommendation to the Oneida Business Committee of an applicant for appointment.
      - (A) The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida Business Committee meeting in which the appointment is intended to be made.
  - (c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough

discussion, the Oneida Business Committee shall:

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- select an applicant for appointment, or
   ask the Oneida Nation's Secretary to re-notice the vacancy because of

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ineligible, unqualified, or under qualified applicants.

(d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.

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(e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:

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(1) accept the selected applicant and vote to appoint the individual to the vacant position, or

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(2) reject the selected applicant and vote to oppose the appointment of the individual.

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(f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.

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105.7-2. *Notification of Appointment*. Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.

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(a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.

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(b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: "The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

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105.7-3. *Declination of Appointment*. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.

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(a) An individual may decline an appointment to an entity in the following ways:

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(1) Delivery of a letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or

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(2) The failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee.

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(b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined

in section 105.7-1 to select another applicant for appointment. 254 105.7-4. *Termination of Appointment*. An appointed member of an endocated member of an endo

- 105.7-4. *Termination of Appointment*. An appointed member of an entity serves at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.
  - (a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.
  - (b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

# 105.8. Election to an Entity

- 105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or apply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.
  - (a) When the Election Board notifies an applicant or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: "The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."
- 105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

#### 105.9. Oath of Office

- 105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternatealternative time and location as determined by the Secretary. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.
  - (a) When taking an oath at an Oneida Business Committee meeting, the appointed or elected member shall appear in person to take his or her oath, except if granted permission by the Secretary to appear bythrough video conferencing equipment, or through other telecommunications.
  - (b) If an oath is administered outside of an Oneida Business Committee meeting, a quorum of Oneida Business Committee members shall be present to witness the oath.
- 105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.
- 292 105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded to the new member of the entity and the entity.
- 295 105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is 296 pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws

and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will carry out the duties and responsibilities as a member of the [entity name], and all recommendations shall be made in the best interest of the Oneida Nation as a whole.

105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware of their duty to the Nation and as members of the entity.

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## 105.10. Bylaws

- 105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.
  - (a) All existing entities shall comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law.
  - (b) Bylaws shall contain at least the minimum information required by law, although more information is not prohibited.
  - (c) *Exception*. Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities shall have, at minimum, mission or goal statements for completion of the task.
- 105.10-2. Articles. Bylaws shall contain, at a minimum, the following Articles:
  - (a) Article I. Authority.
  - (b) Article II. Officers.
  - (c) Article III. Meetings.
  - (d) Article IV. Expectations.
  - (e) Article V. Stipends and Compensation.
  - (f) Article VI. Records and Reporting.
  - (g) Article VII. Amendments.
- 105.10-3. Sections. Articles shall be divided into "sections" as set out.
  - (a) "Article I. Authority" shall consist of the following:
    - (1) *Name*. The full name of the entity shall be stated, along with any short name that will be officially used.
    - (2) *Establishment*. This section shall state the citation and name, if any, of the creation document.
    - (3) *Authority*. This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.
    - (4) Office. There shall be listed the official office or post box of the entity.
    - (5) *Membership*. The following information shall be in this section:
      - (A) Number of members on the entity;
      - (B) If members on the entity are elected or appointed, and how a member is elected or appointed;
      - (C) How vacancies are filled; and
      - (D) Qualifications for membership on the entity.
        - (i) In order to qualify for membership on an entity, a person shall

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meet the minimum age requirements set forth for status as a qualified voter of the Nation, unless a law, policy, or directive sets forth a minimum age requirement.

- (6) *Termination or Removal*. This section shall identify causes for termination or removal, if any, in addition to those already identified in laws and/or policies of the Nation.
- (7) *Trainings and Conferences*. This section shall describe any trainings and/or conferences that the entity deems necessary for members to responsibly serve the entity, if any.
- (b) "Article II. Officers" shall consist of the following:
  - (1) Chairperson and Vice-Chairperson. This section creates the chairperson and vice-chairperson positions of the entity. Other officer positions may also be created here.
  - (2) Responsibilities of the Chairperson. Because of the importance of this position, all duties and responsibilities of the chairperson, as well as limitations of the chairperson shall be specifically listed here.
  - (3) Responsibilities of the Vice-Chairperson. Because of the importance of this position, all duties and responsibilities of the vice-chairperson, as well as limitations of the vice-chairperson shall be specifically listed here.
  - (4) Responsibilities of Additional Officers. There may be additional sections as needed for every officer position created in subsection one (1) above. These sections shall state all duties and responsibilities of the officer, as well as any limitations of the officer.
  - (5) Selection of Officers. This section shall identify how a member of the entity shall be selected for an official officer position in the entity.
  - (6) <u>Budgetary Sign-Off Authority Purchases</u> and Travel. This section shall identify the entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and how the entity shall handle approving approve purchases or travel on behalf of the entity.
    - (A) An entity shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.
    - (B(B) Upon formal approval of a purchase by an entity, the Business Committee Support Office shall have official budgetary sign off authority for the entity.
    - (C) An entity shall approve a member's request to travel on behalf of the entity by majority vote at a regular or emergency meeting of the entity.
  - (7) *Personnel*. This section shall state the entity's authority for hiring personnel, if any, and the duties of such personnel.
- (c) "Article III. Meetings" shall consist of the following:
  - (1) Regular meetings. This section shall identify when and where regular meetings shall be held, and how the entity shall provide notice of the meeting agenda, documents, and minutes.
  - (2) *Emergency meetings*. This section shall identify what constitutes an emergency meeting, how emergency meetings shall be called, and how the entity shall provide

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- notice of the emergency meeting.

  (A) All bylaws shall include a provision requiring that within seventy-two (72) hours after an emergency meeting, the entity shall provide the Nation's Secretary with notice of the meeting, the reason for the emergency meeting,
  - Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular meeting.
- (3) *Joint Meetings*. This section shall identify if joint meetings shall be held, the frequency and location of joint meetings, and how the entity shall provide notice of the meeting agenda, documents, and minutes.
- (4) Quorum. This section shall identify how many members of an entity create a quorum.
- (5) Order of Business. This section sets out how the agenda will be set up.
- (6) *Voting*. This section shall identify voting requirements, such as, but not limited to:
  - (A) the percentages that shall be needed to pass different items;
  - (B) if, and when, the chairperson is allowed to vote;
  - (C) if the use of an e-poll is permissible; and
  - (D) if the use of and e-poll is permissible, who will serve as the Chairperson's designee for the responsibility of conducting an e-poll, if a designee is utilized.
- (d) "Article IV. Expectations" shall consist of the following information:
  - (1) Behavior of Members. This section shall identify the behavioral expectations and requirements of a member of the entity, and identify how the entity shall enforce these behavioral expectations.
  - (2) *Prohibition of Violence*. This section shall prohibit any violent intentional act committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property, and set forth any further expectations regarding the prohibition of violence.
  - (3) Drug and Alcohol Use. This section shall prohibit the use of alcohol and prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and alcohol.
  - (4) *Social Media*. This section shall identify expectations for the use of social media in regards to official business of the entity.
  - (5) Conflict of Interest. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities resulting from disclosed conflicts of interest, and means by which a party can alleviate or mitigate the conflict of interest.
- (e) "Article V. Stipends and Compensation" shall consist of the following information:
  - (1) Stipends. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.
  - (2) Compensation. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting

such compensation, if any in addition to those contained in this law.

(f) "Article VI. Records and Reporting" shall consist of the following information:

 Agenda Items. Agenda items shall be maintained in a consistent format as identified by this section.
 Minutes. Minutes shall be typed and in a consistent format designed to generate

 the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the Business Committee Support Office.

(3) *Attachments*. Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented. This section shall identify how records of attachments shall be kept.

(4) Oneida Business Committee Liaison. Entities shall regularly communicate with the Oneida Business Committee member who is their designated liaison. This section shall identify a format and frequency for communication which may be as the liaison and entity agree to, but not less than that required in any law or policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. The purpose of the liaison relationship is to uphold the ability of the liaison to act as a support to that entity.

(5) Audio Recordings. An entity shall audio record all meetings. This section shall state how the entity shall audio record meetings, and how the entity shall maintain the audio records.

(A) *Exception*. Audio recordings of executive session portions of a meeting shall not be required.

(g) "Article VII. Amendments" consists of:

(1) Amendments to Bylaws. This section shall describe how amendments to the bylaws are made. Any amendments to bylaws shall conform to the requirements of this and any other policy of the Nation. Amendments to bylaws shall be approved by the Oneida Business Committee, in addition to the General Tribal Council when applicable, prior to implementation.

## 105.11. Electronic Polling

 105.11-1. An entity may utilize an e-poll when approval of an action may be required before the next available meeting agenda of the entity.

 105.11-2. *Conducting an E-Poll*. The Chairperson of the entity, or designee, shall e-mail the e-poll to all members of the entity. Requests for an e-poll shall be sent only from an official e-mail address of the entity. The e-poll's message shall include the following information:

 (a) The e-mail subject line shall begin with "E-poll Request:" and include a short title describing the purpose of the request.

(b) The body of the e-poll shall contain the following elements:

 (1) An executive summary of the reason for the request and why the request cannot be presented at the next available meeting of the entity;

(2) A proposed motion which shall be in bold and identified in a separate paragraph

by the words "Requested Action;"

(3) All attachments in \*.pdf format, which are necessary to understand the request being made; and

(4) A deadline date for a response to be returned regarding the results of the electronic poll which shall be in bold and identified in a separate paragraph by the words "Deadline for Response."

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- (A) E-poll requests shall be open for response not less than one (1) hour and no more than twenty-four (24) hours.
- (B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.
- 105.11-3. Response to an E-Poll. Only the member of an entity shall respond to an e-poll. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.
  - (a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.
  - (b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.
  - (c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.
  - (d) The Chairperson, or designee, shall monitor all responses and deadline dates for responses.
- 105.11-4. *Entering an E-Poll in the Record*. Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:
  - (a) Original e-poll request and all supporting documentation;
  - (b) A summary of the e-poll results identifying each member of the entity and his or her response; and
  - (c) A copy of any comment by a member of the entity if comments are made beyond a vote.

## 105.12. Reporting Requirements

- 105.12-1. *Minutes*. All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.
  - (a) Actions taken by an entity are valid upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.
  - (b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.
  - (c) No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.
- 105.12-2. Standard Operating Procedures. All standard operating procedures established by an

entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.

- 105.12-3. Quarterly Reports to the Oneida Business Committee. Entities shall provide quarterly reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:
  - (a) Contact Information. The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.
  - (b) *Meetings*. When and how often the entity is holding meetings and whether any emergency meetings have been held.
    - (1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.
  - (c) Accomplishments. Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.
  - (d) Goals. Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.
  - (e) *Budget*. The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.
  - (f) Requests. Details of any requests to the Oneida Business Committee.
  - (g) Other. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.
- 105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.
  - (a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.
  - (b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.
- 105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

#### 105.13. Stipends, Reimbursement and Compensation

105.13-1. Stipends and reimbursement for expenses shall follow the procedures as set out in this section and according to procedures for payment as set out by the Nation, unless otherwise declined by the entity through its bylaws, or declined by a member.

105.13-2. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending the resolution. Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards. 105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.

- (a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than twelve (12) meeting stipends per <u>fiscal</u> year.
- (b) *Meeting Stipends for an Elected Entity*. An individual serving on an elected entity shall be paid no more than twenty-four (24) meeting stipends per <u>fiscal</u> year.
- (c) Demonstrating Presence During a Meeting. An entity shall demonstrate the presence of its members during an entirea meeting by taking roll call on the record at both the beginning and conclusion of a meeting.
- (d) Technological Issues Affecting Presence During a Meeting. If a member of an entity experiences a technological issue during a regular or emergency meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the meeting, the member shall notify the entity of the technological issue as soon as possible.
  - (1) An exemption to the stipend eligibility requirement to be present for the entire meeting may be granted if the entity certifies by a majority vote that the member was present for a majority of the meeting despite the technological issue which disrupted the member's presence during the meeting.
- 105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
    - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
  - (b) Demonstrating Presence During a Joint Meeting. An entity shall demonstrate the presence of its members during a joint meeting by taking roll call on the record at both the beginning and conclusion of a joint meeting.
  - (c) Technological Issues Affecting Presence During a Joint Meeting. If a member of an entity experiences a technological issue during a joint meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the joint meeting, the member shall notify the entity of the technological issue as soon as possible.
    - (1) An exemption to the stipend eligibility requirement to be present for the entire joint meeting may be granted if the entity certifies by a majority vote that the

605 606 member was present for a majority of the joint meeting despite the technological issue which disrupted the member's presence during the joint meeting.

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105.13-5. *Oneida Judiciary Hearings*. A member of an entity shall receive a Judiciary hearing stipend if the member's attendance at the Judiciary hearing is required by official subpoena. 105.13-6. *Hearings of an Entity*. A member of an entity that maintains hearing authority may

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obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting

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614 105.13-7. *Other Stipends*. The Oneida Business Committee shall determine if, and when, any 615 other stipends are appropriate to compensate members of entities for their official actions. All 616 possible stipends shall be included in the Oneida Business Committee resolution which sets stipend 617 amounts.

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105.13-8. *Conferences and Training*. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:

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(a) A member shall be eligible for a stipend for attending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.

623 624 (1) The amount of the stipend a member is eligible to receive for attendance at a conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a conference or training.

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(b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.

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(c) No stipend payments shall be made for those days spent traveling to and from the conference or training.

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105.13-9. *Business Expenses*. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.

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105.13-10. *Task Force and Ad Hoc Subcommittees*. Members of task force, ad hoc committees and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

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#### 105.14. Confidential Information

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105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order to protect the interest of the Nation and ensure that no persons engaged in by the Nation, nor their relatives or associates, benefit from the use of confidential information.

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(a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.

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(b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written

- authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Nation and the entity.
  - (c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.
  - (d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.
  - 105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and shall only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents shall be made in accordance with the Nation's laws and policies governing open records and open meetings.
  - 105.14-3. Official Oneida Nation E-mail Address. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
    - (a) If a member is also an employee of the Nation, he or she shall receive a separate email address from his or her regular work e-mail address.
    - (b) A member of an entity shall have thirty (30) days upon election or appointment to an entity to activate his or her official e-mail address.
    - (c) An individual who holds a position as an ad hoc or alternate member of an entity shall be exempt from the requirement to be provided an official e-mail address, unless determined that an e-mail address is necessary for the role and responsibilities of the ad hoc or alternate member.
    - (d) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
    - (ee) A member of an entity shall exclusively use his or her official e-mail address to electronically conduct any business of the entity, and shall not use anya personal or work e-mail address to electronically conduct any business of the entity.
    - (df) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

#### 105.15. Conflicts of Interest

- 105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.
- 105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.
  - (a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action shall be

693 taken by the Nation regarding the status of the official.

105.15-3. Ineligibility Due to Conflicts of Interest. Due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed or elected entity:

(a) political appointees;

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- (b) an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, or Intergovernmental Affairs and Communications; and
- (c) an employee who serves as a direct report to the Oneida Business Committee or General Manager.

#### 105.16. Use of the Nation's Assets

- 105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.
- 105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:
  - (a) all transactions are executed in accordance with management's authorization; and
  - (b) access to assets is permitted only in accordance with management's authorization; and
  - (c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.
- 105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

#### 105.17. Dissolution of an Entity

- 105.17-1. Dissolution of a Task Force or Ad Hoc Committee. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.
- 724 105.17-2. Dissolution of an Entity. All other entities of the Nation shall be dissolved only by 725 motion of the Oneida General Tribal Council or the Oneida Business Committee.
- 726 105.17-3. Notice of Dissolution. Within five (5) business days of the Oneida General Tribal 727 Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida 728 Business Committee shall provide the entity written notice of the dissolution.
  - 105.17-4. Management of Records and Materials. All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other
- 734 appropriate department for the storage and disposal of the records and materials. 735 (a) The entity may request the Oneida Business Committee to grant a one (1) week 736
  - extension of the time allowed to close out open business of the entity and forward all

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737 materials and records to the Business Committee Support Office. 738 739 105.18. Enforcement 740 105.18-1. Any member of an entity found to be in violation of this law may be subject to: (a) sanctions and penalties in accordance with any laws or policies of the Nation governing 741 742 sanctions and/or penalties; 743 (b) removal pursuant to any laws or policies of the Nation's governing removal, if the individual is a member of an elected entity; or 744 (c) termination of appointment by the Oneida Business Committee, if the individual is a 745 746 member of an appointed entity. 747 End. 748 750 751 Adopted - BC-08-02-95-A 752 753 Amended - BC-05-14-97-F Emergency Amended - BC-04-12-06-JJ 754 Amended - BC-09-27-06-E (permanent adoption of emergency amendments) 755 Amended - BC-09-22-10-C756 Amended - BC-09-26-18-C757 Emergency Amended – BC-03-11-20-B 758 Emergency Amended – BC-03-17-20-C 759 Amended – BC-\_ -\_ -\_ -\_

# Title 1. Government and Finances – Chapter 105 Laotiyanlahsla?shúha katyohkwaya'tú'se? Their laws of the groups we have BOARDS, COMMITTEES, AND COMMISSIONS

105.1. Purpose and Policy	105.10. Bylaws
105.2. Adoption, Amendment, Repeal	105.11 Electronic Polling
105.3. Definitions	105.12. Reporting Requirements
105.4. Creation of an Entity	105.13. Stipends, Reimbursement and Compensation
105.5. Applications	105.14. Confidential Information
105.6. Vacancies	105.15. Conflicts of Interest
105.7. Appointment to an Entity	105.16. Use of the Nation's Assets
105.8. Election to an Entity	105.17. Dissolution of an Entity
105.9. Oath of Office	105.18. Enforcement

# 105.1. Purpose and Policy

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105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

- (a) This law shall not apply to the Oneida Business Committee, or standing committees of the Oneida Business Committee.
- (b) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.
- 105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

#### 105.2. Adoption, Amendment, Repeal

- 105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C and amended by BC- - .
- 105.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 22 105.2-3. Should a provision of this law or the application thereof to any person or circumstances
- be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.
- 25 105.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 27 105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

# 105.3. Definitions

- 105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Application" means the form by which a person seeks to be appointed to fill a vacancy

on an entity.

- (b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.
- (c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
- (d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.
- (e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.
- (f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.
- (g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.
- (h) "Direct report" means a position which requires direct contact and supervision by the Oneida Business Committee because of the position, the duties, or the services provided. Direct reports shall be identified by the Oneida Business Committee through resolution
- (i) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.
- (j) "E-poll" means an electronic poll, which is the act of delivering an e-mail to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.
- (k) "Joint meeting" means a meeting with the Oneida Business Committee.
- (1) "Nation" means the Oneida Nation.
- (m) "Per Diem" means the payment made by the Nation to offset the costs of being on travel on behalf of the Oneida Nation.
- (n) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member's daily activities and operations.
- (o) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used

in an unauthorized or unlawful manner.

- (p) "Stipend" means the amount paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation.
- (q) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.
- (r) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by clear and convincing evidence.
- (s) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.
- (t) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

#### 105.4. Creation of an Entity

- 105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.
- 105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.
- 99 105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

#### 105.5. Applications

- 105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.
  - (a) All applications shall include:
    - (1) a statement explaining the attendance requirements of section 105.12-3; and
    - (2) a section regarding disclosures of conflicts of interest.
  - (b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.
- 105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date.
- 117 105.5-3. Within eight (8) days after the posted deadline for filing applications, the Business
- 118 Committee Support Office shall notify all persons who have filed an application of the date his or
- her application was received and if his or her application met the deadline to be considered for the election or appointment.

- 121 105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. Applications for appointed positions shall be verified by the Business Committee Support Office as needed or as required in the bylaws of the entity.
  - 105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Business Committee Support Office may repost for an additional time period.
    - (a) If the number of applicants is equal to or less than the number of vacancies then it shall be determined to be an insufficient number of applicants.
    - (b) The Business Committee Support Office shall notify the Oneida Business Committee if a position will be reposted for an additional time period.
    - (c) In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.
    - (d) The Oneida Business Committee may elect to include within the pool of appointed persons late applications.

#### 105.6. Vacancies

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- 105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.
- 105.6-2. A position on an entity shall be considered vacant in the following situations:
  - (a) *End of Term*. A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.
    - (1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.
  - (b) Removal. Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.
  - (c) Termination of Appointment. A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.
  - (d) Resignation. A resignation is effective upon:
    - (1) Deliverance of a letter to the Business Committee Support Office and to the Chairperson of the entity, or designee; or
    - (2) Acceptance by motion of the entity of a verbal resignation.
- (e) New Positions. Vacancies on new entities are effective upon adoption of bylaws.
- 105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.
- 105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The Business Committee Support Office shall post notice of vacancies at the following times:
  - (a) End of Term. Automatically sixty (60) days prior to completion of the term.

- 165 (b) *Removal*. No later than the next Oneida Business Committee meeting following the effective date of the removal.
  - (c) Resignation. No later than the next Oneida Business Committee meeting following the Business Committee Support Office's receipt of notice of an effective resignation from the entity.
  - (d) New Positions. Upon one of the following conditions:
    - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
    - (2) upon date specified when creating the entity.
  - (e) *Termination of appointment*. No later than the next Oneida Business Committee meeting following the effective date of the termination.
  - 105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

#### 105.7. Appointment to an Entity

- 105.7-1. *Appointment Selection*. The following procedures shall be used to determine how the applicant for an appointed position is selected:
  - (a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
    - (1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and
    - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made; or
    - (3) if delays in compiling the applications, summary of qualifications, or results of any investigations exist, request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2).
  - (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
    - (1) The entity's Chairperson may review the application materials and submit to the Business Committee Support Office a recommendation to the Oneida Business Committee of an applicant for appointment.
      - (A) The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida Business Committee meeting in which the appointment is intended to be made.
  - (c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough

209 discussion, the Oneida Business Committee shall: 210

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- (1) select an applicant for appointment, or
- ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.
- (d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.
- (e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:
  - (1) accept the selected applicant and vote to appoint the individual to the vacant position, or
  - (2) reject the selected applicant and vote to oppose the appointment of the individual.
- (f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.
- 105.7-2. Notification of Appointment. Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.
  - (a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.
  - (b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: "The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."
- 105.7-3. Declination of Appointment. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.
  - (a) An individual may decline an appointment to an entity in the following ways:
    - (1) Delivery of a letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or
    - (2) The failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee.
  - (b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined

in section 105.7-1 to select another applicant for appointment.

- 105.7-4. *Termination of Appointment*. An appointed member of an entity serves at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.
  - (a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.
  - (b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

# 105.8. Election to an Entity

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- 105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or apply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.
  - (a) When the Election Board notifies an applicant or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: "The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."
- 105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

#### 105.9. Oath of Office

- 105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternative time and location as determined by the Secretary. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.
  - (a) When taking an oath, the appointed or elected member shall appear in person to take his or her oath, except if granted permission by the Secretary to appear through video conferencing, or through other telecommunications.
  - (b) If an oath is administered outside of an Oneida Business Committee meeting, a quorum of Oneida Business Committee members shall be present to witness the oath.
- 105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.
- 291 105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded to the new member of the entity and the entity.
- 294 105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is 295 pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws 296 and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation

- 297 Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people 298 with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will 299 carry out the duties and responsibilities as a member of the [entity name], and all recommendations 300 shall be made in the best interest of the Oneida Nation as a whole.
- 301 105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware of their duty to the Nation and as members of the entity.

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#### 105.10. Bylaws

- 105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.
  - (a) All existing entities shall comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law.
  - (b) Bylaws shall contain at least the minimum information required by law, although more information is not prohibited.
  - (c) *Exception*. Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities shall have, at minimum, mission or goal statements for completion of the task.
- 105.10-2. Articles. Bylaws shall contain, at a minimum, the following Articles:
  - (a) Article I. Authority.
  - (b) Article II. Officers.
  - (c) Article III. Meetings.
  - (d) Article IV. Expectations.
  - (e) Article V. Stipends and Compensation.
  - (f) Article VI. Records and Reporting.
  - (g) Article VII. Amendments.
- 105.10-3. Sections. Articles shall be divided into "sections" as set out.
  - (a) "Article I. Authority" shall consist of the following:
    - (1) *Name*. The full name of the entity shall be stated, along with any short name that will be officially used.
    - (2) *Establishment*. This section shall state the citation and name, if any, of the creation document.
    - (3) *Authority*. This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.
    - (4) Office. There shall be listed the official office or post box of the entity.
    - (5) *Membership*. The following information shall be in this section:
      - (A) Number of members on the entity;
      - (B) If members on the entity are elected or appointed, and how a member is elected or appointed;
      - (C) How vacancies are filled; and
      - (D) Qualifications for membership on the entity.
        - (i) In order to qualify for membership on an entity, a person shall meet the minimum age requirements set forth for status as a

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qualified voter of the Nation, unless a law, policy, or directive sets

343	(6) Termination or Removal. This section shall identify causes for termination or
344	removal, if any, in addition to those already identified in laws and/or policies of the
345	Nation.
346	(7) Trainings and Conferences. This section shall describe any trainings and/or
347	conferences that the entity deems necessary for members to responsibly serve the
348	entity, if any.
349	(b) "Article II. Officers" shall consist of the following:
350	(1) Chairperson and Vice-Chairperson. This section creates the chairperson and
351	vice-chairperson positions of the entity. Other officer positions may also be created
352	here.
353	(2) Responsibilities of the Chairperson. Because of the importance of this position,
354	all duties and responsibilities of the chairperson, as well as limitations of the
355	chairperson shall be specifically listed here.
356	(3) Responsibilities of the Vice-Chairperson. Because of the importance of this
357	position, all duties and responsibilities of the vice-chairperson, as well as
358	limitations of the vice-chairperson shall be specifically listed here.
359	(4) Responsibilities of Additional Officers. There may be additional sections as
360	needed for every officer position created in subsection one (1) above. These
361	sections shall state all duties and responsibilities of the officer, as well as any
362	limitations of the officer.
363	(5) Selection of Officers. This section shall identify how a member of the entity
364	shall be selected for an official officer position in the entity.
365	(6) Purchases and Travel. This section shall identify how the entity shall approve
366	purchases or travel on behalf of the entity.
367	(A) An entity shall follow the Nation's policies and procedures regarding
368	purchasing and sign-off authority.
369	(B) Upon formal approval of a purchase by an entity, the Business
370	Committee Support Office shall have official budgetary sign off authority
371	for the entity.
372	(C) An entity shall approve a member's request to travel on behalf of the
373	entity by majority vote at a regular or emergency meeting of the entity.
374	(7) <i>Personnel</i> . This section shall state the entity's authority for hiring personnel,
375	if any, and the duties of such personnel.
376	(c) "Article III. Meetings" shall consist of the following:
377	(1) <i>Regular meetings</i> . This section shall identify when and where regular meetings
378	shall be held, and how the entity shall provide notice of the meeting agenda,
379	documents, and minutes.
380	(2) <i>Emergency meetings</i> . This section shall identify what constitutes an emergency
381	meeting, how emergency meetings shall be called, and how the entity shall provide
382	notice of the emergency meeting.
383	(A) All bylaws shall include a provision requiring that within seventy-two
384	(72) hours after an emergency meeting, the entity shall provide the Nation's
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forth a minimum age requirement.

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Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular meeting.

- (3) *Joint Meetings*. This section shall identify if joint meetings shall be held, the frequency and location of joint meetings, and how the entity shall provide notice of the meeting agenda, documents, and minutes.
- (4) *Quorum*. This section shall identify how many members of an entity create a quorum.
- (5) Order of Business. This section sets out how the agenda will be set up.
- (6) *Voting*. This section shall identify voting requirements, such as, but not limited to:
  - (A) the percentages that shall be needed to pass different items;
  - (B) if, and when, the chairperson is allowed to vote;
  - (C) if the use of an e-poll is permissible; and
  - (D) if the use of and e-poll is permissible, who will serve as the Chairperson's designee for the responsibility of conducting an e-poll, if a designee is utilized.
- (d) "Article IV. Expectations" shall consist of the following information:
  - (1) Behavior of Members. This section shall identify the behavioral expectations and requirements of a member of the entity, and identify how the entity shall enforce these behavioral expectations.
  - (2) *Prohibition of Violence*. This section shall prohibit any violent intentional act committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property, and set forth any further expectations regarding the prohibition of violence.
  - (3) Drug and Alcohol Use. This section shall prohibit the use of alcohol and prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and alcohol.
  - (4) Social Media. This section shall identify expectations for the use of social media in regards to official business of the entity.
  - (5) Conflict of Interest. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities resulting from disclosed conflicts of interest, and means by which a party can alleviate or mitigate the conflict of interest.
- (e) "Article V. Stipends and Compensation" shall consist of the following information:
  - (1) Stipends. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.
  - (2) Compensation. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.
- (f) "Article VI. Records and Reporting" shall consist of the following information:
  - (1) Agenda Items. Agenda items shall be maintained in a consistent format as

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429	identified by this section.
430	(2) Minutes. Minutes shall be typed and in a consistent format designed to generate
431	the most informative record of the meetings of the entity. This may include a
432	summary of action taken by the entity. This section shall identify the format for
433	minutes, and a reasonable timeframe by which minutes shall be submitted to the
434	Business Committee Support Office.
435	(3) Attachments. Handouts, reports, memoranda, and the like may be attached to
436	the minutes and agenda, or may be kept separately, provided that all materials can
437	be identified to the meeting in which they were presented. This section shall
438	identify how records of attachments shall be kept.
439	(4) Oneida Business Committee Liaison. Entities shall regularly communicate with
440	the Oneida Business Committee member who is their designated liaison. This
441	section shall identify a format and frequency for communication which may be as
442	the liaison and entity agree to, but not less than that required in any law or policy
443	on reporting developed by the Oneida Business Committee or Oneida General
444	Tribal Council. The purpose of the liaison relationship is to uphold the ability of
445	the liaison to act as a support to that entity.
446	(5) Audio Recordings. An entity shall audio record all meetings. This section shall
447	state how the entity shall audio record meetings, and how the entity shall maintain
448	the audio records.

(g) "Article VII. Amendments" consists of:

shall not be required.

(1) Amendments to Bylaws. This section shall describe how amendments to the bylaws are made. Any amendments to bylaws shall conform to the requirements of this and any other policy of the Nation. Amendments to bylaws shall be approved by the Oneida Business Committee, in addition to the General Tribal Council when applicable, prior to implementation.

(A) Exception. Audio recordings of executive session portions of a meeting

#### 105.11. Electronic Polling

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- 105.11-1. An entity may utilize an e-poll when approval of an action may be required before the next available meeting agenda of the entity.
- 105.11-2. Conducting an E-Poll. The Chairperson of the entity, or designee, shall e-mail the epoll to all members of the entity. Requests for an e-poll shall be sent only from an official e-mail address of the entity. The e-poll's message shall include the following information:
  - (a) The e-mail subject line shall begin with "E-poll Request:" and include a short title describing the purpose of the request.
  - (b) The body of the e-poll shall contain the following elements:
    - (1) An executive summary of the reason for the request and why the request cannot be presented at the next available meeting of the entity;
    - (2) A proposed motion which shall be in bold and identified in a separate paragraph by the words "Requested Action;"
    - (3) All attachments in \*.pdf format, which are necessary to understand the request being made; and

- 473 (4) A deadline date for a response to be returned regarding the results of the electronic poll which shall be in bold and identified in a separate paragraph by the words "Deadline for Response."
  - (A) E-poll requests shall be open for response not less than one (1) hour and no more than twenty-four (24) hours.
  - (B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.
  - 105.11-3. Response to an E-Poll. Only the member of an entity shall respond to an e-poll. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.
    - (a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.
    - (b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.
    - (c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.
    - (d) The Chairperson, or designee, shall monitor all responses and deadline dates for responses.
  - 105.11-4. *Entering an E-Poll in the Record.* Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:
    - (a) Original e-poll request and all supporting documentation;
    - (b) A summary of the e-poll results identifying each member of the entity and his or her response; and
    - (c) A copy of any comment by a member of the entity if comments are made beyond a vote.

## 105.12. Reporting Requirements

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- 105.12-1. *Minutes*. All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.
  - (a) Actions taken by an entity are valid upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.
  - (b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.
  - (c) No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.
- 513 105.12-2. *Standard Operating Procedures*. All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.
- 516 105.12-3. Quarterly Reports to the Oneida Business Committee. Entities shall provide quarterly

reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:

- (a) *Contact Information*. The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.
- (b) *Meetings*. When and how often the entity is holding meetings and whether any emergency meetings have been held.
  - (1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.
- (c) Accomplishments. Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.
- (d) Goals. Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.
- (e) *Budget*. The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.
- (f) Requests. Details of any requests to the Oneida Business Committee.
- (g) Other. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.
- 105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.
  - (a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.
  - (b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.
- 105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

# 105.13. Stipends, Reimbursement and Compensation

- 105.13-1. Stipends and reimbursement for expenses shall follow the procedures as set out in this section and according to procedures for payment as set out by the Nation, unless otherwise declined by the entity through its bylaws, or declined by a member.
- 558 105.13-2. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida 559 Business Committee shall periodically review the amounts provided for stipends and, based on the 560 availability of funds, shall adjust those amounts accordingly by amending the resolution. Stipends

are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards. 105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.

- (a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than twelve (12) meeting stipends per fiscal year.
- (b) *Meeting Stipends for an Elected Entity*. An individual serving on an elected entity shall be paid no more than twenty-four (24) meeting stipends per fiscal year.
- (c) Demonstrating Presence During a Meeting. An entity shall demonstrate the presence of its members during a meeting by taking roll call on the record at both the beginning and conclusion of a meeting.
- (d) Technological Issues Affecting Presence During a Meeting. If a member of an entity experiences a technological issue during a regular or emergency meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the meeting, the member shall notify the entity of the technological issue as soon as possible.
  - (1) An exemption to the stipend eligibility requirement to be present for the entire meeting may be granted if the entity certifies by a majority vote that the member was present for a majority of the meeting despite the technological issue which disrupted the member's presence during the meeting.
- 105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
    - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
  - (b) Demonstrating Presence During a Joint Meeting. An entity shall demonstrate the presence of its members during a joint meeting by taking roll call on the record at both the beginning and conclusion of a joint meeting.
  - (c) Technological Issues Affecting Presence During a Joint Meeting. If a member of an entity experiences a technological issue during a joint meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the joint meeting, the member shall notify the entity of the technological issue as soon as possible.
    - (1) An exemption to the stipend eligibility requirement to be present for the entire joint meeting may be granted if the entity certifies by a majority vote that the member was present for a majority of the joint meeting despite the technological issue which disrupted the member's presence during the joint meeting.
- 105.13-5. Oneida Judiciary Hearings. A member of an entity shall receive a Judiciary hearing

- stipend if the member's attendance at the Judiciary hearing is required by official subpoena.
- 105.13-6. *Hearings of an Entity*. A member of an entity that maintains hearing authority may obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.
- 611 105.13-7. *Other Stipends*. The Oneida Business Committee shall determine if, and when, any 612 other stipends are appropriate to compensate members of entities for their official actions. All 613 possible stipends shall be included in the Oneida Business Committee resolution which sets stipend 614 amounts.
  - 105.13-8. *Conferences and Training*. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:
    - (a) A member shall be eligible for a stipend for attending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
      - (1) The amount of the stipend a member is eligible to receive for attendance at a conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a conference or training.
    - (b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.
    - (c) No stipend payments shall be made for those days spent traveling to and from the conference or training.
  - 105.13-9. *Business Expenses*. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.
  - 105.13-10. *Task Force and Ad Hoc Subcommittees*. Members of task force, ad hoc committees and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

#### 105.14. Confidential Information

- 105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order to protect the interest of the Nation and ensure that no persons engaged in by the Nation, nor their relatives or associates, benefit from the use of confidential information.
  - (a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.
  - (b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the

Nation and the entity.

- (c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.
- (d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.
- 105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and shall only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents shall be made in accordance with the Nation's laws and policies governing open records and open meetings.
- 105.14-3. Official Oneida Nation E-mail Address. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
  - (a) If a member is also an employee of the Nation, he or she shall receive a separate email address from his or her regular work e-mail address.
  - (b) A member of an entity shall have thirty (30) days upon election or appointment to an entity to activate his or her official e-mail address.
  - (c) An individual who holds a position as an ad hoc or alternate member of an entity shall be exempt from the requirement to be provided an official e-mail address, unless determined that an e-mail address is necessary for the role and responsibilities of the ad hoc or alternate member.
  - (d) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
  - (e) A member of an entity shall exclusively use his or her official e-mail address to electronically conduct any business of the entity, and shall not use a personal or work e-mail address to electronically conduct any business of the entity.
  - (f) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

#### 105.15. Conflicts of Interest

- 105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.
- 105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.
  - (a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action shall be taken by the Nation regarding the status of the official.
- 105.15-3. *Ineligibility Due to Conflicts of Interest*. Due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed

or elected entity:

- (a) political appointees;
- (b) an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, or Intergovernmental Affairs and Communications; and
- (c) an employee who serves as a direct report to the Oneida Business Committee or General Manager.

#### 105.16. Use of the Nation's Assets

- 105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.
- 105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:
  - (a) all transactions are executed in accordance with management's authorization; and
  - (b) access to assets is permitted only in accordance with management's authorization; and
  - (c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.
- 105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

#### 105.17. Dissolution of an Entity

- 105.17-1. *Dissolution of a Task Force or Ad Hoc Committee*. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.
- 721 105.17-2. *Dissolution of an Entity*. All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee.
- 105.17-3. *Notice of Dissolution*. Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida Business Committee shall provide the entity written notice of the dissolution.
  - 105.17-4. *Management of Records and Materials*. All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.
    - (a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

#### 105.18. Enforcement

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737 105.18-1. Any member of an entity found to be in violation of this law may be subject to: (a) sanctions and penalties in accordance with any laws or policies of the Nation governing 738 739 sanctions and/or penalties; 740 (b) removal pursuant to any laws or policies of the Nation's governing removal, if the 741 individual is a member of an elected entity; or (c) termination of appointment by the Oneida Business Committee, if the individual is a 742 743 member of an appointed entity. 744 End. **748** 747 748 Adopted - BC-08-02-95-A 749 Amended - BC-05-14-97-F 750 Emergency Amended - BC-04-12-06-JJ 751 Amended - BC-09-27-06-E (permanent adoption of emergency amendments) 752 Amended - BC-09-22-10-C 753 Amended - BC-09-26-18-C 754 Emergency Amended – BC-03-11-20-B 755 Emergency Amended – BC-03-17-20-C 756 Amended – BC- - - -757 758

# Title 1. Government and Finances – Chapter 105 BOARDS, COMMITTEES AND COMMISSIONS

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# **BOARDS, COMMITTEES, AND COMMISSIONS**

105.1. Purpose and Policy	105.10. Bylaws
105.2. Adoption, Amendment, Repeal	105.11 Electronic Polling
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105.4. Creation of an Entity	105.13. Stipends, Reimbursement and Compensation
105.5. Applications	105.14. Confidential Information
105.6. Vacancies	105.15. Conflicts of Interest
105.7. Appointment to an Entity	105.16. Use of the Nation's Assets
105.8. Election to an Entity	105.17. Dissolution of an Entity
105.9. Oath of Office	105.18. Enforcement

#### 105.1. Purpose and Policy

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- (a) This law shall not apply to the Oneida Business Committee, or Standing Committees of the Oneida Business Committee.
- (b) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.

105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

#### 105.2. Adoption, Amendment, Repeal

17 105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-14-97-F 18 and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, and BC-09-26-18-C- and amended 19 by BC- - - - .

- 105.2-2. This law may be amended or repealed by the Oneida Business Committee or the General
   Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 105.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered
- to have legal force without the invalid portions.
- 105.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 27 105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### 105.3. Definitions

105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Application" means the form by which a person seeks to be appointed to fill a vacancy on an entity.
- 34 (b) "Appointment" means the process by which a person is chosen to fill a vacancy on an
  - entity by the Oneida Business Committee.

    (c) "Business day" means Monday through Friday from 8:00 a m. to 4:30 n m. excluding
  - (c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
  - (d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.
  - (e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.
  - (f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.
  - (g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.
  - (h(h) "Direct report" means a position which requires direct contact and supervision by the Oneida Business Committee because of the position, the duties, or the services provided. Direct reports shall be identified by the Oneida Business Committee through resolution
  - (i) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.
  - (ij) "E-poll" means an electronic poll, which is the act of delivering an e-mail to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.
  - (jk) "Joint meeting" means a meeting with the Oneida Business Committee.
  - (kl) "Nation" means the Oneida Nation.
  - (1) Am) "Per Diem≅" means the payment made by the Nation to offset the costs of being on travel on behalf of the Oneida Nation.
  - (mn) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member's daily activities and operations.
  - (no) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance

76 77 78 included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

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(o) Ap) "Stipend" means the amount paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation.

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(pq) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.

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(qr) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by clear and convincing evidence.

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(FS) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term

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(st) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

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#### 105.4. Creation of an Entity

105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.

98 105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.

100 105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

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#### 105.5. Applications

104 105 106 105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

107 108 (a) All applications shall include:

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(1) a statement explaining the attendance requirements of section 105.12-3; and

110 111 (2) a section regarding disclosures of conflicts of interest.

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(b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.

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105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date.

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105.5-3. Within eight (8) days after the posted deadline for filing applications, the Business Committee Support Office shall notify all persons who have filed an application of the date his or

- her application was received and if his or her application met the deadline to be considered for the election or appointment.
- 122 105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or
- policies governing elections. Applications for appointed positions shall be verified by the Business
- 124 Committee Support Office as needed or as required in the bylaws of the entity.
- 125 105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Oneida-Business Committee Support Office may elect to:repost for an additional time period.
  - (a) include within the pool of appointed persons late applications, or
  - (a) If the number of applicants is equal to or less than the number of vacancies then it shall be determined to be an insufficient number of applicants.
  - (b) repostThe Business Committee Support Office shall notify the Oneida Business Committee if a position will be reposted for an additional time period.
  - (c) In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.
  - (d) The Oneida Business Committee may elect to include within the pool of appointed persons late applications.

#### 105.6. Vacancies

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- 105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.
- 105.6-2. A position on an entity shall be considered vacant in the following situations:
  - (a) End of Term. A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.
    - (1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.
  - (b) Removal. Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.
  - (c) Termination of Appointment. A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.
  - (d) Resignation. A resignation is effective upon:
    - (1) Deliverance of a letter to the Business Committee Support Office and to the Chairperson of the entity, or designee; or-
    - (2) Acceptance by motion of the entity of a verbal resignation.
- (e) New Positions. Vacancies on new entities are effective upon adoption of bylaws.
- 105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.
- 162 105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee

to post the notice of vacancy. The Business Committee Support Office shall post notice of vacancies at the following times:

- (a) End of Term. Automatically sixty (60) days prior to completion of the term.
- (b) *Removal*. No later than the next Oneida Business Committee meeting following the effective date of the removal.
- (c) Resignation. No later than the next Oneida Business Committee meeting following the Business Committee Support Office's receipt of notice of an effective resignation from the entity.
- (d) New Positions. Upon one of the following conditions:
  - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
  - (2) upon date specified when creating the entity.
- (e) *Termination of appointment*. No later than the next Oneida Business Committee meeting following the effective date of the termination.
- 105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

# 105.7. Appointment to an Entity

- 105.7-1. *Appointment Selection*. The following procedures shall be used to determine how the applicant for an appointed position is selected:
  - (a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
    - (1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and
    - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made.; or
    - (3) if delays in compiling the applications, summary of qualifications, or results of any investigations exist, request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2).
  - (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
    - (1) The entity's Chairperson may have until the executive session to review the application materials and providesubmit to the Business Committee Support Office a recommendation to the Oneida Business Committee a recommendation of an applicant for appointment.
      - (A) The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida

# Business Committee meeting in which the appointment is intended to be made.

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- (c) The Oneida Business Committee shall have a full and complete discussion of the merits
- and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:
  - (1) chooseselect an applicant for appointment, or
  - (2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.
- (d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.
- (e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:
  - (1) accept the selected applicant and vote to appoint the individual to the vacant
  - (2) reject the selected applicant and vote to oppose the appointment of the individual.
- (f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.
- 105.7-2. Notification of Appointment. Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.
  - (a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.
  - (b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: A"The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income. "."
- 105.7-3. Declination of Appointment. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.
  - (a) An individual may decline an appointment to an entity in the following ways:
    - (1) Delivery of ana letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or

(2) The failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee.

(b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined in section 105.7-1 to select another applicant for appointment.

105.7-4. *Termination of Appointment*. An appointed member of an entity serves at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.

(a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.

(b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

# 105.8. Election to an Entity

105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or petitionapply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.

(a) When the Election Board notifies a petitioner an applicant or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: A: The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income.

105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

#### 105.9. Oath of Office

105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternative time and location as determined by the Secretary. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.

 (a) The When taking an oath, the appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by through video conferencing equipment, or through other telecommunications.

(b) If an oath is administered outside of an Oneida Business Committee meeting, a quorum of Oneida Business Committee members shall be present to witness the oath.

105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths

- shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.
- 298 105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded

300 to the new member of the entity and the entity.

- 105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will carry out the duties and responsibilities as a member of the [entity name], and all recommendations shall be made in the best interest of the Oneida Nation as a whole.
  - 105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware of their duty to the Nation and as members of the entity.

105.10. Bylaws

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- 105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.
  - (a) All existing entities <u>mustshall</u> comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law.
  - (b) Bylaws mustshall contain at least the minimum information required by law, although more information is not prohibited.
  - (c) *Exception*. Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities mustshall have, at minimum, mission or goal statements for completion of the task.
- 105.10-2. Articles. Bylaws shall contain, at a minimum, the following Articles:
  - (a) Article I. Authority.
  - (b) Article II. Officers.
  - (c) Article III. Meetings.
  - (d) Article IV. Expectations.
  - (e) Article V. Stipends and Compensation.
  - (f) Article VI. Records and Reporting.
  - (g) Article VII. Amendments.
- 105.10-3. Sections. Articles shall be divided into "sections" as set out.
  - (a) "Article I. Authority" shall consist of the following:
    - (1) *Name*. The full name of the entity shall be stated, along with any short name that will be officially used.
    - (2) *Establishment*. This section shall state the citation and name, if any, of the creation document.
    - (3) *Authority*. This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.
    - (4) Office. There shall be listed the official office or post box of the entity.

1 O.C. 105 – Page 8

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- 340 341 342 343 is elected or appointed; 344 345 346 347 348 349 350 351 352 Nation. 353 354 355 entity, if any. 356 357 358 359 here. 360 361 362 363 364 365 366 367 368 369 limitations of the officer. 370 371 372 373 374 375 376 377 378 379 380 for the entity. 381 382 383
  - (5) *Membership*. The following information shall be in this section:
    - (A) Number of members on the entity;
    - (B) If members on the entity are elected or appointed, and how a member
    - (C) How vacancies are filled; and
    - (D) Qualifications for membership on the entity.
      - (i) In order to qualify for membership on an entity, a person shall meet the minimum age requirements set forth for status as a qualified voter of the Nation, unless a law, policy, or directive sets forth a minimum age requirement.
  - (6) Termination or Removal. This section shall identify causes for termination or removal, if any, in addition to those already identified in laws and/or policies of the
  - (7) Trainings and Conferences. This section shall describe any trainings and/or conferences that the entity deems necessary for members to responsibly serve the
  - (b) "Article II. Officers" shall consist of the following:
    - (1) Chairperson and Vice-Chairperson. This section creates the chairperson and vice-chairperson positions of the entity. Other officer positions may also be created
    - (2) Responsibilities of the Chairperson. Because of the importance of this position, all duties and responsibilities of the chairperson, as well as limitations of the chairperson shall be specifically listed here.
    - (3) Responsibilities of the Vice-Chairperson. Because of the importance of this position, all duties and responsibilities of the vice-chairperson, as well as limitations of the vice-chairperson shall be specifically listed here.
    - (4) Responsibilities of Additional Officers. There may be additional sections as needed for every officer position created in subsection one (1) above. These sections shall state all duties and responsibilities of the officer, as well as any
    - (5) Selection of Officers. This section shall identify how a member of the entity shall be selected for an official officer position in the entity.
    - (6) Budgetary Sign-Off Authority Purchases and Travel. This section shall identify the entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and how the entity shall handle approvingapprove purchases or travel on behalf of the entity.
      - (A) An entity shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.
      - (B) Upon formal approval of a purchase by an entity, the Business Committee Support Office shall have official budgetary sign off authority
      - (C) An entity shall approve a member's request to travel on behalf of the entity by majority vote at a regular or emergency meeting of the entity.
    - (7) Personnel. This section shall state the entity's authority for hiring personnel,

 if any, and the duties of such personnel.

- (c) "Article III. Meetings" shall consist of the following:
  - (1) Regular meetings. This section shall identify when and where regular meetings shall be held, and how the entity shall provide notice of the meeting agenda, documents, and minutes.
  - (2) *Emergency meetings*. This section shall identify what constitutes an emergency meeting, how emergency meetings shall be called, and how the entity shall provide notice of the emergency meeting.
    - (A) All bylaws shall include a provision requiring that within seventy-two (72) hours after an emergency meeting, the entity shall provide the Nation's Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular meeting.
  - (3) *Joint Meetings*. This section shall identify if joint meetings shall be held, the frequency and location of joint meetings, and how the entity shall provide notice of the meeting agenda, documents, and minutes.
  - (4) *Quorum*. This section shall identify how many members of an entity create a quorum.
  - (5) Order of Business. This section sets out how the agenda will be set up.
  - (6) *Voting*. This section shall identify voting requirements, such as, but not limited to:
    - (A) the percentages that shall be needed to pass different items;
    - (B) if, and when, the chairperson is allowed to vote;
    - (C) if the use of an e-poll is permissible; and
    - (D) if the use of and e-poll is permissible, who will serve as the Chairperson's designee for the responsibility of conducting an e-poll, if a designee is utilized.
- (d) "Article IV. Expectations" shall consist of the following information:
  - (1) Behavior of Members. This section shall identify the behavioral expectations and requirements of a member of the entity, and identify how the entity shall enforce these behavioral expectations.
  - (2) *Prohibition of Violence*. This section shall prohibit any violent intentional act committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property, and set forth any further expectations regarding the prohibition of violence.
  - (3) Drug and Alcohol Use. This section shall prohibit the use of alcohol and prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and alcohol.
  - (4) *Social Media*. This section shall identify expectations for the use of social media in regards to official business of the entity.
  - (5) Conflict of Interest. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities resulting from disclosed conflicts of interest, and means by which a party can

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alleviate or mitigate the conflict of interest.

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105.11. Electronic Polling

105.11-1. An entity may utilize an e-poll when approval of an action may be required before the next available meeting agenda of the entity.

105.11-2. Conducting an E-Poll. The Chairperson of the entity, or designee, shall e-mail the epoll to all members of the entity. Requests for an e-poll shall be sent only from an official e-mail

- (e) "Article V. Stipends and Compensation" shall consist of the following information:
  - (1) Stipends. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.
  - (2) Compensation. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.
- (f) "Article VI. Records and Reporting" shall consist of the following information:
  - (1) Agenda Items. Agenda items shall be maintained in a consistent format as identified by this section.
  - (2) Minutes. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the Business Committee Support Office.
  - (3) Attachments. Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented. This section shall identify how records of attachments shall be kept.
  - (4) Oneida Business Committee Liaison. Entities shall regularly communicate with the Oneida Business Committee member who is their designated liaison. This section shall identify a format and frequency for communication which may be as the liaison and entity agree to, but not less than that required in any law or policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. The purpose of the liaison relationship is to uphold the ability of the liaison to act as a support to that entity.
  - (5) Audio Recordings. An entity shall audio record all meetings. This section shall state how the entity shall audio record meetings, and how the entity shall maintain the audio records.
    - (A) Exception. Audio recordings of executive session portions of a meeting shall not be required.
- (g) "Article VII. Amendments" consists of:
  - (1) Amendments to Bylaws. This section shall describe how amendments to the bylaws are made. Any amendments to bylaws shall conform to the requirements of this and any other policy of the Nation. Amendments to bylaws shall be approved by the Oneida Business Committee, in addition to the General Tribal Council when applicable, prior to implementation.

address of the entity. The e-poll's message shall include the following information:

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- (a) The e-mail subject line shall begin with "E-poll Request:" and include a short title describing the purpose of the request.
- (b) The body of the e-poll shall contain the following elements:
  - (1) An executive summary of the reason for the request and why the request cannot be presented at the next available meeting of the entity;
  - (2) A proposed motion which shall be in bold and identified in a separate paragraph by the words "Requested Action:"
  - (3) All attachments in \*.pdf format, which are necessary to understand the request being made; and
  - (4) A deadline date for a response to be returned regarding the results of the electronic poll which shall be in bold and identified in a separate paragraph by the words "Deadline for Response."
    - (A) E-poll requests shall be open for response not less than one (1) hour and no more than twenty-four (24) hours.
    - (B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.
- 105.11-3. Response to an E-Poll. Only the member of an entity shall respond to an e-poll. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.
  - (a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.
  - (b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.
  - (c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.
  - (d) The Chairperson, or designee, shall monitor all responses and deadline dates for responses.
- 105.11-4. *Entering an E-Poll in the Record*. Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:
  - (a) Original e-poll request and all supporting documentation;
  - (b) A summary of the e-poll results identifying each member of the entity and his or her response; and
  - (c) A copy of any comment by a member of the entity if comments are made beyond a vote.

#### 105.12. Reporting Requirements

- 105.12-1. *Minutes*. All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.
  - (a) Actions taken by an entity are valid upon approval of the action by vote, unless the

bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.

- (b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.
- (c) No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.
- 105.12-2. *Standard Operating Procedures*. All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.
- 105.12-3. Quarterly Reports to the Oneida Business Committee. Entities shall provide quarterly reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:
  - (a) *Contact Information*. The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.
  - (b) *Meetings*. When and how often the entity is holding meetings and whether any emergency meetings have been held.
    - (1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.
  - (c) Accomplishments. Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.
  - (d) Goals. Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.
  - (e) *Budget*. The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.
  - (f) Requests. Details of any requests to the Oneida Business Committee.
  - (g) Other. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.
- 105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.
  - (a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.
  - (b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.

105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

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### 105.13. Stipends, Reimbursement and Compensation

- 105.13-1. Stipends and reimbursement for expenses shall follow the procedures as set out in this section and according to procedures for payment as set out by the Nation, unless otherwise declined by the entity through its bylaws, or declined by a member.
- 105.13-2. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending the resolution. Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards. 105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than one (1twelve (12) meeting stipends per month fiscal year.
  - (b) Meeting Stipends for an Elected Entity. An individual serving on an elected entity shall be paid no more than two (2twenty-four (24) meeting stipends per month fiscal year.
  - (c) Demonstrating Presence During a Meeting. An entity shall demonstrate the presence of its members during a meeting by taking roll call on the record at both the beginning and conclusion of a meeting.
  - (d) Technological Issues Affecting Presence During a Meeting. If a member of an entity experiences a technological issue during a regular or emergency meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the meeting, the member shall notify the entity of the technological issue as soon as possible.
    - (1) An exemption to the stipend eligibility requirement to be present for the entire meeting may be granted if the entity certifies by a majority vote that the member was present for a majority of the meeting despite the technological issue which disrupted the member's presence during the meeting.
- 105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
    - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
  - (b) Demonstrating Presence During a Joint Meeting. An entity shall demonstrate the presence of its members during a joint meeting by taking roll call on the record at both the beginning and conclusion of a joint meeting.

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105.14. Confidential Information

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105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order

- (c) Technological Issues Affecting Presence During a Joint Meeting. If a member of an entity experiences a technological issue during a joint meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the joint meeting, the member shall notify the entity of the technological issue as soon as possible.
  - (1) An exemption to the stipend eligibility requirement to be present for the entire joint meeting may be granted if the entity certifies by a majority vote that the member was present for a majority of the joint meeting despite the technological issue which disrupted the member's presence during the joint meeting.
- 105.13-5. Oneida Judiciary Hearings. A member of an entity shall receive a Judiciary hearing stipend if the member's attendance at the Judiciary hearing is required by official subpoena.
- 105.13-6. Hearings of an Entity. A member of an entity that maintains hearing authority may obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.
- 105.13-7. Other Stipends. The Oneida Business Committee shall determine if, and when, any other stipends are appropriate to compensate members of entities for their official actions. All possible stipends shall be included in the Oneida Business Committee resolution which sets stipend amounts.
- 105.13-8. Conferences and Training. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:
  - (a) A member shall be eligible for a stipend for each full day the member is present at theattending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
    - (1) The amount of the stipend a member is eligible to receive for attendance at a conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a conference or training.
  - (b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.
  - (c) No stipend payments shall be made for those days spent traveling to and from the conference or training.
- 105.13-9. Business Expenses. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.
- 105.13-10. Task Force and Ad Hoc Subcommittees. Members of task force, ad hoc committees and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

- (a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.
- (b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Nation and the entity.
- (c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.
- (d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.
- 105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and <u>eanshall</u> only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents <u>mustshall</u> be made in accordance with the Nation's laws and policies <u>regardinggoverning</u> open records and open meetings.
- 105.14-3. Official Oneida Nation E-mail Address. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
  - (a) If a member is also an employee of the Nation, he or she shall receive a separate email address from his or her regular work e-mail address.
  - (b) A member of an entity shall have thirty (30) days upon election or appointment to an entity to activate his or her official e-mail address.
  - (c) An individual who holds a position as an ad hoc or alternate member of an entity shall be exempt from the requirement to be provided an official e-mail address, unless determined that an e-mail address is necessary for the role and responsibilities of the ad hoc or alternate member.
  - (d) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
  - (ee) A member of an entity shall exclusively use his or her official e-mail address to electronically conduct any business of the entity, and shall not use anya personal or work e-mail address to electronically conduct any business of the entity.
  - (df) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

### 105.15. Conflicts of Interest

- 105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.
- 105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises, and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.
  - (a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action <u>mustshall</u> be taken by the Nation regarding the status of the official.
- 105.15-3. <u>Ineligibility Due to Conflicts of Interest.</u> Due to the potential for a real or perceived conflict of interest to exist, <u>political appointees the following individuals</u> shall not <u>be eligible to serve on an appointed or elected entity:</u>
  - (a) political appointees;
  - (b) an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, or Intergovernmental Affairs and Communications; and
  - (c) an employee who serves as a direct report to the Oneida Business Committee or General Manager.

### 105.16. Use of the Nation's Assets

- 105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.
- 105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:
  - (a) all transactions are executed in accordance with management's authorization; and
  - (b) access to assets is permitted only in accordance with management's authorization; and
  - (c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.
- 105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

### 105.17. Dissolution of an Entity

- 105.17-1. Dissolution of a Task Force or Ad Hoc Committee. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.
- 732 105.17-2. *Dissolution of an Entity*. All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee.
- 734 105.17-3. *Notice of Dissolution*. Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida

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- Business Committee shall provide the entity written notice of the dissolution.
  - 105.17-4. *Management of Records and Materials*. All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.
    - (a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

### 105.18. Enforcement

- 105.18-1. Any member of an entity found to be in violation of this law may be subject to:
  - (a) sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;
  - (b) removal pursuant to any laws or policies of the Nation's governing removal, if the individual is a member of an elected entity; or
  - (c) termination of appointment by the Oneida Business Committee, if the individual is a member of an appointed entity.

End.

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Adopted - BC-08-02-95-A
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Amended - BC-05-14-97-F
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Emergency Amendments Amended - BC-04-12-06-JJ
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Amended - BC-09-27-06-E (permanent adoption of emergency amendments)
Amended - BC-09-22-10-C
Amended - BC-09-26-18-C
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Emergency Amended - BC-03-11-20-B

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# AMENDMENTS TO THE BOARDS, COMMITTEES, and COMMISSIONS LAW LEGISLATIVE ANALYSIS

### SECTION 1. EXECUTIVE SUMMARY

<b>SECTION 1.</b> I	SECTION 1. EXECUTIVE SUMMARY			
	Analysis by the Legislative Reference Office			
Intent of the	<ul> <li>Allow the Business Committee Support Office to repost a vacancy for an additional time period if insufficient applications are received, as long as notification is provided to the Oneida</li> </ul>			
Proposed Amendments	Business Committee;			
Amenuments	Allow the Business Committee Support Office to request additional time from the Oneida Business Committee in compiling the applications, summary of qualifications, or results of			
	any investigation;			
	<ul> <li>Clarify a deadline for when a Chairperson of a board, committee, or commission of the Nation has to submit a recommendation for an appointment to the entity for the Oneida Business</li> </ul>			
	Committee's consideration;			
	Allow for the oath of office to be taken at an alternative time and location than during a regular or special Oneida Business Committee meeting as determined by the Secretary, as long as a quorum of the Oneida Business Committee is present to witness the oath;			
	Require that the entity's bylaws provide how the entity shall approve purchases or travel on behalf of the entity, but clarify the Business Committee Support Office has budgetary sign off authority on behalf of the entity;			
	Require that an entity audio record all meetings;			
	Clarify that only a member of an entity shall respond to e-polls;			
	Eliminate the requirement that a member of a board, committee, or commission be physically			
	present during the entirety of a meeting or joint meeting in order to be eligible to receive a meeting stipend, but still require the member to be present and participate for the entire meeting through some means;			
	Address how technological issues during a meeting held through telecommunications is			
	address and how it may affect a member's eligibility for a meeting stipend;  Provide that meetings and joint meetings can occur in person by telephone through			
	<ul> <li>Provide that meetings and joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications;</li> </ul>			
	Revise how the limitation of stipend eligible meetings is calculated;			
	<ul> <li>Clarify how eligibility for a conference or training stipend is calculated;</li> </ul>			
	<ul> <li>Provide a deadline for a member to activate his or her e-mail address, and clarify when an ad hoc or alternate member of an entity must have an official e-mail address;</li> </ul>			
	• Specify that certain positions within the Nation are ineligible to serve on a board, committee,			
	or commission of the Nation due to the potential for a real or perceived conflict of interest to exist.			
Purpose	To govern boards, committees, and commissions of the Nation, including the procedures regarding			
	the appointment and election of persons to boards, committees and commissions, creation of			
	bylaws, maintenance of official records, compensation, and other items related to boards,			
1.00	committees and commissions. [1 O.C. 105.1-1]			
Affected	Oneida Election Board, Oneida Gaming Commission, Oneida Land Claims Commission, Oneida			
Entities	Land Commission, Oneida Nation Commission on Aging, Oneida Nation School Board, Oneida Trust Enrollment Committee, Anna John Resident Centered Care Community Board, Oneida			
	Community Library Board, Oneida Environmental Resource Board, Oneida Nation Arts Board,			
	Oneida Personnel Commission, Oneida Police Commission, Oneida Pow Wow Committee, Oneida			
	Nation Veterans Affairs Committee, Pardon and Forgiveness Screening Committee, Southeastern			
	WI Oneida Tribal Services Advisory Board			
Public	A public comment period was held open until July 9, 2020. A public meeting was not held in			
Meeting	accordance with the Nation's COVID-19 Core Decision Making Team's declaration titled,			
TD*	"Suspension of Public Meetings under the Legislative Procedures Act."			
Fiscal Impact	A fiscal impact statement has not yet been developed.			

### **SECTION 2. LEGISLATIVE DEVELOPMENT**

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- A. Background. The Boards, Committees, and Commissions law ("the Law") was first adopted by the Oneida Business Committee on August 2, 1995, for the purpose of governing boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions, [1 O.C. 105.1-1]. The Law was last amended on a permanent basis thorough the adoption of resolution BC-09-26-18-C, and then amended on an emergency basis through the adoption of resolution BC-03-11-20-B and BC-03-17-20-C.
- **B.** The Legislative Operating Committee is proposed amendments be made to this Law to permanently adopt emergency amendments that were recently made to the Law, as well as to address various considerations that arose during the one (1) year review of the Law.
- C. Table 1 illustrates the various boards, committees, and commissions of the Nation this Law applies to. This Law does not apply to the Oneida Business Committee, standing committees of the Oneida Business Committee, corporate entities, or members of the Judiciary.

Table 1. Boards, Committees and Commissions of the Nation		
ELECTED	APPOINTED	
<ul> <li>Oneida Election Board</li> </ul>	■ Anna John Resident Centered Care Community	
<ul> <li>Oneida Gaming Commission</li> </ul>	Board (AJRCC)	
<ul> <li>Oneida Land Claims Commission</li> </ul>	<ul> <li>Oneida Community Library Board</li> </ul>	
<ul> <li>Oneida Land Commission</li> </ul>	<ul> <li>Oneida Environmental Resource Board (ERB)</li> </ul>	
<ul> <li>Oneida Nation Commission on</li> </ul>	<ul> <li>Oneida Nation Arts Board</li> </ul>	
Aging (ONCOA)	<ul> <li>Oneida Personnel Commission</li> </ul>	
<ul> <li>Oneida Nation School Board</li> </ul>	<ul> <li>Oneida Police Commission</li> </ul>	
<ul> <li>Oneida Trust Enrollment</li> </ul>	<ul> <li>Oneida Pow Wow Committee</li> </ul>	
Committee	■ Oneida Nation Veterans Affairs Committee	
	(ONVAC)	
	<ul> <li>Pardon and Forgiveness Screening Committee</li> </ul>	
	Southeastern WI Oneida Tribal Services Advisory	
	Board (SEOTS)	

### SECTION 3. CONSULTATION AND OUTREACH

- A. Representatives from the following departments or entities participated in the one (1) year review of the Law which was then used in development of amendments to this Law and legislative analysis:
  - Oneida Law Office;
  - Business Committee Support Office;
- 24 Oneida Land Commission;
  - Oneida Trust Enrollment Committee;
  - Oneida Nation Commission on Aging;
  - Oneida Nation School Board;
    - Oneida Police Commission:
      - Oneida Personnel Commission; and
- 30 Oneida Nation Arts Board.

B. The following laws were reviewed in the drafting of this analysis: Election Law, Removal law, Code
 of Ethics, Conflict of Interest Policy, Oneida Nation Gaming Ordinance, Computer Resources
 Ordinance, Social Media Policy.

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### **SECTION 4. PROCESS**

- **A.** The amendments to this Law have followed the process set forth in the Legislative Procedures Act.
  - On February 12, 2020, the Oneida Business Committee adopted a motion "to request the Legislative Operating Committee to consider amendments to the Boards, Committees and Commissions law as agreed upon at the February 3, 2020, joint meeting with the Oneida Land Commission."
  - The LOC added the amendments to the Active Files List on February 19, 2020.
  - The Oneida Business Committee adopted emergency amendments to the Law on March 11, 2020, through the adoption of resolution BC-03-11-20-B, to address ineligibility due to a conflict of interest. These emergency amendments were set to expire on September 11, 2020.
  - The Oneida Business Committee adopted emergency amendments to the Law on March 17, 2020, through the adoption of resolution BC-03-17-20-C, to address how meetings are held, and limitations on stipends. These emergency amendments will expire on September 17, 2020.
- **B.** At the time this legislative analysis was developed the following work meetings had been held regarding the development of these amendments:
  - April 23, 2020: LOC work meeting.
  - April 30, 2020: LOC work meeting.
  - May 7, 2020: LOC work meeting.
    - June 2, 2020: LOC work meeting.
      - June 4, 2020: LOC work meeting.
    - June 16, 2020: Oneida Business Committee work meeting.
      - July 9, 2020: LOC work meeting.
      - July 16, 2020: LOC work meeting.
    - C. COVID-19 Pandemic's Effect on the Legislative Process. The world is currently facing a pandemic of the coronavirus disease 2019 (COVID-19). The COVID-19 outbreak originated in Wuhan, China and has spread to many other countries throughout the world, including the United States. The COVID-19 pandemic has resulted in high rates of infection and mortality, as well as vast economic impacts including effects on the stock market and the closing of all non-essential businesses. A public meeting for the proposed amendments to this Law was not held due to the COVID-19 pandemic.
      - Declaration of a Public Health State of Emergency.
        - On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
        - On March 28, 2020, the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's Public Health State of Emergency declaration until May 12, 2020.

- On May 6, 2020, the Oneida Business Committee adopted resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until June 11, 2020" which further extended the Nation's Public Health State of Emergency until June 11, 2020.
- On June 10, 2020, the Oneida Business Committee adopted resolution BC-06-10-20-A titled, "Extension of Declaration of Public Health State of Emergency until July 12, 2020" which further extend the Nation's Public Health State of Emergency until July 12, 2020.
- On July 8, 2020, the Oneida Business Committee adopted resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until August 11, 2020" which further extended the Nation's Public Health State of Emergency until August 11, 2020.
- COVID-19 Core Decision Making Team Declarations: Safer at Home.

- On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which ordered all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibited all public gatherings of any number of people.
- On April 21, 2020, the COVID-19 Core Decision Making Team issued an "*Updated Safer at Home*" declaration which allowed for gaming and golf operations to resume.
- On May 19, 2020, the COVID-19 Core Decision Making Team issued a "Safer at Home Declaration, Amendment, Open for Business" which directs that individuals within the Oneida Reservation should continue to stay at home, businesses can re-open under certain safer business practices, and social distancing should be practiced by all persons.
- On June 10, 2020, the COVID-19 Core Decision Making Team issued a "Stay Safer at Home" declaration which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.
- COVID-19 Core Decision Making Team Declaration: Suspension of Public Meetings under the Legislative Procedures Act.
  - On March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.
- Although a public meeting was not held on the proposed amendments to the Boards, Committees, and Commissions law, a public comment period was still held open until July 9, 2020, in accordance with the Legislative Procedures Act and the COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration.
  - Five (5) individuals provided a written submission during the public comment period, for a total of twenty-four (24) comments received on the proposed amendments to the Law.

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

**A.** Reposting for Insufficient Applications. The proposed amendments to the Law allow the Business Committee Support Office to repost a vacancy for an additional time period when insufficient applications are received after the deadline date has passed for appointed positions. [1 O.C. 105.5-5].

The Law clarifies that if the number of applicants is equal to or less than the number of vacancies then it shall be determined to be an insufficient number of applicants. [1 O.C. 105.5-5(a)]. The Business Committee Support Office is required to provide the Oneida Business Committee notification that a position will be reposted. [1 O.C. 105.5-5(a)]. Previously, if an insufficient number of applications were received after the deadline date has passed for appointed positions, it was the Oneida Business Committee who could elect to repost the vacancy for an additional time period.

- Effect. The proposed amendments make the process for reposting a vacancy for an additional time period when insufficient applications are received more efficient because the Business Committee Support Office can take this action immediately, as long as notification is provided to the Oneida Business Committee, instead of having to take the request to the Oneida Business Committee and wait for official action to be taken by the Oneida Business Committee as to whether to repost. Additionally, the Law now provides clarification as to what constitutes an insufficient number of applicants so that the Business Committee Support Office can repost a vacancy when insufficient applicants are received in a consistent manner.
- **B.** Appointment Selection Process. The Law provides that within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made. [1 O.C. 105.7-1(a)(1)-(2)]. The proposed amendments to the Law provide that if delays in compiling the applications, summary of qualifications, or results of any investigations exist, the Business Committee Support Office shall request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2). [1 O.C. 105.7-1(a)(3)].
  - Support Office to request additional time to complete the compilation of materials and submission onto the next executive session portion of an Oneida Business Committee meeting if delays exist. The Business Committee Support Office identified that during the first year of this provision being in effect a situation arose where results of a drug test were not available during the twenty-one (21) day time-period. The Business Committee Support Office wants to ensure that if there are any delays in receiving results of a background investigation or drug test, additional time can be requested so that the Business Committee Support Office can ensure that all available relevant information is shared with the Oneida Business Committee and the entity's Chairperson.
- C. Deadline for Recommendation for Appointment by the Chair of an Entity. The proposed amendments to the Law provide that the Chairperson of an entity may review the application materials and submit to the Business Committee Support Office a recommendation to the Oneida Business Committee of an applicant for appointment. [1 O.C. 105.7-1(b)(1)]. The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida Business Committee meeting in which the appointment is intended to be made. [1 O.C. 105.7-1(b)(1)(A)]. Previously, the Law simply stated that the entity's Chairperson may have until the executive session to review the application materials and provide the Oneida Business Committee a recommendation of an applicant for appointment.

■ Effect. The proposed amendments to the Law provide more clarification as to a specific deadline and method for recommendations to be submitted. The Business Committee Support Office provided that how recommendations were being submitted was inconsistent, and that issues arose with recommendations being submitted once the Oneida Business Committee was already in executive session. The proposed amendment will provide more guidance to Chairs of boards, committees, and commissions to ensure they know how to properly submit a recommendation to the Oneida Business Committee.

- **D.** *Oath of Office*. The proposed amendments provide that all appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternative time and location as determined by the Secretary. [1 O.C. 105.9-1]. The Law clarifies that if an oath of office is administered outside of an Oneida Business Committee meeting, then a quorum of Oneida Business Committee members is required to be present to witness the oath. [1 O.C. 105.9-1]. Previously, the Law only allowed for an oath of office to be taken at an Oneida Business Committee meeting, although a person was allowed to appear by video conferencing equipment if granted permission by the Secretary.
  - Effect. The proposed amendments provide more flexibility as to when and where an oath of office can be taken. Many members of boards, committees, and commissions expressed that it was burdensome to only allow oaths of office to occur during an Oneida Business Committee meeting. This allows the Secretary to use his or her discretion to allow for an oath of office to be taken at an alternative time or place other than an Oneida Business Committee meeting.
- **E.** Requirement to Audio Record Meetings. The proposed amendments reinstate the requirement that a boards, committee, or commission audio record all meetings, and the requirement that the bylaws of a board, committee, or commission address how this will be accomplished. [1 O.C. 105.10-3(f)(5)]. The emergency amendments adopted through resolution BC-03-17-20-C removed this provision from the Law due to the COVID-19 pandemic and the uncertainty of whether a board, committee, or commission will have the capability to audio record meetings.
  - Effect. The proposed amendment simply return this provision back to the Law. The Legislative Operating Committee determined that requirement to audio record meetings is an important function. The Legislative Operating Committee is confident that boards, committees, and commissions have the ability to audio record meetings even if meetings have to be held remotely through telecommunications. For example, Microsoft Teams has the capability to record meetings that are held through the video call and call functions.
- **F.** Budgetary Sign Off Authority. The proposed amendments revise the requirements for how a board, committee, or commission addresses its purchases and budgetary sign off authority in its bylaws. The proposed amendments require that in its bylaws an entity identify how shall approve purchases and travel on behalf of the entity. [1 O.C. 105.10-3(b)(6)]. The Law then provides that upon formal approval of a purchase by an entity, the Business Committee Support Office shall have official budgetary sign off authority for the entity. [1 O.C. 105.10-3(b)(6)(B)]. Previously, the bylaws were required to identify the entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and how the entity shall handle approving purchases or travel on behalf of the entity. [1 O.C. 105.10-3(b)(6)]. The Law has always required that an entity follow the Nation's policies and procedures regarding purchasing and sign off authority. [1 O.C. 105.10-3(b)(6)(A)].
  - Effect. Requiring that a board, committee, or commission still formally approve a purchase, but changing formal budgetary sign off authority from the board, committee, or commission to the

- Business Committee Support Office will allow boards, committees, and commissions to transfer to the automatic procurement process, instead of the manual paper procurement process boards, committees, and commissions have currently been using.
- **G.** Clarification for Responding to an Electronic Poll. The proposed amendments provide clarification that only a member of an entity can respond to an electronic poll, or "e-poll," of an entity. [1 O.C. 105.11-3]. Previously, the Law provided that a response from a member of an entity shall be valid if received from an official e-mail address of the entity.

- Effect. The proposed amendment provides additional clarify that it is to be the member of a board, committee, or commission himself or herself, and therefore, the use of a proxy to respond to an epoll is not allowed.
- **G.** *Meetings Eligible for Stipends.* The proposed amendments eliminate the requirement that a member of a board, committee, or commission be *physically* present during the entirety of a meeting in order to be eligible to receive a meeting stipend, although the member is still required to be present for the entirety of the meeting. [1 O.C. 105.13-3]. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications. [1 O.C. 105.13-3]. The proposed amendments also provide that an entity shall demonstrate presence during an entire meeting by taking roll call on the record at both the beginning and conclusion of a meeting. [1 O.C. 105.13-3(c)]. Previously, the Law required that a member of a board, committee, or commission be physically present for the entirety of a meeting because meetings had to occur in person in order to be eligible for a stipend.
  - Effect. The proposed amendments provide more flexibility to boards, committees, and commissions of the Nation in how they can hold meetings that are eligible for a stipend. Flexibility for how a meeting is held is especially important during times such as this COVID-19 pandemic. Holding meetings by telephone, video conferencing, or other telecommunications will help eliminate any unnecessary contact between individuals which could spread COVID-19, without disrupting the ability of a board, committee, and commission to conduct business and receive a stipend for the business they are conducting. Although the Legislative Operating Committee wants to provide boards, committees, or commissions with more flexibility, it is still important that members of a board, committee, or commission participate and be present for the entirety of a meeting, especially when meetings are not held in person. For that reason, the Legislative Operating Committee included the provision on how a board, committee, or commission can demonstrate presence during a meeting through taking roll call at the beginning and end of a meeting.
- **H.** *Frequency of Meeting Stipends.* The proposed amendments revise how many meetings a board, committee, or commission is eligible to receive a stipend for. The proposed amendments provide that a member of an appointed entity may be eligible for up to twelve (12) meeting stipends per fiscal year, while a member of an elected entity may be eligible for up to twenty-four (24) meeting stipends per fiscal year. [1 O.C. 105.13-3(a)-(b)]. Previously, the Law provided that an individual serving on an appointed entity shall be paid no more than one (1) meeting stipend per month, while an individual serving on an elected entity shall be paid no more than two (2) meeting stipends per month.
  - Effect. The proposed amendments do not change the overall number of meetings a member of a board, committee, or commission may be eligible to receive per fiscal year. Providing the limitation on number of meetings that are eligible for a stipend per fiscal year instead of per month provides boards, committees, and commissions with more flexibility in determining when stipend eligible meetings should be held.

I. *Joint Meetings Eligible for Stipends*. The proposed amendments eliminate the requirement that a member of a board, committee, or commission be *physically* present during the entirety of a joint meeting with the Oneida Business Committee in order to be eligible to receive a joint meeting stipend. [1 O.C. 105.13-4]. The amendments also provide that joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications. [1 O.C. 105.13-4].

- *Effect*. The proposed amendments provide more flexibility to boards, committees, and commissions of the Nation in how they can hold joint meetings with the Oneida Business Committee that are eligible for a stipend
- The Oneida Business Committee adopted resolution BC-03-27-19-D titled, "Oneida Business Committee and Joint Meetings with Boards, Committees and Commissions Definitions and Impact" to set standard rules and understandings for joint meetings. Adoption of the proposed amendments result in no conflict or impact on this resolution.
- **J.** *Technological Issues Affecting Presence During a Meeting*. The proposed amendments provide that if a member of an entity experiences technological issues during a regular, emergency, or joint meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the meeting, the member shall notify the entity of the technical issue as soon as possible. [1 O.C. 105.13-3(d), 1-5.13-4(c)]. The Law also allows the an exemption to the stipend eligibility requirement to be present for the entire meeting to be granted if the entity certifies by a majority vote that the member was present for a majority of the meeting despite the technological issue which disrupted the member's presence during the meeting. [1 O.C. 105.13-3(d)(1), 1-5.13-4(c)(1)].
  - Effect. Since meetings may be held by telephone, through videoconferencing, or through other telecommunications it can be assumed that technological problems may arise. [1 O.C. 105.13-3, 105.13-4]. The Legislative Operating Committee added this provision to the Law to allow for exemptions so that a meeting stipend can still be paid to a member of an entity that experiences a technological problem that resulted in the member not being present for the entire meeting, but who still was present for a majority of the meeting.
- **K.** Stipends for Attendance at Conferences and Trainings. The proposed amendments provide that a member of a board, committee, or commission shall be eligible for a stipend for attending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution. [1 O,C. 105.13-8(a)]. The proposed amendments further provide that the amount of the stipend a member is eligible to receive for attendance at a conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a conference or training. [1 O.C. 105.13-8(a)(1)]. Previously, the Law provided that a member shall be eligible for a stipend for each full day the member is present at a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
  - Effect. The proposed amendments provide clarification as to how a stipend for attendance at a conference or training will be determined. Previously, there were many questions as to how to interpret what a "full day" of attending a conference and training meant. Many members of boards, committees, and commissions expressed that requiring attendance at a conference or training be a full day was inequitable as it did not reflect the reality of many trainings and conferences being less than a full day. The proposed amendment is modeled after how stipends for participation in interviews are handled. This will provide not only clarification on how eligibility for a stipend for attending a conference or training will be determined, but also provide more flexibility to members

of boards, committees, and commissions for what trainings or conferences they are eligible to receive a stipend for.

- **L.** Official Oneida E-Mail Address. The proposed amendments provide that a member of an entity shall have thirty (30) days upon election or appointment to an entity to activate his or her official e-mail address. [1 O.C. 105.14-3(b)]. Previously, there was no deadline associated with when a member of an entity had to activate his or her account. The proposed amendments also clarify that an individual who holds a position as an ad hoc or alternate member of an entity shall be exempt from the requirement to be provided an official e-mail address, unless determined that an e-mail address is necessary for the role and responsibilities of the ad hoc or alternate member. [1 O.C. 105.14-3(c)]. Previously, the Law was not clear as to whether ad hoc or alternate members of an entity were required to be provided an official e-mail address.
  - Effect. The proposed amendments provide clarification for how an official e-mail address for a member of an entity should be used. A deadline for activating the e-mail account was included in the Law because the Business Committee Support Office reported issues with members not activating or using their e-mail. It is very important that a member of an entity have the e-mail address ready for use to ensure that there is a consistent form of communication available to reach all members of a board, committee, and commission, as well as to encourage and ensure confidentiality when conducting business electronically for the entity. The Law clarifies that an ad hoc or alternate member of an entity does not have to be provided an official e-mail address, unless determined that an e-mail address is necessary for the role and responsibilities of the ad hoc or alternate member, because it would not be a good utilization of resources to provide an official e-mail address to an individual that is brought on for a temporary basis, or who will have a limited role and responsibilities.
- **M.** *Ineligibility Due to Conflicts of Interest*. The proposed amendments to the Law provide that due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed or elected entity: political appointees; an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office or Intergovernmental Affairs and Communications; and an employee who serves as a direct report to the Oneida Business Committee or General Manager. [1 O.C. 105.15-3]. Previously, the Law only provided that political appointees could not serve on an appointed or elected entity due to the potential for a real or perceived conflict of interest to exist.
  - Effect. The proposed amendments expand the restriction to serve on a board, committee, or commission from political appointees to other employees of the Nation. The potential for a real or perceived conflict of interest to exist for an employee of the Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, Intergovernmental Affairs and Communications, or any employee who holds a position as a direct report to the Oneida Business Committee or General Manager is due to the nature of employment in those areas. Those employees have access to confidential information which requires a higher level of professionalism and fiscal responsibilities than other areas. Therefore, it is in the best interest of the Nation to recognize the potential for a conflict of interest to exist and amend the Law to restrict employee related actions on this matter to better protect the Nation from a potential conflict of interest.
  - *Number of Employees Impacted.* At the time this legislative analysis was drafted, the following number of employees would be impacted as a result of this proposed amendment to the Law:
    - Internal Audit Department: nine (9) employees;

Oneida Law Office: eight (8) employees;

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- Finance Administration Office: three (3) employees;
  - Intergovernmental Affairs and Communications: seven (7) employees;
  - Business Committee Support Office: five (5) employees; and
  - Direct Reports: eight (8) employees including the following positions as identified in resolution BC-08-14-19-N:
    - Chief Counsel:
    - General Manager;
    - Gaming General Manager;
    - Intergovernmental Affairs and Communications Director;
    - Emergency Management Director;
    - Area Manager, Human Resources Division;
    - Area Manager, Retail-Profit; and
    - Business Compliance Analyst.
- Nothing in this Law limits the ability of any department of the Nation from placing their own restrictions and expectations within employment contracts, job descriptions, or standard operating procedures. As a result, there may be employees of the Nation who are already restricted from serving on a board, committee or commission outside of this Law.

### **SECTION 6. EXISTING LEGISLATION**

- **A.** References to other Laws of the Nation. The following laws of the Nation are referenced in this Law:
  - *Election law*. The Election law governs the procedures for the conduct of orderly elections of the Nation, including pre-election activities. [1 O.C. 102.1-1].
    - The Boards, Committees, and Commissions law provides that applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. [1 O.C. 105.5-4].
    - The Boards, Committees, and Commissions law provides that all elected positions shall be nominated at a caucus called by the Oneida Election Board, or apply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment. [1 O.C. 105.8-1]. Additionally, this Law provides that all other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections. [1 O.C. 105.8-2].
  - Open Records and Open Meetings law. The Open Records and Open Meetings law advances the democratic principle of open government by providing access to information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees. [1 O.C. 107.1-1].
    - The Boards, Committees, and Commissions law provides that all removal or destruction of documents of an entity shall be made in accordance with the Nation's laws and policies governing open records and open meetings. [1 O.C. 105.14-2].
  - Computer Resources Ordinance. The Computer Resources Ordinance regulates the usage of computer resources owned and operated by the Nation. [2 O.C. 215.1-1].
    - The Boards, Committees, and Commissions law provides that a member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the

Nation's applicable computer and media related laws, policies and rules. [1 O.C. 105.14-3(b)].

- Social Media Policy. The Social Media Policy regulates social media accounts, including a social networking web page, blog or microblog, that is administered on behalf of the Nation or an entity of the Nation. [2 O.C. 218.1-1].
  - The Boards, Committees, and Commissions law provides that a member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. [1 O.C. 105.14-3(b)].
- Conflict of Interest law. The purpose of the Conflict of Interest law is to ensure that all employees, contractors, elected officials, officers, political appointees, appointed and elected members and all others who may have access to information or materials that are confidential or may be used by competitors of the Nation's enterprises or interests be subject to specific limitations to which such information and materials may be used in order to protect the interests of the Nation. [2 O.C. 217.1-1].
  - The Boards, Committees, and Commissions law provides that all members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest. [1 O.C. 105.15-1].
- Removal law. The Removal law provides an orderly and fair process that governs the removal of persons elected to serve on boards, committees, and commissions of the Nation. [1 O.C. 104.1-1]. The Removal law provides the various grounds for removal [1 O.C. 104.4-1], as well as the removal process which consists of a petition [1 O.C. 104.5], preliminary review [1 O.C. 104.6], hearing at the Judiciary [1 O.C. 104.7], and ultimate decision by the General Tribal Council [1 O.C. 104.8].
  - The Boards, Committees, and Commissions law provides that any elected member of an entity found to be in violation of this Law may be subject to removal pursuant to any laws or policies of the Nation governing removal. [1 O.C. 105.18-1].
  - The Boards, Committees, and Commissions law also provides that a position in an entity shall be considered vacant upon removal whenever the removal is effective in accordance to any law or policy of the Nation regarding removal. [1 O.C. 105.6-2(b)].
- **B.** References to Conflicts of Interest in Other Laws. The following laws of the Nation reference conflict of interest as it relates to employees and elected or appointed officials of the Nation. Employees and/or elected and appointed officials are already subject to comply with the following provisions within other laws:
  - Conflict of Interest law. The Conflict of Interest law applies to "all agents, elected officials, officers, political appointees, contractors, appointed and or elected members." [2 O.C. 217.4-1].
    - The Conflict of Interest law requires employees and elected or appointed officials to disclose any conflicts of interest.
      - Failure to disclose a conflict of interest may result in removal in accordance with the Removal law, penalties pursuant to laws of the Nation regarding penalties, or termination of employment. [2 O.C. 217.6-2 and 217.6-3].
      - When an existing conflict of interest is disclosed, no employee, elected
        official, or appointed official may participate in the selection, award or
        administration of a contract, including contracts supported by federal award

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and/or any other prohibited activities identified in any other law, policy or rule of the Nation. [2 O.C. 217.7].

- There is no conflict with the proposed amendments and compliance with the Conflicts of Interest law. Upon adoption of the proposed amendments, serving on a board, committee, or commission of the Nation while being employed in the Internal Audit Department, Law Office, Finance Administration Office, or Intergovernmental Affairs and Communications, or employed in a position that serves as a direct report to the Oneida Business Committee will become a "prohibited activity identified in a law of the Nation" in accordance with the Conflict of Interest law.
- Code of Ethics law. The Code of Ethics law promotes the highest ethical conduct in all of its elected and appointed officials and employees and represents a minimum standard of conduct which is expected. [1 O.C. 103.1-1]. All government officials, including persons elected to serve on a board, committee or commission are subject to the Nation's Code of Ethics law.
  - The Code of Ethics law provides that a government official shall create and maintain an independent and honorable political system and shall observe high standards of conduct... including, but not limited to:" [1 O.C. 103.3-3(a)].
    - Encouraging separation between departments or entities of tribal government, and should avoid contact or duty that violates such a separation.
    - Avoid participation in action or decision making (except where participation is in accordance with the traditions of the Nation) that would present an appearance of conflict of interest or an actual conflict of interest.
  - The Code of Ethics law provides that a government official should disqualify themselves when their action or inaction might reasonably be questioned, including, but not limited to personal bias..." [1 O.C. 103.3-5].
  - The Code of Ethics law provides that a government official shall regulate their extra governmental activities to minimize the risk of conflict with duties of their office." [1 O.C. 103.3-61.
  - The Code of Ethics law provides that government officials may be subject to either removal, if elected, or termination, if appointed, for a violation of any part of this ethics code as it applies to them." [1 O.C. 103.6-1].
  - There is no conflict between the proposed amendments and compliance with the Code of Ethics law.
- Election law. The Election law states that "No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election." [1 O.C. 102.5-3].
  - This means that although the proposed amendments to the Boards, Committees, and Commissions law prohibit employees of the Internal Audit Department, Law Office, Finance Administration Office, Intergovernmental Affairs and Communications, or any person employed in a position that serves as a direct report to the Oneida Business Committee from serving on a board, committee, or commission of the Nation, those individuals may still be nominated for office, run in an election, and win election to a board, committee or commission. However, the winning candidate would have to eliminate their conflict of interest prior to taking office by resigning from their position of employment.

C. Restrictions on Employees in Current Bylaws. Boards, committees and commissions may place additional qualifications for membership within their bylaws. Bylaws are a document that provides a framework for the operation and management of a board, committee or commission. Examples of these qualifications include age, residency, education, and experience. Some boards already place restrictions on whether employees of the Oneida Nation may serve on their entity. Below is a review of current restrictions on employees of the Nation. For a full review of qualifications for each entity, please see each entity's bylaws.

Table 2. Restrictions on Employees in Current Bylaws.

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Table 2. Restrictions on Emp	
Board, Committee or	Employees who may not serve on that entity:
Commission	
Land Commission	Employees of the Nation's Audit Department, Finance Department, Law Office "or other department associated with items (a) – (j) in section 1-3 of the Land Commission bylaws:  • the Real Property law, • Leasing law, • Building Code, • Condominium Ordinance, • Zoning and Shoreland Protection law, • Eviction and Termination law, • Mortgage and Foreclosure law, • the Cemetery law, • and any other delegating law, policy, rule and/or resolution of the Nation Division Directors or Area Managers for the Oneida Nation, Independent contractor for Land Management or any other department of the Nation associated with items (a) – (j)
Anna John Resident	Employees of Anna John Resident Centered Care
Centered Care Community Board	Community.
Oneida Community Library Board	Employees or contractors of any Oneida Nation Library Branch.
Oneida Environmental	Employees of the Oneida Environmental, Health, Safety and
Resource Board (ERB)	Land Division
Oneida Nation Arts Board	Employees of the Oneida Nation Arts Board.
Oneida Personnel	Employees of the Oneida Nation.
Commission	
Oneida Police Commission	Employees of the Oneida Police Department or individuals
	terminated from the Oneida Police Department.
Oneida Land Claims	Shall not serve in the capacity of "consultant, contractor or
Commission	attorney for the Land Claims Commission."

**D.** *Restrictions on Employees in Current Laws.* The following laws of the Nation already restrict certain employees of the Nation from serving on certain boards, committees and commissions of the Nation:

Table 3. Restrictions on Employees in Other Laws of the Nation.

I OVE ON DVI OVE	Entity	Doctrictions on Oncide Nation Employees
Law or Bylaw	שוועו	Restrictions on Oneida Nation Employees

Oneida Law	Oneida Police	"Must not be an employee of the Oneida
Enforcement	Commission	Police Department" [3 O.C. 301.6-3(e)].
Ordinance		
Oneida Nation	Oneida Gaming	"Commissioners shall perform duties on a
Gaming	Commission	full-time basis and may not, during tenure
Ordinance		in office, be engaged in any other profession
		or business activity" [5 O.C. 501.6-9].

### **SECTION 7. OTHER CONSIDERATIONS**

- **A.** *Updates to the Stipend Resolution*. The Law requires that the Oneida Business Committee set stipend amounts by resolution. [1 O.C. 105.13-2]. On September 26, 2018, the Oneida Business Committee adopted resolution BC-09-26-18-D titled, "Boards, Committees, and Commissions Law Stipends" which set forth the specific stipend amounts allowed to be paid to a member of a board, committee, or commission. On May 8, 2019, the Oneida Business Committee adopted resolution BC-05-08-19-B titled, "Amending Resolution BC-09-26-18-D Boards, Committees, and Commissions Law Stipends" to allow the Oneida Nation School Board to be eligible to receive a stipend for participating in interviews and/or job description prescreens. Then on March 17, 2020, the Oneida Business Committee adopted resolution BC-03-17-20-D titled, "Amending Resolution BC-05-18-19-B Boards, Committees, and Commissions Law Stipends" to address emergency amendments that were made to the Law. Based on the proposed amendments, revisions to resolution BC-03-17-20-D will have to be made to permanently reflect the new proposal on how to address the limitation of meeting stipends, as well as how stipends for conferences and trainings are determined.
  - Conclusion. The Legislative Operating Committee should consider bringing an amended stipend
    resolution for consideration when the Legislative Operating Committee presents the proposed
    amendments to the Oneida Business Committee for consideration.
- **B.** Suspension of all Non-Emergent Expenses and Stipends and Activity by Certain Boards, Committees, and Commissions. On March 19, 2020, the Nation's COVID-19 Core Decision Making Team issued a declaration titled, "Suspension of all Non-Emergent Expenses and Stipends and Activity by Certain Boards, Committees, and Commissions." This declaration identified that the Nation needed to preserve cash flow to provide funds for regular wages to employees throughout the emergency declaration period, and that activities of boards, committees, and commissions could create contact and spread of COVID-19 through meetings and gatherings. This declaration then suspended all budget expenditures and stipends for certain boards, committees, and commissions of the Nation, as well as discontinued meetings for certain boards, committees, and commissions. For those boards, committees, and commissions of the Nation not specifically identified, the declaration recommended that meetings be discontinued or held remotely.
  - The boards, committees, and commissions of the Nation who had all budget expenditures and stipends suspended by this declaration included:
    - Oneida Community Library Board;
    - Oneida Environmental Resources Board;
    - Oneida Nation Arts Board;
    - Oneida Nation Veterans Affairs Committee;
    - Oneida Personnel Commission;
    - Oneida Pow Wow Committee;
    - Pardon and Forgiveness Screening Committee;

- 517 Southeast Wisconsin Oneida Tribal Social Services Advisory Board;
- Finance Committee, Public Member;
- Audit Committee, Public Member;

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- Oneida Land Claims Commission; and
- Oneida Nation Commission on Aging.
- The boards, committees, and commissions of the Nation who had all meetings discontinued by this declaration included:
  - Oneida Community Library Board;
  - Oneida Environmental Resources Board;
  - Oneida Nation Arts Board;
  - Oneida Nation Veterans Affairs Committee;
  - Oneida Personnel Commission;
- Oneida Pow Wow Committee;
  - Pardon and Forgiveness Screening Committee;
  - Southeast Wisconsin Oneida Tribal Social Services Advisory Board;
    - Oneida Land Claims Commission; and
    - Oneida Nation Commission on Aging.
  - Conclusion. The Legislative Operating Committee should be informed that this declaration was issued by the Nation's COVID-19 Core Decision Making Team.
  - C. Boards, Committees and Commissions in Temporary Closure Status. On April 4, 2020, the Oneida Business Committee adopted resolution BC-04-08-20-B titled, "Placing Listed Boards, Committees, and Commissions in Temporary Closure Status." Based on the Nation's Public Health State of Emergency and the necessity to enter into Tier V Budget Contingency measures through resolution BC-04-08-20-C, the Oneida Business Committee reviewed the list of boards, committees and commissions and determined that certain boards, committees, or commissions continuing to operate, generating expenses would affect the overall financial status of the Nation, and therefore those entities should be placed on temporary closure to preserve funding for necessary governmental services and activities. This resolution places certain identified boards, committees, and commissions into temporary closure for the remainder of Fiscal Year 2020 and during any continuing resolution for Fiscal Year 2021, also identifies that posting of vacancies shall be discontinued for the remainder of Fiscal Year 2020 and during any continuing resolution for Fiscal Year 2021.
    - The boards, committees, and commissions of the Nation that were placed on temporary closure include:
      - Oneida Community Library Board;
      - Oneida Environmental Resources Board;
      - Oneida Nation Arts Board;
      - Oneida Nation Veterans Affairs Committee;
      - Oneida Personnel Commission:
      - Oneida Pow Wow Committee;
      - Pardon and Forgiveness Screening Committee;
      - Southeast Wisconsin Oneida Tribal Social Services Advisory Board;
        - Oneida Land Claims Commission; and
        - Oneida Nation Commission on Aging.
  - Conclusion. The Legislative Operating Committee should be informed that there are boards,

- committees, and commissions that are currently in temporary closure status based on the financial impacts of the COVID-19 pandemic.
  - **D.** *Fiscal Impact*. A fiscal impact statement of the proposed amendments to the Law has not yet been requested. Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation. [1 O.C. 109.6-1].
    - Oneida Business Committee resolution BC-09-25-19-A titled, "Interpreting 'Fiscal Impact Statement' in the Legislative Procedures Act," 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.
    - *Conclusion*. The Legislative Operating Committee shall request, upon final approval of draft legislation, a fiscal impact statement from the Finance Department.

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## Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-365



TO: Lawrence E. Barton, Chief Financial Officer

Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer

FROM: David P. Jordan, Legislative Operating Committee Chairman

DATE: July 16, 2020

RE: Boards, Committees, and Commissions Law Amendments Fiscal Impact Statement

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

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

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed legislation being forwarded to the Oneida Business Committee for consideration. [1 O.C. 109.6-2]. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct the Finance Department or any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. [1 O.C. 109.6-1].

Oneida Business Committee resolution BC-09-25-19-A titled, "Interpreting 'Fiscal Impact Statement' in the Legislative Procedures Act' provides further clarification on the process for directing a fiscal impact statement be completed. This resolution provides that when developing a fiscal impact statement for proposed legislation to be used for presentation to and consideration of adoption by the Oneida Business Committee, the Finance Department shall, within ten (10) business days of final approval of draft legislation by the LOC, provide a fiscal impact statement to the LOC.

On July 16, 2020, the Legislative Operating Committee approved the final draft of the proposed amendments to the Boards, Committees, and Commissions law. Therefore, the LOC is directing

the Finance Department to provide a fiscal impact statement on the proposed amendments to the Boards, Committees, and Commissions law by July 31, 2020.

A copy of the proposed amendments to the Boards, Committees, and Commissions law, as well as the legislative analysis, have been attached to this memorandum for your convenience.

### **Requested Action**

Provide the LOC a fiscal impact statement of the proposed amendments to the Boards, Committees, and Commissions law by July 31, 2020.



# July 30, 2020, Legislative Operating Committee E-Poll Approval of the Boards, Committees, and Commissions Law Amendments Adoption Packet

E-POLL REQUEST: Approval of the Boards, Committees, and Commissions Law Amendments Adoption Packet

LOC

To Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen
Cc Clorissa N. Santiago; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster

1) Vote by clicking Vote in the Respond group above.
This message was sent with High importance.

2020 08 12 Boards Committees and Commissions Law Amendments Adoption Packet.pdf
2 MB

2020 08 12 Boards Committees and Commissions Law Stipend Resolution Packet.pdf
398 KB

### **Good Afternoon Legislative Operating Committee,**

This e-mail serves as the e-poll for the approval of the Boards, Committees, and Commissions law amendments adoption packet, and the "Amended Boards, Committees, and Commissions Law Stipends" resolution.

#### **EXECUTIVE SUMMARY**

On March 11, 2020, the Oneida Business Committee adopted emergency amendments to the Boards, Committees, and Commissions law through resolution BC-03-11-20-B to address the ineligibility of an individual to serve on a board, committee, or commission due to the potential for a conflict of interest to exist based on his or her employment with the Nation. Then on March 17, 2020, additional emergency amendments to the Boards, Committees, and Commissions law were made through resolution BC-03-17-20-C to address how meetings are held, and the limitations on stipends in response to the COVID-19 pandemic. The emergency amendments are set to expire on September 17, 2020.

The Legislative Operating Committee has since been developing permanent amendments to the Boards, Committees, and Commissions law. The adoption packet for the Boards, Committees, and Commissions law amendments is ready for approval by the Legislative Operating Committee so that it can be sent to the Oneida Business Committee to consider adoption at the August 12, 2020, Oneida Business Committee meeting. The proposed amendments to the Boards, Committees, and Commissions law will:

- Allow the Business Committee Support Office to repost a vacancy for an additional time period if
  insufficient applications are received, as long as notification is provided to the Oneida Business
  Committee [1 O.C. 105.5-5];
- Allow the Business Committee Support Office to request additional time from the Oneida Business Committee in compiling the applications, summary of qualifications, or results of any investigation [1 O.C. 105.7-1(a)(3)];
- Clarify a deadline for when a Chairperson of an entity has to submit a recommendation for an appointment to the entity for the Oneida Business Committee's consideration [1 O.C. 105.7-1(b)(1)];
- Allow for the oath of office to be taken at an alternative time and location other than during a
  regular or special Oneida Business Committee meeting as determined by the Secretary, as long as
  a quorum of the Oneida Business Committee is present to witness the oath [1 O.C. 105.9-1];
- Require that the entity's bylaws provide how the entity shall approve purchases or travel on behalf of the entity, but clarify the Business Committee Support Office has budgetary sign off

authority on behalf of the entity [1 O.C. 105.10-3(b)(6)];

- Reinstate the requirement that an entity audio record all meetings [1 O.C. 105.10-3(f)(5)];
- Clarify that only a member of an entity shall respond to e-polls [1 O.C. 105.11-3];
- Eliminate the requirement that a member of a board, committee, or commission be physically present during the entirety of a meeting or joint meeting in order to be eligible to receive a meeting stipend, but still require the member to be present and participate for the entire meeting through some means [1 O.C. 105.13-3, 105.13-4];
- Address how technological issues during a meeting held through telecommunications is addressed and how it may affect a member's eligibility for a meeting stipend [1 O.C. 105.13-3(d), 105.13-4(c)];
- Provide that meetings and joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications [1 O.C. 105.13-3, 105.13-4];
- Revise how the limitation of stipend eligible meetings is calculated [1 O.C. 105.13-3, 105.13-4];
- Clarify how eligibility for a conference or training stipend is calculated [1 O.C. 105.13-8];
- Provide a deadline for a member to activate his or her e-mail address, and clarify when an ad hoc
  or alternate member of an entity must have an official e-mail address [1 O.C. 105.14-3(b)]; and
- Specify that certain positions within the Nation are ineligible to serve on a board, committee, or commission of the Nation due to the potential for a real or perceived conflict of interest to exist. [1 O.C. 105.15-3].

Additionally, the "Amended Boards, Committees, and Commissions Law Stipends" resolution, which sets forth specific stipend amounts allowed to be paid to a member of a board, committee, or commission of the Nation, is also ready for approval by the Legislative Operating Committee so it can be forwarded to the Oneida Business Committee for consideration alongside the amendments to the Boards, Committees, and Commissions law.

An e-poll is necessary for this matter because Legislative Operating Committee meetings have been canceled due to the COVID-19 pandemic, and immediate action is required by the Legislative Operating Committee to approve the Boards, Committees, and Commissions law amendments adoption packet and the "Amended Boards, Committees, and Commissions Law Stipends" resolution so the materials may be forwarded to the Oneida Business Committee for consideration during the August 12, 2020, Oneida Business Committee meeting.

### **REQUESTED ACTION**

Approve the Boards, Committees, and Commissions law amendments adoption packet and the "Amended Boards, Committees, and Commissions Law Stipends" resolution and forward to the Oneida Business Committee for consideration.

### **DEADLINE FOR RESPONSE**

July 30, 2020 at 3:30 p.m.

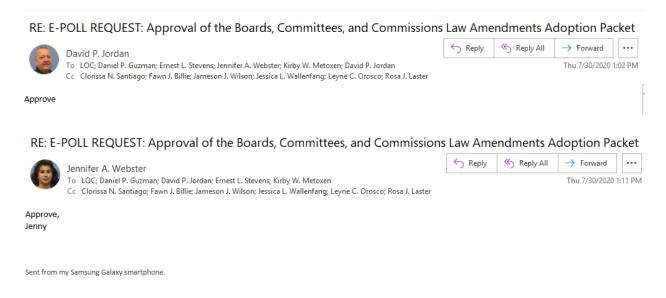
All supporting documentation has been attached to this email for your convenience.



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

### **E-POLL RESULTS:**

The e-poll was approved by David P. Jordan and Jennifer Webster. Kirby Metoxen, Ernest Stevens III, and Daniel Guzman King did not provide a response to the e-poll. This e-poll failed due to lack of responses.





## Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson 🔟

DATE: August 12, 2020

RE: Amendments to the Boards, Committees, and Commissions Law

Please find the following attached backup documentation for your consideration of the amendments to the Boards, Committees, and Commissions law:

- 1. Resolution: Amendments to the Boards, Committees, and Commissions Law
- 2. Statement of Effect: Amendments to the Boards, Committees, and Commissions Law
- 3. Boards, Committees, and Commissions Law Amendments Legislative Analysis
- 4. Boards, Committees, and Commissions Law Amendments (Redline)
- 5. Boards, Committees, and Commissions Law Amendments (Clean)
- 6. Boards, Committees, and Commissions Law Fiscal Impact Statement

### Overview

On March 11, 2020, the Oneida Business Committee adopted emergency amendments to the Boards, Committees, and Commissions law through resolution BC-03-11-20-B to address the ineligibility of an individual to serve on a board, committee, or commission due to the potential for a conflict of interest to exist based on his or her employment with the Nation. Then on March 17, 2020, additional emergency amendments to the Boards, Committees, and Commissions law were made through resolution BC-03-17-20-C to address how meetings are held, and the limitations on stipends in response to the COVID-19 pandemic. The emergency amendments are set to expire on September 17, 2020.

The Legislative Operating Committee has now prepared permanent amendments to the Boards, Committees, and Commissions law for the Oneida Business Committee's consideration. The purpose of the Boards, Committees, and Commissions law is to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1]. This resolution adopts permanent amendments to the Boards, Committees, and Commissions law which will:

- Allow the Business Committee Support Office to repost a vacancy for an additional time period if insufficient applications are received, as long as notification is provided to the Oneida Business Committee [1 O.C. 105.5-5];
- Allow the Business Committee Support Office to request additional time from the Oneida Business Committee in compiling the applications, summary of qualifications, or results of any investigation [1 O.C. 105.7-1(a)(3)];
- Clarify a deadline for when a Chairperson of an entity has to submit a recommendation for an appointment to the entity for the Oneida Business Committee's consideration [1 O.C.

- 105.7-1(b)(1)1;
- Allow for the oath of office to be taken at an alternative time and location other than during a regular or special Oneida Business Committee meeting as determined by the Secretary, as long as a quorum of the Oneida Business Committee is present to witness the oath [1 O.C. 105.9-1];
- Require that the entity's bylaws provide how the entity shall approve purchases or travel on behalf of the entity, but clarify the Business Committee Support Office has budgetary sign off authority on behalf of the entity [1 O.C. 105.10-3(b)(6)];
- Reinstate the requirement that an entity audio record all meetings [1 O.C. 105.10-3(f)(5)];
- Clarify that only a member of an entity shall respond to e-polls [1 O.C. 105.11-3];
- Eliminate the requirement that a member of a board, committee, or commission be physically present during the entirety of a meeting or joint meeting in order to be eligible to receive a meeting stipend, but still require the member to be present and participate for the entire meeting through some means [1 O.C. 105.13-3, 105.13-4];
- Address how technological issues during a meeting held through telecommunications is addressed and how it may affect a member's eligibility for a meeting stipend [1 O.C. 105.13-3(d), 105.13-4(c)];
- Provide that meetings and joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications [1 O.C. 105.13-3, 105.13-4];
- Revise how the limitation of stipend eligible meetings is calculated [1 O.C. 105.13-3, 105.13-4];
- Clarify how eligibility for a conference or training stipend is calculated [1 O.C. 105.13-8];
- Provide a deadline for a member to activate his or her e-mail address, and clarify when an ad hoc or alternate member of an entity must have an official e-mail address [1 O.C. 105.14-3(b)]; and
- Specify that certain positions within the Nation are ineligible to serve on a board, committee, or commission of the Nation due to the potential for a real or perceived conflict of interest to exist. [1 O.C. 105.15-3].

The Legislative Operating Committee developed the proposed amendments to the Boards, Committees, and Commissions law through input received from the following departments and entities during the one (1) year review of the Boards, Committees, and Commissions law as adopted through resolution BC-09-26-18-C: Oneida Law Office, Business Committee Support Office, Oneida Land Commission, Oneida Trust Enrollment Committee, Oneida Nation Commission on Aging, Oneida Nation School Board, Oneida Police Commission, Oneida Personnel Commission, and Oneida Nation Arts Board.

A public meeting, in accordance with the Legislative Procedures Act, was not held for the proposed amendments to the Boards, Committees, and Commissions law due to the COVID-19 pandemic. In early 2020 the world was hit with the COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts. On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. This Public Health State of Emergency was extended through August 11, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, and BC-07-08-20-A.



On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibits all public gatherings of any number of people. On April 21, 2020, the COVID-19 Core Decision Making Team issued an "Updated Safer at Home" declaration which allowed for gaming and golf operations to resume. On May 19, 2020, the COVID-19 Core Decision Making Team issued a "Safer at Home Declaration, Amendment, Open for Business" which directs that individuals within the Oneida Reservation should continue to stay at home, businesses can re-open under certain safer business practices, and social distancing should be practiced by all persons. Then on June 10, 2020, the COVID-19 Core Decision Making Team issued a "Stay Safer at Home" declaration which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.

On March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

Although no public meeting for the proposed amendments to the Boards, Committees, and Commissions law was held in person, the public comment period was still held open until July 9, 2020, for the submission of written comments. Five (5) individuals submitted written comments during the public comment period for a total of twenty-four (24) comments received. All public comments received were reviewed and considered by the Legislative Operating Committee July 9, 2020, and July 16, 2020. Any changes made based on those comments have been incorporated into this draft.

### **Requested Action**

Approve the Resolution: Amendments to the Boards, Committees, and Commissions Law



### **Oneida Nation**

Post Office Box 365

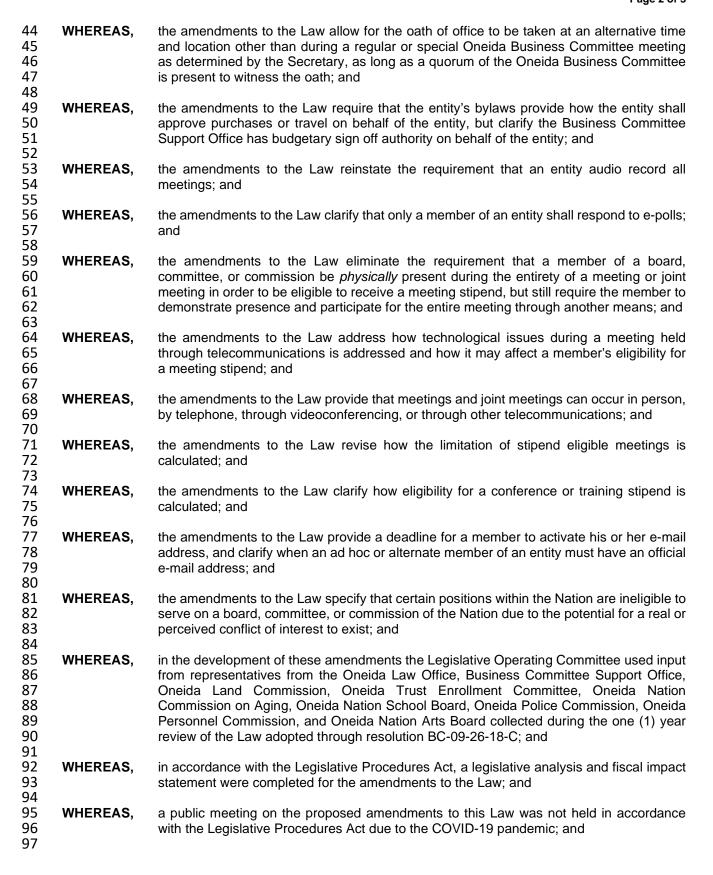
Phone: (920)869-2214

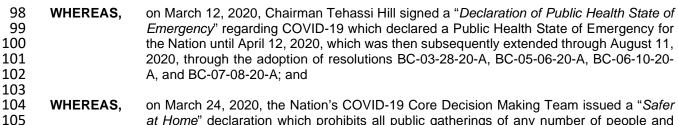


Oneida, WI 54155

### BC Resolution # Amendments to the Boards, Committees, and Commissions Law

1 2 3	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty trib recognized by the laws of the United States of America; and		
4	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and		
5 6 7 8 9 10 11	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and		
	WHEREAS,	the Boards, Committees, and Commissions law ("the Law") was adopted by the Oneida Business Committee through BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C; and		
13 14 15 16 17	WHEREAS,	the purpose of the Law is to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions; and		
18 19 20 21	WHEREAS,	the Oneida Business Committee adopted emergency amendments to the Law through resolution BC-03-11-20-B and BC-03-17-20-C in accordance with the emergency adoption process set forth by the Legislative Procedures Act; and		
22 23 24 25 26	WHEREAS,	the emergency amendments addressed the ineligibility of an individual to serve on a board, committee, or commission due to the potential for a conflict of interest to exist based on his or her employment with the Nation, as well as how meetings are held and the limitations on stipends in response to the COVID-19 pandemic; and		
26 27 28	WHEREAS,	the emergency amendments are set to expire on September 17, 2020; and		
29 30 31	WHEREAS,	the Legislative Operating Committee has developed permanent amendments to the Law for consideration by the Oneida Business Committee; and		
32 33 34 35	WHEREAS,	the amendments to the Law allow the Business Committee Support Office to repost a vacancy for an additional time period if insufficient applications are received, as long as notification is provided to the Oneida Business Committee; and		
36 37 38 39	WHEREAS,	the amendments to the Law allow the Business Committee Support Office to request additional time from the Oneida Business Committee for compiling the applications, summary of qualifications, or results of any investigation; and		
40 41 42 43	WHEREAS,	the amendments to the Law clarify a deadline for when a Chairperson of an entity has to submit a recommendation for an appointment to the entity for the Oneida Business Committee's consideration; and		





- whereas, on March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed; and
- whereas, the Nation's COVID-19 Core Decision Making Team modified the "Safer at Home" declaration on April 21, 2020, with the issuance of the "Updated Safer at Home" declaration, on May 19, 2020, with the "Safer at Home Declaration, Amendment, Open for Business" declaration, and then again on June 10, 2020, with the issuance of the "Stay Safer at Home" declaration; and
- whereas, on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period; and
- WHEREAS, although a public meeting was not held for the proposed amendments to this Law, the public comment period for the amendments to this Law was held open until July 9, 2020; and
- **WHEREAS,** the Legislative Operating Committee reviewed and considered all public comments received on July 9, 2020, and July 16, 2020; and
- Commissions law are hereby adopted and shall be effective on August 26, 2020.

  RE IT FURTHER RESOLVED, that the amended Boards Commissions law bereby

NOW THEREFORE BE IT RESOLVED, that the amendments to the Boards, Committees, and

- **BE IT FURTHER RESOLVED**, that the amended Boards, Committees, and Commissions law hereby supersedes any conflicting language that may be found in the bylaws of boards, committees, or commissions of the Nation.
- BE IT FINALLY RESOLVED, that an individual employed in a position identified in section 105.15-3(a)-(c) that is currently simultaneously serving on an elected board, committee, or commission of the Nation shall be allowed to complete his or her term.



### Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



### **Statement of Effect**

Amendments to the Boards, Committees, and Commissions Law

### **Summary**

This resolution adopts amendments to the Boards, Committees, and Commissions law.

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

Date: July 30, 2020

### Analysis by the Legislative Reference Office

The Boards, Committees, and Commissions law ("the Law") was adopted by the Oneida Business Committee for the purpose governing boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1]. The Boards, Committees, and Commissions law was most recently amended on an emergency basis through the adoption of resolution BC-03-11-20-B and BC-03-17-20-C for the purpose of addressing the ineligibility of an individual to serve on a board, committee, or commission due to the potential for a conflict of interest to exist based on his or her employment with the Nation, as well as addressing how meetings are held, and the limitations on stipends in response to the COVID-19 pandemic. The emergency amendments are set to expire on September 17, 2020.

This resolution seeks permanent amendments to the Boards, Committees, and Commissions law which will:

- Allow the Business Committee Support Office to repost a vacancy for an additional time period if insufficient applications are received, as long as notification is provided to the Oneida Business Committee [1 O.C. 105.5-5];
- Allow the Business Committee Support Office to request additional time from the Oneida Business Committee in compiling the applications, summary of qualifications, or results of any investigation [1 O.C. 105.7-1(a)(3)];
- Clarify a deadline for when a Chairperson of an entity has to submit a recommendation for an appointment to the entity for the Oneida Business Committee's consideration [1 O.C. 105.7-1(b)(1)]:
- Allow for the oath of office to be taken at an alternative time and location other than during a regular or special Oneida Business Committee meeting as determined by the Secretary, as long as a quorum of the Oneida Business Committee is present to witness the oath [1 O.C. 105.9-1];
- Require that the entity's bylaws provide how the entity shall approve purchases or travel on behalf of the entity, but clarify the Business Committee Support Office has budgetary sign off authority on behalf of the entity [1 O.C. 105.10-3(b)(6)];
- Reinstate the requirement that an entity audio record all meetings [1 O.C. 105.10-3(f)(5)];
- Clarify that only a member of an entity shall respond to e-polls [1 O.C. 105.11-3];
- Eliminate the requirement that a member of a board, committee, or commission be

physically present during the entirety of a meeting or joint meeting in order to be eligible to receive a meeting stipend, but still require the member to be present and participate for the entire meeting through some means [1 O.C. 105.13-3, 105.13-4];

- Address how technological issues during a meeting held through telecommunications is addressed and how it may affect a member's eligibility for a meeting stipend [1 O.C. 105.13-3(d), 105.13-4(c)];
- Provide that meetings and joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications [1 O.C. 105.13-3, 105.13-4];
- Revise how the limitation of stipend eligible meetings is calculated [1 O.C. 105.13-3, 105.13-4];
- Clarify how eligibility for a conference or training stipend is calculated [1 O.C. 105.13-8];
- Provide a deadline for a member to activate his or her e-mail address, and clarify when an ad hoc or alternate member of an entity must have an official e-mail address [1 O.C. 105.14-3(b)]; and
- Specify that certain positions within the Nation are ineligible to serve on a board, committee, or commission of the Nation due to the potential for a real or perceived conflict of interest to exist. [1 O.C. 105.15-3].

The Legislative Procedures Act ("the LPA") was adopted by the General Tribal Council for the purpose of providing a process for the adoption or amendment of laws of the Nation. [1 O.C. 109.1-1]. The LPA requires that for all proposed legislation both a legislative and fiscal analysis be developed. [1 O.C. 109.6 and 109.7]. The proposed amendments to the Boards, Committees, and Commissions law comply with these requirements.

The LPA also requires that there be an opportunity for public review during a public meeting and public comment period. [1 O.C. 109.8]. A public meeting for the Boards, Committees, and Commissions law amendments was not held due to the COVID-19 pandemic. In early 2020 the world experienced a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts.

In accordance with the Emergency Management and Homeland Security law, on March 12, 2020, Chairman Tehassi Hill signed a "*Declaration of Public Health State of Emergency*" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. [3 O.C. 302.8-1]. The Public Health State of Emergency for the Nation has been extended until August 11, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, and BC-07-08-20-A.

On March 17, 2020, the Oneida Business Committee adopted emergency amendments to the Emergency Management and Homeland Security law to create and delegate authority to a COVID-19 Core Decision Making Team ("COVID-19 Team"). [3 O.C. 302.10]. When a public health emergency has been declared, the COVID-19 Team has the authority to declare exceptions to the Nation's laws, policies, procedures, regulations, or standard operating procedures during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees. [3 O.C. 302.10-2]. These declarations remain in effect for the duration of the Public Health State of Emergency. [3 O.C. 302.10-3].



On March 24, 2020, the Nation's COVID-19 Team made a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. On April 21, 2020, the COVID-19 Core Decision Making Team issued an "Updated Safer at Home" declaration which allowed for gaming and golf operations to resume. On May 19, 2020, the COVID-19 Core Decision Making Team issued a "Safer at Home Declaration, Amendment, Open for Business" which directs that individuals within the Oneida Reservation should continue to stay at home, businesses can re-open under certain safer business practices, and social distancing should be practiced by all persons. Then on June 10, 2020, the COVID-19 Core Decision Making Team issued a "Stay Safer at Home" declaration which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.

On March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

Although a public meeting for the Boards, Committees, and Commissions law amendments was not held, the public comment period was still held open until July 9, 2020. The Legislative Operating Committee reviewed and considered the public comments that were received on July 9, 2020, and July 16, 2020.

Adoption of this resolution complies with the process and procedures of the LPA as it has been modified by the COVID-19 Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration.

This resolution provides that the amendments to the Boards, Committees, and Commissions law would become effective on August 26, 2020, in accordance with the LPA. [1 O.C. 109.9-3].

### **Conclusion**

Adoption of this resolution would not conflict with any of the Nation's laws. Adoption of this resolution complies with the Legislative Procedures Act as it has been modified by the COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration.





# AMENDMENTS TO THE BOARDS, COMMITTEES, and COMMISSIONS LAW LEGISLATIVE ANALYSIS

#### SECTION 1. EXECUTIVE SUMMARY

SECTION 1. EXECUTIVE SUMMARY			
	Analysis by the Legislative Reference Office		
Intent of the Proposed	<ul> <li>Allow the Business Committee Support Office to repost a vacancy for an additional time period if insufficient applications are received, as long as notification is provided to the Oneida</li> </ul>		
Amendments	Business Committee;  Allow the Business Committee Support Office to request additional time from the Oneida		
	Business Committee in compiling the applications, summary of qualifications, or results of any investigation;		
	<ul> <li>Clarify a deadline for when a Chairperson of a board, committee, or commission of the Nation has to submit a recommendation for an appointment to the entity for the Oneida Business</li> </ul>		
	Committee's consideration;  Allow for the oath of office to be taken at an alternative time and location than during a regular or special Oneida Business Committee meeting as determined by the Secretary, as long as a		
	quorum of the Oneida Business Committee is present to witness the oath;  Require that the entity's bylaws provide how the entity shall approve purchases or travel on		
	behalf of the entity, but clarify the Business Committee Support Office has budgetary sign off authority on behalf of the entity;		
	■ Require that an entity audio record all meetings;		
	<ul> <li>Clarify that only a member of an entity shall respond to e-polls;</li> <li>Eliminate the requirement that a member of a board, committee, or commission be physically.</li> </ul>		
	Eliminate the requirement that a member of a board, committee, or commission be physically present during the entirety of a meeting or joint meeting in order to be eligible to receive a meeting stipend, but still require the member to be present and participate for the entire meeting through some means;		
	<ul> <li>Address how technological issues during a meeting held through telecommunications is address and how it may affect a member's eligibility for a meeting stipend;</li> </ul>		
	<ul> <li>Provide that meetings and joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications;</li> </ul>		
	<ul> <li>Revise how the limitation of stipend eligible meetings is calculated;</li> </ul>		
	Clarify how eligibility for a conference or training stipend is calculated;		
	<ul> <li>Provide a deadline for a member to activate his or her e-mail address, and clarify when an ad hoc or alternate member of an entity must have an official e-mail address;</li> </ul>		
	<ul> <li>Specify that certain positions within the Nation are ineligible to serve on a board, committee, or commission of the Nation due to the potential for a real or perceived conflict of interest to exist.</li> </ul>		
Purpose	To govern boards, committees, and commissions of the Nation, including the procedures regarding		
	the appointment and election of persons to boards, committees and commissions, creation of		
	bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1]		
Affected	Oneida Election Board, Oneida Gaming Commission, Oneida Land Claims Commission, Oneida		
Entities	Land Commission, Oneida Nation Commission on Aging, Oneida Nation School Board, Oneida		
	Trust Enrollment Committee, Anna John Resident Centered Care Community Board, Oneida		
	Community Library Board, Oneida Environmental Resource Board, Oneida Nation Arts Board,		
	Oneida Personnel Commission, Oneida Police Commission, Oneida Pow Wow Committee, Oneida		
	Nation Veterans Affairs Committee, Pardon and Forgiveness Screening Committee, Southeastern WI Oneida Tribal Services Advisory Board		
Public	A public comment period was held open until July 9, 2020. A public meeting was not held in		
Meeting	accordance with the Nation's COVID-19 Core Decision Making Team's declaration titled, "Suspension of Public Meetings under the Legislative Procedures Act."		
<b>Fiscal Impact</b>	A fiscal impact statement was provided by the Finance Department on July 20, 2020.		

#### **SECTION 2. LEGISLATIVE DEVELOPMENT**

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- **A.** *Background*. The Boards, Committees, and Commissions law ("the Law") was first adopted by the Oneida Business Committee on August 2, 1995, for the purpose of governing boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1]. The Law was last amended on a permanent basis thorough the adoption of resolution BC-09-26-18-C, and then amended on an emergency basis through the adoption of resolutions BC-03-11-20-B and BC-03-17-20-C.
- B. The Legislative Operating Committee proposed amendments be made to this Law to permanently adopt some of the emergency amendments that were recently made to the Law, as well as to address various considerations that arose during the one (1) year review of the Law as adopted through BC-09-26-18 C.
  - C. Table 1 illustrates the various boards, committees, and commissions of the Nation this Law applies to. This Law does not apply to the Oneida Business Committee, standing committees of the Oneida Business Committee, corporate entities, or members of the Judiciary.

Table 1. Boards, Committees and Commissions of the Nation

Table 1. Boards, Committees and Commissions of the Nation			
ELECTED	APPOINTED		
<ul> <li>Oneida Election Board</li> </ul>	■ Anna John Resident Centered Care Community		
<ul> <li>Oneida Gaming Commission</li> </ul>	Board (AJRCC)		
<ul> <li>Oneida Land Claims Commission</li> </ul>	<ul> <li>Oneida Community Library Board</li> </ul>		
<ul> <li>Oneida Land Commission</li> </ul>	<ul> <li>Oneida Environmental Resource Board (ERB)</li> </ul>		
<ul> <li>Oneida Nation Commission on</li> </ul>	<ul> <li>Oneida Nation Arts Board</li> </ul>		
Aging (ONCOA)	<ul> <li>Oneida Personnel Commission</li> </ul>		
<ul> <li>Oneida Nation School Board</li> </ul>	<ul> <li>Oneida Police Commission</li> </ul>		
■ Oneida Trust Enrollment	<ul> <li>Oneida Pow Wow Committee</li> </ul>		
Committee	■ Oneida Nation Veterans Affairs Committee		
	(ONVAC)		
	<ul> <li>Pardon and Forgiveness Screening Committee</li> </ul>		
	Southeastern WI Oneida Tribal Services Advisory		
	Board (SEOTS)		

#### SECTION 3. CONSULTATION AND OUTREACH

- **A.** Representatives from the following departments or entities participated in the one (1) year review of the Law as adopted through resolution BC-09-26-28-C which was then used in development of amendments to this Law and legislative analysis:
  - Oneida Law Office;
  - Business Committee Support Office;
  - Oneida Land Commission;
    - Oneida Trust Enrollment Committee;
  - Oneida Nation Commission on Aging;
    - Oneida Nation School Board;
  - Oneida Police Commission;

- Oneida Personnel Commission; and
  - Oneida Nation Arts Board.
  - **B.** The following laws were reviewed in the drafting of this analysis: Election Law, Removal law, Code of Ethics, Conflict of Interest Policy, Oneida Nation Gaming Ordinance, Computer Resources Ordinance, Social Media Policy.

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

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- **A.** The amendments to this Law have followed the process set forth in the Legislative Procedures Act.
  - On February 12, 2020, the Oneida Business Committee adopted a motion "to request the Legislative Operating Committee to consider amendments to the Boards, Committees and Commissions law as agreed upon at the February 3, 2020, joint meeting with the Oneida Land Commission."
  - The LOC added the amendments to the Active Files List on February 19, 2020.
  - The Oneida Business Committee adopted emergency amendments to the Law on March 11, 2020, through the adoption of resolution BC-03-11-20-B, to address ineligibility due to a conflict of interest. These emergency amendments were set to expire on September 11, 2020.
  - The Oneida Business Committee adopted emergency amendments to the Law on March 17, 2020, through the adoption of resolution BC-03-17-20-C, to address how meetings are held, and limitations on stipends. These emergency amendments will expire on September 17, 2020.
- **B.** At the time this legislative analysis was developed the following work meetings had been held regarding the development of these amendments:
  - April 23, 2020: LOC work meeting.
  - April 30, 2020: LOC work meeting.
  - May 7, 2020: LOC work meeting.
  - June 2, 2020: LOC work meeting.
- June 4, 2020: LOC work meeting.
  - June 16, 2020: Oneida Business Committee work meeting.
  - July 9, 2020: LOC work meeting.
    - July 16, 2020: LOC work meeting.
      - July 30, 2020: LOC work meeting.
    - C. COVID-19 Pandemic's Effect on the Legislative Process. The world is currently facing a pandemic of the coronavirus disease 2019 (COVID-19). The COVID-19 outbreak originated in Wuhan, China and has spread to many other countries throughout the world, including the United States. The COVID-19 pandemic has resulted in high rates of infection and mortality, as well as vast economic impacts including effects on the stock market and the closing of all non-essential businesses. A public meeting for the proposed amendments to this Law was not held due to the COVID-19 pandemic.
      - Declaration of a Public Health State of Emergency.
        - On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

- On March 28, 2020, the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's Public Health State of Emergency declaration until May 12, 2020.
  - On May 6, 2020, the Oneida Business Committee adopted resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until June 11, 2020" which further extended the Nation's Public Health State of Emergency until June 11, 2020.
  - On June 10, 2020, the Oneida Business Committee adopted resolution BC-06-10-20-A titled, "Extension of Declaration of Public Health State of Emergency until July 12, 2020" which further extend the Nation's Public Health State of Emergency until July 12, 2020.
  - On July 8, 2020, the Oneida Business Committee adopted resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until August 11, 2020" which further extended the Nation's Public Health State of Emergency until August 11, 2020.
- COVID-19 Core Decision Making Team Declarations: Safer at Home.

- On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which ordered all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibited all public gatherings of any number of people.
- On April 21, 2020, the COVID-19 Core Decision Making Team issued an "*Updated Safer at Home*" declaration which allowed for gaming and golf operations to resume.
- On May 19, 2020, the COVID-19 Core Decision Making Team issued a "Safer at Home Declaration, Amendment, Open for Business" which directs that individuals within the Oneida Reservation should continue to stay at home, businesses can re-open under certain safer business practices, and social distancing should be practiced by all persons.
- On June 10, 2020, the COVID-19 Core Decision Making Team issued a "Stay Safer at Home" declaration which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.
- COVID-19 Core Decision Making Team Declaration: Suspension of Public Meetings under the Legislative Procedures Act.
  - On March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.
- Although a public meeting was not held on the proposed amendments to the Boards, Committees, and Commissions law, a public comment period was still held open until July 9, 2020, in accordance with the Legislative Procedures Act and the COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration.
  - Five (5) individuals provided a written submission during the public comment period, for a total of twenty-four (24) comments received on the proposed amendments to the Law.

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

A. Reposting for Insufficient Applications. The proposed amendments to the Law allow the Business Committee Support Office to repost a vacancy for an additional time period when insufficient applications are received after the deadline date has passed for appointed positions. [1 O.C. 105.5-5]. The Law clarifies that if the number of applicants is equal to or less than the number of vacancies then it shall be determined to be an insufficient number of applicants. [1 O.C. 105.5-5(a)]. The Business Committee Support Office is required to provide the Oneida Business Committee notification that a position will be reposted. [1 O.C. 105.5-5(a)]. Previously, if an insufficient number of applications were received after the deadline date has passed for appointed positions, it was the Oneida Business Committee who could elect to repost the vacancy for an additional time period.

- Effect. The proposed amendments make the process for reposting a vacancy for an additional time period when insufficient applications are received more efficient because the Business Committee Support Office can take this action immediately, as long as notification is provided to the Oneida Business Committee, instead of having to take the request to the Oneida Business Committee and wait for official action to be taken by the Oneida Business Committee as to whether to repost. Additionally, the Law now provides clarification as to what constitutes an insufficient number of applicants so that the Business Committee Support Office can repost a vacancy when insufficient applicants are received in a consistent manner.
- **B.** Appointment Selection Process. The Law provides that within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made. [1 O.C. 105.7-1(a)(1)-(2)]. The proposed amendments to the Law provide that if delays in compiling the applications, summary of qualifications, or results of any investigations exist, the Business Committee Support Office shall request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2). [1 O.C. 105.7-1(a)(3)].
  - Effect. The proposed amendments to the Law provide flexibility to the Business Committee Support Office to request additional time to complete the compilation of materials and submission onto the next executive session portion of an Oneida Business Committee meeting if delays exist. The Business Committee Support Office identified that during the first year of this provision being in effect a situation arose where results of a drug test were not available during the twenty-one (21) day time-period. The Business Committee Support Office wants to ensure that if there are any delays in receiving results of a background investigation or drug test, additional time can be requested so that the Business Committee Support Office can ensure that all available relevant information is shared with the Oneida Business Committee and the entity's Chairperson.
- C. Deadline for Recommendation for Appointment by the Chair of an Entity. The proposed amendments to the Law provide that the Chairperson of an entity may review the application materials and submit to the Business Committee Support Office a recommendation to the Oneida Business Committee of an applicant for appointment. [1 O.C. 105.7-1(b)(1)]. The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida Business Committee meeting in which the appointment is intended to be made. [1 O.C. 105.7-

I(b)(1)(A)J. Previously, the Law simply stated that the entity's Chairperson may have until the executive session to review the application materials and provide the Oneida Business Committee a recommendation of an applicant for appointment.

- Effect. The proposed amendments to the Law provide more clarification as to a specific deadline and method for recommendations to be submitted. The Business Committee Support Office provided that how recommendations were being submitted was inconsistent, and that issues arose with recommendations being submitted once the Oneida Business Committee was already in executive session. The proposed amendment will provide more guidance to Chairs of boards, committees, and commissions to ensure they know how to properly submit a recommendation to the Oneida Business Committee.
- **D.** *Oath of Office*. The proposed amendments provide that all appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternative time and location as determined by the Secretary. [1 O.C. 105.9-1]. The Law clarifies that if an oath of office is administered outside of an Oneida Business Committee meeting, then a quorum of Oneida Business Committee members is required to be present to witness the oath. [1 O.C. 105.9-1]. Previously, the Law only allowed for an oath of office to be taken at an Oneida Business Committee meeting, although a person was allowed to appear by video conferencing equipment if granted permission by the Secretary.
  - Effect. The proposed amendments provide more flexibility as to when and where an oath of office can be taken. Many members of boards, committees, and commissions expressed that it was burdensome to only allow oaths of office to occur during an Oneida Business Committee meeting. This allows the Secretary to use his or her discretion to allow for an oath of office to be taken at an alternative time or place other than an Oneida Business Committee meeting.
- **E.** Requirement to Audio Record Meetings. The proposed amendments reinstate the requirement that a board, committee, or commission audio record all meetings, and the requirement that the bylaws of a board, committee, or commission address how this will be accomplished. [1 O.C. 105.10-3(f)(5)]. The emergency amendments adopted through resolution BC-03-17-20-C removed this provision from the Law due to the COVID-19 pandemic and the uncertainty of whether a board, committee, or commission will have the capability to audio record meetings.
  - Effect. The proposed amendment simply return this provision back to the Law. The Legislative Operating Committee determined that the requirement to audio record meetings is an important function. The Legislative Operating Committee is confident that boards, committees, and commissions have the ability to audio record meetings even if meetings have to be held remotely through telecommunications. For example, Microsoft Teams has the capability to record meetings that are held through the video call and call functions.
- **F.** Budgetary Sign Off Authority. The proposed amendments revise the requirements for how a board, committee, or commission addresses its purchases and budgetary sign off authority in its bylaws. The proposed amendments require that in its bylaws an entity identify how it shall approve purchases and travel on behalf of the entity. [1 O.C. 105.10-3(b)(6)]. The Law then provides that upon formal approval of a purchase by an entity, the Business Committee Support Office shall have official budgetary sign off authority for the entity. [1 O.C. 105.10-3(b)(6)(B)]. Previously, the bylaws were required to identify the entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and how the entity shall handle approving purchases or travel on behalf of the entity. [1

204 O.C. 105.10-3(b)(6)]. The Law has always required that an entity follow the Nation's policies and procedures regarding purchasing and sign off authority. [1 O.C. 105.10-3(b)(6)(A)].

- Effect. Requiring that a board, committee, or commission still formally approve a purchase, but changing formal budgetary sign off authority from the board, committee, or commission to the Business Committee Support Office will allow boards, committees, and commissions to transfer to the automatic procurement process, instead of the manual paper procurement process boards, committees, and commissions have currently been using.
- **G.** Clarification for Responding to an Electronic Poll. The proposed amendments provide clarification that only a member of an entity can respond to an electronic poll, or "e-poll," of an entity. [1 O.C. 105.11-3]. Previously, the Law provided that a response from a member of an entity shall be valid if received from an official e-mail address of the entity.
  - *Effect*. The proposed amendment provides additional clarify that it is to be the member of a board, committee, or commission himself or herself, and therefore, the use of a proxy to respond to an epoll is not allowed.
- **G.** *Meetings Eligible for Stipends.* The proposed amendments eliminate the requirement that a member of a board, committee, or commission be *physically* present during the entirety of a meeting in order to be eligible to receive a meeting stipend, although the member is still required to be present for the entirety of the meeting. [1 O.C. 105.13-3]. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications. [1 O.C. 105.13-3]. The proposed amendments also provide that an entity shall demonstrate presence during an entire meeting by taking roll call on the record at both the beginning and conclusion of a meeting. [1 O.C. 105.13-3(c)]. Previously, the Law required that a member of a board, committee, or commission be physically present for the entirety of a meeting because meetings had to occur in person in order to be eligible for a stipend.
  - Effect. The proposed amendments provide more flexibility to boards, committees, and commissions of the Nation in how they can hold meetings that are eligible for a stipend. Flexibility for how a meeting is held is especially important during times such as this COVID-19 pandemic. Holding meetings by telephone, video conferencing, or other telecommunications will help eliminate any unnecessary contact between individuals which could spread COVID-19, without disrupting the ability of a board, committee, and commission to conduct business and receive a stipend for the business they are conducting. Although the Legislative Operating Committee wants to provide boards, committees, or commissions with more flexibility, it is still important that members of a board, committee, or commission participate and be present for the entirety of a meeting, especially when meetings are not held in person. For that reason, the Legislative Operating Committee included the provision on how a board, committee, or commission can demonstrate presence during a meeting through taking roll call at the beginning and end of a meeting.
- **H.** Frequency of Meeting Stipends. The proposed amendments revise how many meetings a board, committee, or commission is eligible to receive a stipend for. The proposed amendments provide that a member of an appointed entity may be eligible for up to twelve (12) meeting stipends per fiscal year, while a member of an elected entity may be eligible for up to twenty-four (24) meeting stipends per fiscal year. [1 O.C. 105.13-3(a)-(b)]. Previously, the Law provided that an individual serving on an appointed entity shall be paid no more than one (1) meeting stipend per month, while an individual serving on an elected entity shall be paid no more than two (2) meeting stipends per month.
  - *Effect*. The proposed amendments do not change the overall number of meetings a member of a board, committee, or commission may be eligible to receive per fiscal year. Providing the limitation

on number of meetings that are eligible for a stipend per fiscal year instead of per month provides boards, committees, and commissions with more flexibility in determining when stipend eligible meetings should be held.

- **I.** Joint Meetings Eligible for Stipends. The proposed amendments eliminate the requirement that a member of a board, committee, or commission be *physically* present during the entirety of a joint meeting with the Oneida Business Committee in order to be eligible to receive a joint meeting stipend. [1 O.C. 105.13-4]. The amendments also provide that joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications. [1 O.C. 105.13-4].
  - *Effect*. The proposed amendments provide more flexibility to boards, committees, and commissions of the Nation in how they can hold joint meetings with the Oneida Business Committee that are eligible for a stipend
  - The Oneida Business Committee adopted resolution BC-03-27-19-D titled, "Oneida Business Committee and Joint Meetings with Boards, Committees and Commissions Definitions and Impact" to set standard rules and understandings for joint meetings. Adoption of the proposed amendments result in no conflict or impact on this resolution.
- **J.** Technological Issues Affecting Presence During a Meeting. The proposed amendments provide that if a member of an entity experiences technological issues during a regular, emergency, or joint meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the meeting, the member shall notify the entity of the technical issue as soon as possible. [1 O.C. 105.13-3(d), 1-5.13-4(c)]. The Law also allows the an exemption to the stipend eligibility requirement to be present for the entire meeting to be granted if the entity certifies by a majority vote that the member was present for a majority of the meeting despite the technological issue which disrupted the member's presence during the meeting. [1 O.C. 105.13-3(d)(1), 1-5.13-4(c)(1)].
  - Effect. Since meetings may be held by telephone, through videoconferencing, or through other telecommunications it can be assumed that technological problems may arise. [1 O.C. 105.13-3, 105.13-4]. The Legislative Operating Committee added this provision to the Law to allow for exemptions so that a meeting stipend can still be paid to a member of an entity that experiences a technological problem that resulted in the member not being present for the entire meeting, but who still was present for a majority of the meeting.
- **K.** Stipends for Attendance at Conferences and Trainings. The proposed amendments provide that a member of a board, committee, or commission shall be eligible for a stipend for attending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution. [1 O,C. 105.13-8(a)]. The proposed amendments further provide that the amount of the stipend a member is eligible to receive for attendance at a conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a conference or training. [1 O.C. 105.13-8(a)(1)]. Previously, the Law provided that a member shall be eligible for a stipend for each full day the member is present at a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
  - Effect. The proposed amendments provide clarification as to how a stipend for attendance at a conference or training will be determined. Previously, there were many questions as to how to interpret what a "full day" of attending a conference and training meant. Many members of boards, committees, and commissions expressed that requiring attendance at a conference or training be a full day was inequitable as it did not reflect the reality of many trainings and conferences being less

than a full day. The proposed amendment is modeled after how stipends for participation in interviews are handled. This will provide not only clarification on how eligibility for a stipend for attending a conference or training will be determined, but also provide more flexibility to members of boards, committees, and commissions for what trainings or conferences they are eligible to receive a stipend for.

- **L.** Official Oneida E-Mail Address. The proposed amendments provide that a member of an entity shall have thirty (30) days upon election or appointment to an entity to activate his or her official e-mail address. [1 O.C. 105.14-3(b)]. Previously, there was no deadline associated with when a member of an entity had to activate his or her account. The proposed amendments also clarify that an individual who holds a position as an ad hoc or alternate member of an entity shall be exempt from the requirement to be provided an official e-mail address, unless determined that an e-mail address is necessary for the role and responsibilities of the ad hoc or alternate member. [1 O.C. 105.14-3(c)]. Previously, the Law was not clear as to whether ad hoc or alternate members of an entity were required to be provided an official e-mail address.
  - Effect. The proposed amendments provide clarification for how an official e-mail address for a member of an entity should be used. A deadline for activating the e-mail account was included in the Law because the Business Committee Support Office reported issues with members not activating or using their e-mail. It is very important that a member of an entity have the e-mail address ready for use to ensure that there is a consistent form of communication available to reach all members of a board, committee, and commission, as well as to encourage and ensure confidentiality when conducting business electronically for the entity. The Law clarifies that an ad hoc or alternate member of an entity does not have to be provided an official e-mail address, unless determined that an e-mail address is necessary for the role and responsibilities of the ad hoc or alternate member, because it would not be a good utilization of resources to provide an official e-mail address to an individual that is brought on for a temporary basis, or who will have a limited role and responsibilities.
- **M.** *Ineligibility Due to Conflicts of Interest*. The proposed amendments to the Law provide that due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed or elected entity: political appointees; an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office or Intergovernmental Affairs and Communications; and an employee who serves as a direct report to the Oneida Business Committee or General Manager. [1 O.C. 105.15-3]. Previously, the Law only provided that political appointees could not serve on an appointed or elected entity due to the potential for a real or perceived conflict of interest to exist.
  - Effect. The proposed amendments expand the restriction to serve on a board, committee, or commission from political appointees to other employees of the Nation. The potential for a real or perceived conflict of interest to exist for an employee of the Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, Intergovernmental Affairs and Communications, or any employee who holds a position as a direct report to the Oneida Business Committee or General Manager is due to the nature of employment in those areas. Those employees have access to confidential information which requires a higher level of professionalism and fiscal responsibilities than other areas. Therefore, it is in the best interest of the Nation to recognize the potential for a conflict of interest to exist and amend the Law to restrict employee related actions on this matter to better protect the Nation from a potential conflict of interest.

- Number of Employees Impacted. At the time this legislative analysis was drafted, the following number of employees would be impacted as a result of this proposed amendment to the Law:
  - Internal Audit Department: nine (9) employees;
  - Oneida Law Office: eight (8) employees;
  - Finance Administration Office: three (3) employees;
  - Intergovernmental Affairs and Communications: seven (7) employees;
  - Business Committee Support Office: five (5) employees; and
  - Direct Reports: eight (8) employees including the following positions as identified in resolution BC-08-14-19-N:
    - Chief Counsel;

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- General Manager;
- Gaming General Manager;
- Intergovernmental Affairs and Communications Director;
- Emergency Management Director;
- Area Manager, Human Resources Division;
- Area Manager, Retail-Profit; and
- Business Compliance Analyst.
- Nothing in this Law limits the ability of any department of the Nation from placing their own restrictions and expectations within employment contracts, job descriptions, or standard operating procedures. As a result, there may be employees of the Nation who are already restricted from serving on a board, committee or commission outside of this Law.

#### **SECTION 6. EXISTING LEGISLATION**

- **A.** References to other Laws of the Nation. The following laws of the Nation are referenced in this Law:
  - *Election law*. The Election law governs the procedures for the conduct of orderly elections of the Nation, including pre-election activities. [1 O.C. 102.1-1].
    - The Boards, Committees, and Commissions law provides that applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. [1 O.C. 105.5-4].
    - The Boards, Committees, and Commissions law provides that all elected positions shall be nominated at a caucus called by the Oneida Election Board, or apply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment. [1 O.C. 105.8-1]. Additionally, this Law provides that all other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections. [1 O.C. 105.8-2].
  - Open Records and Open Meetings law. The Open Records and Open Meetings law advances the democratic principle of open government by providing access to information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees. [1 O.C. 107.1-1].
    - The Boards, Committees, and Commissions law provides that all removal or destruction of documents of an entity shall be made in accordance with the Nation's laws and policies governing open records and open meetings. [1 O.C. 105.14-2].

\* Computer Resources Ordinance. The Computer Resources Ordinance regulates the usage of computer resources owned and operated by the Nation. [2 O.C. 215.1-1].

- The Boards, Committees, and Commissions law provides that a member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. [1 O.C. 105.14-3(b)].
- Social Media Policy. The Social Media Policy regulates social media accounts, including a social networking web page, blog or microblog, that is administered on behalf of the Nation or an entity of the Nation. [2 O.C. 218.1-1].
  - The Boards, Committees, and Commissions law provides that a member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. [1 O.C. 105.14-3(b)].
- Conflict of Interest law. The purpose of the Conflict of Interest law is to ensure that all employees, contractors, elected officials, officers, political appointees, appointed and elected members and all others who may have access to information or materials that are confidential or may be used by competitors of the Nation's enterprises or interests be subject to specific limitations to which such information and materials may be used in order to protect the interests of the Nation. [2 O.C. 217.1-1].
  - The Boards, Committees, and Commissions law provides that all members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest. [1 O.C. 105.15-1].
- Removal law. The Removal law provides an orderly and fair process that governs the removal of persons elected to serve on boards, committees, and commissions of the Nation. [1 O.C. 104.1-1]. The Removal law provides the various grounds for removal [1 O.C. 104.4-1], as well as the removal process which consists of a petition [1 O.C. 104.5], preliminary review [1 O.C. 104.6], hearing at the Judiciary [1 O.C. 104.7], and ultimate decision by the General Tribal Council [1 O.C. 104.8].
  - The Boards, Committees, and Commissions law provides that any elected member of an entity found to be in violation of this Law may be subject to removal pursuant to any laws or policies of the Nation governing removal. [1 O.C. 105.18-1].
  - The Boards, Committees, and Commissions law also provides that a position in an entity shall be considered vacant upon removal whenever the removal is effective in accordance to any law or policy of the Nation regarding removal. [1 O.C. 105.6-2(b)].
- **B.** References to Conflicts of Interest in Other Laws. The following laws of the Nation reference conflict of interest as it relates to employees and elected or appointed officials of the Nation. Employees and/or elected and appointed officials are already subject to comply with the following provisions within other laws:
  - Conflict of Interest law. The Conflict of Interest law applies to "all agents, elected officials, officers, political appointees, contractors, appointed and or elected members." [2 O.C. 217.4-1].
    - The Conflict of Interest law requires employees and elected or appointed officials to disclose any conflicts of interest.
      - Failure to disclose a conflict of interest may result in removal in accordance with the Removal law, penalties pursuant to laws of the Nation regarding penalties, or termination of employment. [2 O.C. 217.6-2 and 217.6-3].

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- official, or appointed official may participate in the selection, award or administration of a contract, including contracts supported by federal award and/or any other prohibited activities identified in any other law, policy or rule of the Nation. 12 O.C. 217.71. 427
  - There is no conflict with the proposed amendments and compliance with the Conflicts of Interest law. Upon adoption of the proposed amendments, serving on a board, committee, or commission of the Nation while being employed in the Internal Audit Department, Law Office, Finance Administration Office, or Intergovernmental Affairs and Communications, or employed in a position that serves as a direct report to the Oneida Business Committee will become a "prohibited activity identified in a law of the Nation" in accordance with the Conflict of Interest law.

When an existing conflict of interest is disclosed, no employee, elected

- Code of Ethics law. The Code of Ethics law promotes the highest ethical conduct in all of its elected and appointed officials and employees and represents a minimum standard of conduct which is expected. [1 O.C. 103.1-1]. All government officials, including persons elected to serve on a board, committee or commission are subject to the Nation's Code of Ethics law.
  - The Code of Ethics law provides that a government official shall create and maintain an independent and honorable political system and shall observe high standards of conduct... including, but not limited to:" [1 O.C. 103.3-3(a)].
    - Encouraging separation between departments or entities of tribal government, and should avoid contact or duty that violates such a separation.
    - Avoid participation in action or decision making (except where participation is in accordance with the traditions of the Nation) that would present an appearance of conflict of interest or an actual conflict of interest.
  - The Code of Ethics law provides that a government official should disqualify themselves when their action or inaction might reasonably be questioned, including, but not limited to personal bias..." [1 O.C. 103.3-5].
  - The Code of Ethics law provides that a government official shall regulate their extra governmental activities to minimize the risk of conflict with duties of their office." [1 O.C. 103.3-61.
  - The Code of Ethics law provides that government officials may be subject to either removal, if elected, or termination, if appointed, for a violation of any part of this ethics code as it applies to them." [1 O.C. 103.6-1].
  - There is no conflict between the proposed amendments and compliance with the Code of Ethics law.
- Election law. The Election law states that "No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election." [1 O.C. 102.5-3].
  - This means that although the proposed amendments to the Boards, Committees, and Commissions law prohibit employees of the Internal Audit Department, Law Office, Finance Administration Office, Intergovernmental Affairs and Communications, or any person employed in a position that serves as a direct report to the Oneida Business Committee from serving on a board, committee, or commission of the Nation, those

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each entity's bylaws.

additional qualifications for membership within their bylaws. Bylaws are a document that provides a

framework for the operation and management of a board, committee or commission. Examples of these qualifications include age, residency, education, and experience. Some boards already place restrictions on whether employees of the Oneida Nation may serve on their entity. Below is a review of current restrictions on employees of the Nation. For a full review of qualifications for each entity, please see

C. Restrictions on Employees in Current Bylaws. Boards, committees and commissions may place

individuals may still be nominated for office, run in an election, and win election to a board, committee or commission. However, the winning candidate would have to eliminate their

conflict of interest prior to taking office by resigning from their position of employment.

Table 2. Restrictions on Employees in Current Bylaws.

<b>Board, Committee or</b>	Employees who may not serve on that entity:
Commission	
Land Commission	Employees of the Nation's Audit Department, Finance Department, Law Office "or other department associated with items (a) – (j) in section 1-3 of the Land Commission bylaws:  • the Real Property law, • Leasing law, • Building Code, • Condominium Ordinance, • Zoning and Shoreland Protection law, • Eviction and Termination law, • Mortgage and Foreclosure law, • the Cemetery law, • and any other delegating law, policy, rule and/or resolution of the Nation Division Directors or Area Managers for the Oneida Nation, Independent contractor for Land Management or any other department of the Nation associated with items (a) – (j)
Anna John Resident	Employees of Anna John Resident Centered Care
Centered Care Community	Community.
Board	
Oneida Community	Employees or contractors of any Oneida Nation Library
Library Board	Branch.
Oneida Environmental	Employees of the Oneida Environmental, Health, Safety and
Resource Board (ERB)	Land Division
Oneida Nation Arts Board	Employees of the Oneida Nation Arts Board.
Oneida Personnel	Employees of the Oneida Nation.
Commission	
Oneida Police Commission	Employees of the Oneida Police Department or individuals terminated from the Oneida Police Department.
Oneida Land Claims	Shall not serve in the capacity of "consultant, contractor or
Commission	attorney for the Land Claims Commission."

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**D.** Restrictions on Employees in Current Laws. The following laws of the Nation already restrict certain employees of the Nation from serving on certain boards, committees and commissions of the Nation:

Table 3. Restrictions on Employees in Other Laws of the Nation.

Law or Bylaw	Entity	Restrictions on Oneida Nation Employees
Oneida Law	Oneida Police	"Must not be an employee of the Oneida
Enforcement	Commission	Police Department" [3 O.C. 301.6-3(e)].
Ordinance		_
Oneida Nation	Oneida Gaming	"Commissioners shall perform duties on a
Gaming	Commission	full-time basis and may not, during tenure
Ordinance		in office, be engaged in any other profession
		or business activity" [5 O.C. 501.6-9].

#### **SECTION 7. OTHER CONSIDERATIONS**

- A. Updates to the Stipend Resolution. The Law requires that the Oneida Business Committee set stipend amounts by resolution. [1 O.C. 105.13-2]. On September 26, 2018, the Oneida Business Committee adopted resolution BC-09-26-18-D titled, "Boards, Committees, and Commissions Law Stipends" which set forth the specific stipend amounts allowed to be paid to a member of a board, committee, or commission. On May 8, 2019, the Oneida Business Committee adopted resolution BC-05-08-19-B titled, "Amending Resolution BC-09-26-18-D Boards, Committees, and Commissions Law Stipends" to allow the Oneida Nation School Board to be eligible to receive a stipend for participating in interviews and/or job description prescreens. Then on March 17, 2020, the Oneida Business Committee adopted resolution BC-03-17-20-D titled, "Amending Resolution BC-05-18-19-B Boards, Committees, and Commissions Law Stipends" to address emergency amendments that were made to the Law. Based on the proposed amendments, revisions to resolution BC-03-17-20-D will have to be made to permanently reflect the new proposal on how to address the limitation of meeting stipends, as well as how stipends for conferences and trainings are determined.
  - Conclusion. The Legislative Operating Committee should consider bringing an amended stipend
    resolution for consideration when the Legislative Operating Committee presents the proposed
    amendments to the Oneida Business Committee for consideration.
- **B.** Suspension of all Non-Emergent Expenses and Stipends and Activity by Certain Boards, Committees, and Commissions. On March 19, 2020, the Nation's COVID-19 Core Decision Making Team issued a declaration titled, "Suspension of all Non-Emergent Expenses and Stipends and Activity by Certain Boards, Committees, and Commissions." This declaration identified that the Nation needed to preserve cash flow to provide funds for regular wages to employees throughout the emergency declaration period, and that activities of boards, committees, and commissions could create contact and spread of COVID-19 through meetings and gatherings. This declaration then suspended all budget expenditures and stipends for certain boards, committees, and commissions of the Nation, as well as discontinued meetings for certain boards, committees, and commissions. For those boards, committees, and commissions of the Nation not specifically identified, the declaration recommended that meetings be discontinued or held remotely.
  - The boards, committees, and commissions of the Nation who had all budget expenditures and stipends suspended by this declaration included:
    - Oneida Community Library Board;
    - Oneida Environmental Resources Board;
    - Oneida Nation Arts Board;
    - Oneida Nation Veterans Affairs Committee;
- Oneida Personnel Commission:

■ Oneida Pow Wow Committee:

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- Pardon and Forgiveness Screening Committee;
- 520 Southeast Wisconsin Oneida Tribal Social Services Advisory Board;
- Finance Committee, Public Member;
  - Audit Committee, Public Member;
    - Oneida Land Claims Commission; and
    - Oneida Nation Commission on Aging.
  - The boards, committees, and commissions of the Nation who had all meetings discontinued by this declaration included:
    - Oneida Community Library Board;
    - Oneida Environmental Resources Board;
  - Oneida Nation Arts Board;
    - Oneida Nation Veterans Affairs Committee;
- Oneida Personnel Commission:
- Oneida Pow Wow Committee;
  - Pardon and Forgiveness Screening Committee;
- Southeast Wisconsin Oneida Tribal Social Services Advisory Board;
  - Oneida Land Claims Commission; and
    - Oneida Nation Commission on Aging.
  - *Conclusion*. The Legislative Operating Committee should be informed that this declaration was issued by the Nation's COVID-19 Core Decision Making Team.
  - C. Boards, Committees and Commissions in Temporary Closure Status. On April 4, 2020, the Oneida Business Committee adopted resolution BC-04-08-20-B titled, "Placing Listed Boards, Committees, and Commissions in Temporary Closure Status." Based on the Nation's Public Health State of Emergency and the necessity to enter into Tier V Budget Contingency measures through resolution BC-04-08-20-C, the Oneida Business Committee reviewed the list of boards, committees and commissions and determined that certain boards, committees, or commissions continuing to operate, generating expenses would affect the overall financial status of the Nation, and therefore those entities should be placed on temporary closure to preserve funding for necessary governmental services and activities. This resolution places certain identified boards, committees, and commissions into temporary closure for the remainder of Fiscal Year 2020 and during any continuing resolution for Fiscal Year 2021, also identifies that posting of vacancies shall be discontinued for the remainder of Fiscal Year 2020 and during any continuing resolution for Fiscal Year 2021.
    - The boards, committees, and commissions of the Nation that were placed on temporary closure include:
      - Oneida Community Library Board;
      - Oneida Environmental Resources Board;
      - Oneida Nation Arts Board:
      - Oneida Nation Veterans Affairs Committee;
  - Oneida Personnel Commission;
  - Oneida Pow Wow Committee;
    - Pardon and Forgiveness Screening Committee;
  - Southeast Wisconsin Oneida Tribal Social Services Advisory Board;
- Oneida Land Claims Commission; and

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- Oneida Nation Commission on Aging.
- Conclusion. The Legislative Operating Committee should be informed that there are boards,
   committees, and commissions that are currently in temporary closure status based on the financial
   impacts of the COVID-19 pandemic.
  - **D.** *Fiscal Impact*. A fiscal impact statement of the proposed amendments to the Law was provided by the Finance Department on July 20, 2020. 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 titled, "Interpreting 'Fiscal Impact Statement' in the Legislative Procedures Act," 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.

### Draft 2 for OBC Consideration (Redline to Last Permanent Draft - BC-09-26-18-C) 2020 08 12

### Title 1. Government and Finances – Chapter 105 BOARDS, COMMITTEES AND COMMISSIONS

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#### **BOARDS, COMMITTEES, AND COMMISSIONS**

105.1. Purpose and Policy	105.10. Bylaws
105.2. Adoption, Amendment, Repeal	105.11 Electronic Polling
105.3. Definitions	105.12. Reporting Requirements
105.4. Creation of an Entity	105.13. Stipends, Reimbursement and Compensation
105.5. Applications	105.14. Confidential Information
105.6. Vacancies	105.15. Conflicts of Interest
105.7. Appointment to an Entity	105.16. Use of the Nation's Assets
105.8. Election to an Entity	105.17. Dissolution of an Entity
105.9. Oath of Office	105.18. Enforcement

#### 105.1. Purpose and Policy

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28 29 105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

- (a) This law shall not apply to the Oneida Business Committee, or Standing Committees of the Oneida Business Committee.
- (b) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.

105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

#### 105.2. Adoption, Amendment, Repeal

105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, and BC-09-26-18-C- and amended by BC-

- 105.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 22 105.2-3. Should a provision of this law or the application thereof to any person or circumstances 23 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
- 24 to have legal force without the invalid portions.
- 105.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 27 105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### 105.3. Definitions

105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Application" means the form by which a person seeks to be appointed to fill a vacancy on an entity.

- (b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.
- (c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
- (d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.
- (e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.
- (f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.
- (g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.
- (h(h) "Direct report" means a position which requires direct contact and supervision by the Oneida Business Committee because of the position, the duties, or the services provided. Direct reports shall be identified by the Oneida Business Committee through resolution
- (i) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.
- (ij) "E-poll" means an electronic poll, which is the act of delivering an e-mail to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.
- (jk) "Joint meeting" means a meeting with the Oneida Business Committee.
- (kl) "Nation" means the Oneida Nation.
- (1) Am) "Per Diem≅" means the payment made by the Nation to offset the costs of being on travel on behalf of the Oneida Nation.
- (mn) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member's daily activities and operations.
- (no) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance

- (e) Ap) "Stipend" means the amount paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation.
- (pq) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.
- (qr) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by clear and convincing evidence.
- (FS) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.
- (st) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

#### 105.4. Creation of an Entity

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- 105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.
- 98 105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.
- 100 105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

#### 105.5. Applications

- 105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.
  - (a) All applications shall include:
    - (1) a statement explaining the attendance requirements of section 105.12-3; and
    - (2) a section regarding disclosures of conflicts of interest.
  - (b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.
- 116 105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date.
- 118 105.5-3. Within eight (8) days after the posted deadline for filing applications, the Business Committee Support Office shall notify all persons who have filed an application of the date his or

- her application was received and if his or her application met the deadline to be considered for the election or appointment.
- 122 105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or
- policies governing elections. Applications for appointed positions shall be verified by the Business
- 124 Committee Support Office as needed or as required in the bylaws of the entity.
- 105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Oneida Business Committee Support Office may elect to:repost for an additional time period.
  - (a) include within the pool of appointed persons late applications, or
  - (a) If the number of applicants is equal to or less than the number of vacancies then it shall be determined to be an insufficient number of applicants.
  - (b) repostThe Business Committee Support Office shall notify the Oneida Business Committee if a position will be reposted for an additional time period.
  - (c) In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.
  - (d) The Oneida Business Committee may elect to include within the pool of appointed persons late applications.

#### 105.6. Vacancies

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- 105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.
- 105.6-2. A position on an entity shall be considered vacant in the following situations:
  - (a) End of Term. A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.
    - (1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.
  - (b) *Removal*. Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.
  - (c) Termination of Appointment. A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.
  - (d) Resignation. A resignation is effective upon:
    - (1) Deliverance of a letter to the Business Committee Support Office and to the Chairperson of the entity, or designee; or-
    - (2) Acceptance by motion of the entity of a verbal resignation.
- (e) New Positions. Vacancies on new entities are effective upon adoption of bylaws.
- 159 105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns 160 that a position has or will become vacant. All notices of vacancy shall be sent to the entities for 161 clarification or confirmation prior to notification to the Oneida Business Committee.
- 162 105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee

- (a) End of Term. Automatically sixty (60) days prior to completion of the term.
- (b) *Removal*. No later than the next Oneida Business Committee meeting following the effective date of the removal.
- (c) Resignation. No later than the next Oneida Business Committee meeting following the Business Committee Support Office's receipt of notice of an effective resignation from the entity.
- (d) New Positions. Upon one of the following conditions:
  - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
  - (2) upon date specified when creating the entity.
- (e) *Termination of appointment*. No later than the next Oneida Business Committee meeting following the effective date of the termination.
- 105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

#### 105.7. Appointment to an Entity

- 105.7-1. *Appointment Selection*. The following procedures shall be used to determine how the applicant for an appointed position is selected:
  - (a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
    - (1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and
    - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made.; or
    - (3) if delays in compiling the applications, summary of qualifications, or results of any investigations exist, request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2).
  - (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
    - (1) The entity's Chairperson may have until the executive session to review the application materials and providesubmit to the Business Committee Support Office a recommendation to the Oneida Business Committee a recommendation of an applicant for appointment.
      - (A) The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida

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Business Committee meeting in which the appointment is intended to be made.

- (c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:
  - (1) chooseselect an applicant for appointment, or
  - (2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.
- (d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.
- (e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:
  - (1) accept the selected applicant and vote to appoint the individual to the vacant
  - (2) reject the selected applicant and vote to oppose the appointment of the individual.
- (f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.
- 105.7-2. *Notification of Appointment*. Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.
  - (a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.
  - (b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: A"The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income. "."
- 105.7-3. Declination of Appointment. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.
  - (a) An individual may decline an appointment to an entity in the following ways:
    - (1) Delivery of ana letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or

(2) The failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee.

(b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined in section 105.7-1 to select another applicant for appointment.

105.7-4. *Termination of Appointment*. An appointed member of an entity serves at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.

(a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.

(b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

#### 105.8. Election to an Entity

 105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or petitionapply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.

(a) When the Election Board notifies a petitioneran applicant or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: A: The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income.

105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

#### 105.9. Oath of Office

105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternative time and location as determined by the Secretary. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.

(a) The When taking an oath, the appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by through video conferencing equipment, or through other telecommunications.

(b) If an oath is administered outside of an Oneida Business Committee meeting, a quorum of Oneida Business Committee members shall be present to witness the oath.

105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths

- 296 shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by 297 the Business Committee Support Office.
- 298 105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall 299 be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded 300 to the new member of the entity and the entity.
- 105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is 302 pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will carry out the duties and responsibilities as a member of the [entity name], and all recommendations shall be made in the best interest of the Oneida Nation as a whole.
  - 105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware of their duty to the Nation and as members of the entity.

#### 105.10. Bylaws

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- 105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.
  - (a) All existing entities mustshall comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law.
  - (b) Bylaws mustshall contain at least the minimum information required by law, although more information is not prohibited.
  - (c) Exception. Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities mustshall have, at minimum, mission or goal statements for completion of the task.
- 105.10-2. Articles. Bylaws shall contain, at a minimum, the following Articles:
  - (a) Article I. Authority.
  - (b) Article II. Officers.
  - (c) Article III. Meetings.
  - (d) Article IV. Expectations.
  - (e) Article V. Stipends and Compensation.
  - (f) Article VI. Records and Reporting.
  - (g) Article VII. Amendments.
- 105.10-3. Sections. Articles shall be divided into "sections" as set out.
  - (a) "Article I. Authority" shall consist of the following:
    - (1) Name. The full name of the entity shall be stated, along with any short name that will be officially used.
    - (2) Establishment. This section shall state the citation and name, if any, of the creation document.
    - (3) Authority. This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.
    - (4) Office. There shall be listed the official office or post box of the entity.

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340 (5) *Membership*. The following information shall be in this section: (A) Number of members on the entity; 341 (B) If members on the entity are elected or appointed, and how a member 342 343 is elected or appointed; 344 (C) How vacancies are filled; and (D) Qualifications for membership on the entity. 345 346 (i) In order to qualify for membership on an entity, a person shall meet the minimum age requirements set forth for status as a 347 qualified voter of the Nation, unless a law, policy, or directive sets 348 349 forth a minimum age requirement. 350 (6) Termination or Removal. This section shall identify causes for termination or removal, if any, in addition to those already identified in laws and/or policies of the 351 352 Nation. 353 (7) Trainings and Conferences. This section shall describe any trainings and/or 354 conferences that the entity deems necessary for members to responsibly serve the entity, if any. 355 356 (b) "Article II. Officers" shall consist of the following: (1) Chairperson and Vice-Chairperson. This section creates the chairperson and 357 vice-chairperson positions of the entity. Other officer positions may also be created 358 359 here. 360 (2) Responsibilities of the Chairperson. Because of the importance of this position, all duties and responsibilities of the chairperson, as well as limitations of the 361 chairperson shall be specifically listed here. 362 (3) Responsibilities of the Vice-Chairperson. Because of the importance of this 363 position, all duties and responsibilities of the vice-chairperson, as well as 364 365 limitations of the vice-chairperson shall be specifically listed here. (4) Responsibilities of Additional Officers. There may be additional sections as 366 367 needed for every officer position created in subsection one (1) above. These 368 sections shall state all duties and responsibilities of the officer, as well as any 369 limitations of the officer. 370 (5) Selection of Officers. This section shall identify how a member of the entity 371 shall be selected for an official officer position in the entity. 372 (6) Budgetary Sign-Off Authority Purchases and Travel. This section shall identify 373 the entity's varying levels of budgetary sign off authority, the members that are 374 authorized to sign-off at each level, and how the entity shall handle 375 approvingapprove purchases or travel on behalf of the entity. (A) An entity shall follow the Nation's policies and procedures regarding 376 377 purchasing and sign-off authority. 378 (B) Upon formal approval of a purchase by an entity, the Business 379 Committee Support Office shall have official budgetary sign off authority 380 for the entity. 381 382

- (C) An entity shall approve a member's request to travel on behalf of the entity by majority vote at a regular or emergency meeting of the entity.
- (7) Personnel. This section shall state the entity's authority for hiring personnel,

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384	if any, and the duties of such personnel.
385	(c) "Article III. Meetings" shall consist of the following:
386	(1) Regular meetings. This section shall identify when and where regular meetings
387	shall be held, and how the entity shall provide notice of the meeting agenda,
388	documents, and minutes.
389	(2) Emergency meetings. This section shall identify what constitutes an emergency
390	meeting, how emergency meetings shall be called, and how the entity shall provide
391	notice of the emergency meeting.
392	(A) All bylaws shall include a provision requiring that within seventy-two
393	(72) hours after an emergency meeting, the entity shall provide the Nation's
394	Secretary with notice of the meeting, the reason for the emergency meeting,
395	and an explanation of why the matter could not wait for a regular meeting.
396	(3) Joint Meetings. This section shall identify if joint meetings shall be held, the
397	frequency and location of joint meetings, and how the entity shall provide notice of
398	the meeting agenda, documents, and minutes.
399	(4) Quorum. This section shall identify how many members of an entity create a
400	quorum.
401	(5) Order of Business. This section sets out how the agenda will be set up.
402	(6) <i>Voting</i> . This section shall identify voting requirements, such as, but not limited
403	to:
404	(A) the percentages that shall be needed to pass different items;
405	(B) if, and when, the chairperson is allowed to vote;
406	(C) if the use of an e-poll is permissible; and
407	(D) if the use of and e-poll is permissible, who will serve as the
408	Chairperson's designee for the responsibility of conducting an e-poll, if a
409	designee is utilized.
410	(d) "Article IV. Expectations" shall consist of the following information:
411	(1) Behavior of Members. This section shall identify the behavioral expectations
412	and requirements of a member of the entity, and identify how the entity shall
413	enforce these behavioral expectations.
414	(2) Prohibition of Violence. This section shall prohibit any violent intentional act
415	committed by a member of the entity that inflicts, attempts to inflict, or threatens
416	to inflict emotional or bodily harm on another person, or damage to property, and
417	set forth any further expectations regarding the prohibition of violence.
418	(3) Drug and Alcohol Use. This section shall prohibit the use of alcohol and
419	prohibited drugs for a member of an entity when acting in their official capacity,
420	and set forth any further expectations regarding the use of prohibited drugs and
421	alcohol.
422	(4) Social Media. This section shall identify expectations for the use of social
423	media in regards to official business of the entity.
424	(5) Conflict of Interest. This section shall state any standards and expectations
425	additional to those required by law of the Nation in regards to conflicts of interest
426	and how they are handled, as well as requirements related to prohibited activities
427	resulting from disclosed conflicts of interest, and means by which a party can
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alleviate or mitigate the conflict of interest.

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105.11. Electronic Polling

105.11-1. An entity may utilize an e-poll when approval of an action may be required before the next available meeting agenda of the entity.

105.11-2. Conducting an E-Poll. The Chairperson of the entity, or designee, shall e-mail the epoll to all members of the entity. Requests for an e-poll shall be sent only from an official e-mail

- (e) "Article V. Stipends and Compensation" shall consist of the following information:
  - (1) Stipends. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.
  - (2) Compensation. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.
- (f) "Article VI. Records and Reporting" shall consist of the following information:
  - (1) Agenda Items. Agenda items shall be maintained in a consistent format as identified by this section.
  - (2) Minutes. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the Business Committee Support Office.
  - (3) Attachments. Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented. This section shall identify how records of attachments shall be kept.
  - (4) Oneida Business Committee Liaison. Entities shall regularly communicate with the Oneida Business Committee member who is their designated liaison. This section shall identify a format and frequency for communication which may be as the liaison and entity agree to, but not less than that required in any law or policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. The purpose of the liaison relationship is to uphold the ability of the liaison to act as a support to that entity.
  - (5) Audio Recordings. An entity shall audio record all meetings. This section shall state how the entity shall audio record meetings, and how the entity shall maintain the audio records.
    - (A) Exception. Audio recordings of executive session portions of a meeting shall not be required.
- (g) "Article VII. Amendments" consists of:
  - (1) Amendments to Bylaws. This section shall describe how amendments to the bylaws are made. Any amendments to bylaws shall conform to the requirements of this and any other policy of the Nation. Amendments to bylaws shall be approved by the Oneida Business Committee, in addition to the General Tribal Council when applicable, prior to implementation.

address of the entity. The e-poll's message shall include the following information:

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- (a) The e-mail subject line shall begin with "E-poll Request:" and include a short title describing the purpose of the request.
- (b) The body of the e-poll shall contain the following elements:
  - (1) An executive summary of the reason for the request and why the request cannot be presented at the next available meeting of the entity;
  - (2) A proposed motion which shall be in bold and identified in a separate paragraph by the words "Requested Action;"
  - (3) All attachments in \*.pdf format, which are necessary to understand the request being made; and
  - (4) A deadline date for a response to be returned regarding the results of the electronic poll which shall be in bold and identified in a separate paragraph by the words "Deadline for Response."
    - (A) E-poll requests shall be open for response not less than one (1) hour and no more than twenty-four (24) hours.
    - (B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.
- 105.11-3. Response to an E-Poll. Only the member of an entity shall respond to an e-poll. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.
  - (a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.
  - (b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.
  - (c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.
  - (d) The Chairperson, or designee, shall monitor all responses and deadline dates for responses.
- 105.11-4. *Entering an E-Poll in the Record*. Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:
  - (a) Original e-poll request and all supporting documentation;
  - (b) A summary of the e-poll results identifying each member of the entity and his or her response; and
  - (c) A copy of any comment by a member of the entity if comments are made beyond a vote.

#### 105.12. Reporting Requirements

- 105.12-1. *Minutes*. All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.
  - (a) Actions taken by an entity are valid upon approval of the action by vote, unless the

- (b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.
- (c) No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.
- 105.12-2. *Standard Operating Procedures*. All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.
- 105.12-3. Quarterly Reports to the Oneida Business Committee. Entities shall provide quarterly reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:
  - (a) Contact Information. The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.
  - (b) *Meetings*. When and how often the entity is holding meetings and whether any emergency meetings have been held.
    - (1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.
  - (c) Accomplishments. Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.
  - (d) Goals. Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.
  - (e) *Budget*. The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.
  - (f) Requests. Details of any requests to the Oneida Business Committee.
  - (g) Other. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.
- 105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.
  - (a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.
  - (b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.

105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

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#### 105.13. Stipends, Reimbursement and Compensation

- 105.13-1. Stipends and reimbursement for expenses shall follow the procedures as set out in this section and according to procedures for payment as set out by the Nation, unless otherwise declined by the entity through its bylaws, or declined by a member.
- 105.13-2. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending the resolution. Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards. 105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than one (1twelve (12) meeting stipends per month fiscal year.
  - (b) Meeting Stipends for an Elected Entity. An individual serving on an elected entity shall be paid no more than two (2twenty-four (24) meeting stipends per month fiscal year.
  - (c) Demonstrating Presence During a Meeting. An entity shall demonstrate the presence of its members during a meeting by taking roll call on the record at both the beginning and conclusion of a meeting.
  - (d) Technological Issues Affecting Presence During a Meeting. If a member of an entity experiences a technological issue during a regular or emergency meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the meeting, the member shall notify the entity of the technological issue as soon as possible.
    - (1) An exemption to the stipend eligibility requirement to be present for the entire meeting may be granted if the entity certifies by a majority vote that the member was present for a majority of the meeting despite the technological issue which disrupted the member's presence during the meeting.
- 105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting. *Joint meetings can occur in person*, by telephone, through videoconferencing, or through other telecommunications.
  - (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
    - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
  - (b) Demonstrating Presence During a Joint Meeting. An entity shall demonstrate the presence of its members during a joint meeting by taking roll call on the record at both the beginning and conclusion of a joint meeting.

 105.14.1 Confidential Information

105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order

- (c) Technological Issues Affecting Presence During a Joint Meeting. If a member of an entity experiences a technological issue during a joint meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the joint meeting, the member shall notify the entity of the technological issue as soon as possible.
  - (1) An exemption to the stipend eligibility requirement to be present for the entire joint meeting may be granted if the entity certifies by a majority vote that the member was present for a majority of the joint meeting despite the technological issue which disrupted the member's presence during the joint meeting.
- 105.13-5. *Oneida Judiciary Hearings*. A member of an entity shall receive a Judiciary hearing stipend if the member's attendance at the Judiciary hearing is required by official subpoena.
- 105.13-6. Hearings of an Entity. A member of an entity that maintains hearing authority may obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.
- 105.13-7. *Other Stipends*. The Oneida Business Committee shall determine if, and when, any other stipends are appropriate to compensate members of entities for their official actions. All possible stipends shall be included in the Oneida Business Committee resolution which sets stipend amounts.
- 105.13-8. *Conferences and Training*. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:
  - (a) A member shall be eligible for a stipend for each full day the member is present at the attending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
    - (1) The amount of the stipend a member is eligible to receive for attendance at a conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a conference or training.
  - (b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.
  - (c) No stipend payments shall be made for those days spent traveling to and from the conference or training.
- 105.13-9. *Business Expenses*. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.
- 105.13-10. *Task Force and Ad Hoc Subcommittees*. Members of task force, ad hoc committees and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

- (a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.
- (b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Nation and the entity.
- (c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.
- (d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.
- 105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and <u>eanshall</u> only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents <u>mustshall</u> be made in accordance with the Nation's laws and policies <u>regardinggoverning</u> open records and open meetings.
- 105.14-3. *Official Oneida Nation E-mail Address*. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
  - (a) If a member is also an employee of the Nation, he or she shall receive a separate email address from his or her regular work e-mail address.
  - (b) A member of an entity shall have thirty (30) days upon election or appointment to an entity to activate his or her official e-mail address.
  - (c) An individual who holds a position as an ad hoc or alternate member of an entity shall be exempt from the requirement to be provided an official e-mail address, unless determined that an e-mail address is necessary for the role and responsibilities of the ad hoc or alternate member.
  - (d) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
  - (ee) A member of an entity shall exclusively use his or her official e-mail address to electronically conduct any business of the entity, and shall not use anya personal or work e-mail address to electronically conduct any business of the entity.
  - (df) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

#### 105.15. Conflicts of Interest

- 105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.
- 105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises, and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.
  - (a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action <u>mustshall</u> be taken by the Nation regarding the status of the official.
- 105.15-3. <u>Ineligibility Due to Conflicts of Interest.</u> Due to the potential for a real or perceived conflict of interest to exist, <u>political appointees the following individuals</u> shall not <u>be eligible to serve on an appointed or elected entity:</u>
  - (a) political appointees;
  - (b) an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, or Intergovernmental Affairs and Communications; and
  - (c) an employee who serves as a direct report to the Oneida Business Committee or General Manager.

#### 105.16. Use of the Nation's Assets

- 105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.
- 105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:
  - (a) all transactions are executed in accordance with management's authorization; and
  - (b) access to assets is permitted only in accordance with management's authorization; and
  - (c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.
- 105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

#### 105.17. Dissolution of an Entity

- 105.17-1. Dissolution of a Task Force or Ad Hoc Committee. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.
- 732 105.17-2. *Dissolution of an Entity*. All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee.
- 734 105.17-3. *Notice of Dissolution*. Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida

## Draft 2 for OBC Consideration (Redline to Last Permanent Draft - BC-09-26-18-C) 2020 08 12

- Business Committee shall provide the entity written notice of the dissolution.
  - 105.17-4. *Management of Records and Materials*. All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.
    - (a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

#### 105.18. Enforcement

- 105.18-1. Any member of an entity found to be in violation of this law may be subject to:
  - (a) sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;
  - (b) removal pursuant to any laws or policies of the Nation's governing removal, if the individual is a member of an elected entity; or
  - (c) termination of appointment by the Oneida Business Committee, if the individual is a member of an appointed entity.

End.

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Adopted - BC-08-02-95-A
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Amended - BC-05-14-97-F
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Emergency Amendments Amended - BC-04-12-06-JJ
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Amended - BC-09-27-06-E (permanent adoption of emergency amendments)
Amended - BC-09-22-10-C
Amended - BC-09-26-18-C
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Emergency Amended - BC-03-11-20-B

#### Title 1. Government and Finances – Chapter 105 Laotiyanlahsla?shúha katyohkwaya'tú'se? Their laws of the groups we have BOARDS, COMMITTEES, AND COMMISSIONS

105.1. Purpose and Policy	105.10. Bylaws
105.2. Adoption, Amendment, Repeal	105.11 Electronic Polling
105.3. Definitions	105.12. Reporting Requirements
105.4. Creation of an Entity	105.13. Stipends, Reimbursement and Compensation
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105.6. Vacancies	105.15. Conflicts of Interest
105.7. Appointment to an Entity	105.16. Use of the Nation's Assets
105.8. Election to an Entity	105.17. Dissolution of an Entity
105.9. Oath of Office	105.18. Enforcement

#### 105.1. Purpose and Policy

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105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

- (a) This law shall not apply to the Oneida Business Committee, or standing committees of the Oneida Business Committee.
- (b) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.
- 105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

#### 105.2. Adoption, Amendment, Repeal

- 105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C and amended by BC- - .
- 105.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 22 105.2-3. Should a provision of this law or the application thereof to any person or circumstances
- be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions
- 24 to have legal force without the invalid portions.
- 105.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 27 105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### 105.3. Definitions

- 105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Application" means the form by which a person seeks to be appointed to fill a vacancy

on an entity.

- (b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.
  - (c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
  - (d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.
  - (e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.
  - (f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.
  - (g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.
  - (h) "Direct report" means a position which requires direct contact and supervision by the Oneida Business Committee because of the position, the duties, or the services provided. Direct reports shall be identified by the Oneida Business Committee through resolution
  - (i) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.
  - (j) "E-poll" means an electronic poll, which is the act of delivering an e-mail to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.
  - (k) "Joint meeting" means a meeting with the Oneida Business Committee.
  - (1) "Nation" means the Oneida Nation.
- (m) "Per Diem" means the payment made by the Nation to offset the costs of being on travel on behalf of the Oneida Nation.
- (n) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member's daily activities and operations.
- (o) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used

in an unauthorized or unlawful manner.

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- (p) "Stipend" means the amount paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation.
- (q) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.
- (r) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by clear and convincing evidence.
- (s) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.
- (t) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

## 105.4. Creation of an Entity

- 105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.
- 105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.
- 99 105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

## 105.5. Applications

- 105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.
  - (a) All applications shall include:
    - (1) a statement explaining the attendance requirements of section 105.12-3; and
    - (2) a section regarding disclosures of conflicts of interest.
  - (b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.
- 105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date.
- 117 105.5-3. Within eight (8) days after the posted deadline for filing applications, the Business
- 118 Committee Support Office shall notify all persons who have filed an application of the date his or
- her application was received and if his or her application met the deadline to be considered for the election or appointment.

- 121 105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. Applications for appointed positions shall be verified by the Business
- 123 Committee Support Office as needed or as required in the bylaws of the entity.
  - 105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Business Committee Support Office may repost for an additional time period.
    - (a) If the number of applicants is equal to or less than the number of vacancies then it shall be determined to be an insufficient number of applicants.
    - (b) The Business Committee Support Office shall notify the Oneida Business Committee if a position will be reposted for an additional time period.
    - (c) In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.
    - (d) The Oneida Business Committee may elect to include within the pool of appointed persons late applications.

## 105.6. Vacancies

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- 105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.
- 105.6-2. A position on an entity shall be considered vacant in the following situations:
  - (a) *End of Term*. A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.
    - (1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.
  - (b) Removal. Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.
  - (c) Termination of Appointment. A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.
  - (d) Resignation. A resignation is effective upon:
    - (1) Deliverance of a letter to the Business Committee Support Office and to the Chairperson of the entity, or designee; or
    - (2) Acceptance by motion of the entity of a verbal resignation.
- (e) New Positions. Vacancies on new entities are effective upon adoption of bylaws.
- 105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.
- 105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The Business Committee Support Office shall post notice of vacancies at the following times:
- 164 (a) End of Term. Automatically sixty (60) days prior to completion of the term.

- (b) Removal. No later than the next Oneida Business Committee meeting following the effective date of the removal.
   (c) Resignation. No later than the next Oneida Business Committee meeting following
  - (c) Resignation. No later than the next Oneida Business Committee meeting following the Business Committee Support Office's receipt of notice of an effective resignation from the entity.
  - (d) New Positions. Upon one of the following conditions:
    - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
    - (2) upon date specified when creating the entity.
  - (e) *Termination of appointment*. No later than the next Oneida Business Committee meeting following the effective date of the termination.
  - 105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

## 105.7. Appointment to an Entity

- 105.7-1. *Appointment Selection*. The following procedures shall be used to determine how the applicant for an appointed position is selected:
  - (a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
    - (1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and
    - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made; or
    - (3) if delays in compiling the applications, summary of qualifications, or results of any investigations exist, request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2).
  - (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
    - (1) The entity's Chairperson may review the application materials and submit to the Business Committee Support Office a recommendation to the Oneida Business Committee of an applicant for appointment.
      - (A) The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida Business Committee meeting in which the appointment is intended to be made.
  - (c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough

209 discussion, the Oneida Business Committee shall: 210

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- (1) select an applicant for appointment, or
- ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.
- (d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.
- (e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:
  - (1) accept the selected applicant and vote to appoint the individual to the vacant position, or
  - (2) reject the selected applicant and vote to oppose the appointment of the individual.
- (f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.
- 105.7-2. Notification of Appointment. Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.
  - (a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.
  - (b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: "The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."
- 105.7-3. Declination of Appointment. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.
  - (a) An individual may decline an appointment to an entity in the following ways:
    - (1) Delivery of a letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or
    - (2) The failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee.
  - (b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined

in section 105.7-1 to select another applicant for appointment.

- 105.7-4. *Termination of Appointment*. An appointed member of an entity serves at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.
  - (a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.
  - (b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

## 105.8. Election to an Entity

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- 105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or apply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.
  - (a) When the Election Board notifies an applicant or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: "The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."
- 105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

## 105.9. Oath of Office

- 105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternative time and location as determined by the Secretary. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.
  - (a) When taking an oath, the appointed or elected member shall appear in person to take his or her oath, except if granted permission by the Secretary to appear through video conferencing, or through other telecommunications.
  - (b) If an oath is administered outside of an Oneida Business Committee meeting, a quorum of Oneida Business Committee members shall be present to witness the oath.
- 105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.
- 291 105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded to the new member of the entity and the entity.
- 294 105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is 295 pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws 296 and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation

- 297 Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people 298 with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will 299 carry out the duties and responsibilities as a member of the [entity name], and all recommendations 300 shall be made in the best interest of the Oneida Nation as a whole.
- 301 105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware 302 of their duty to the Nation and as members of the entity.

## 105.10. Bylaws

- 105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.
  - (a) All existing entities shall comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law.
  - (b) Bylaws shall contain at least the minimum information required by law, although more information is not prohibited.
  - (c) Exception. Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities shall have, at minimum, mission or goal statements for completion of the task.
- 105.10-2. Articles. Bylaws shall contain, at a minimum, the following Articles:
  - (a) Article I. Authority.
  - (b) Article II. Officers.
  - (c) Article III. Meetings.
  - (d) Article IV. Expectations.
  - (e) Article V. Stipends and Compensation.
  - (f) Article VI. Records and Reporting.
  - (g) Article VII. Amendments.
- 105.10-3. Sections. Articles shall be divided into "sections" as set out.
  - (a) "Article I. Authority" shall consist of the following:
    - (1) Name. The full name of the entity shall be stated, along with any short name that will be officially used.
    - (2) Establishment. This section shall state the citation and name, if any, of the creation document.
    - (3) Authority. This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.
    - (4) Office. There shall be listed the official office or post box of the entity.
    - (5) *Membership*. The following information shall be in this section:
      - (A) Number of members on the entity;
      - (B) If members on the entity are elected or appointed, and how a member is elected or appointed;
      - (C) How vacancies are filled; and
      - (D) Qualifications for membership on the entity.
        - (i) In order to qualify for membership on an entity, a person shall meet the minimum age requirements set forth for status as a

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343	(6) Termination or Removal. This section shall identify causes for termination or
344	removal, if any, in addition to those already identified in laws and/or policies of the
345	Nation.
346	(7) Trainings and Conferences. This section shall describe any trainings and/or
347	conferences that the entity deems necessary for members to responsibly serve the
348	entity, if any.
349	(b) "Article II. Officers" shall consist of the following:
350	(1) Chairperson and Vice-Chairperson. This section creates the chairperson and
351	vice-chairperson positions of the entity. Other officer positions may also be created
352	here.
353	(2) Responsibilities of the Chairperson. Because of the importance of this position,
354	all duties and responsibilities of the chairperson, as well as limitations of the
355	chairperson shall be specifically listed here.
356	(3) Responsibilities of the Vice-Chairperson. Because of the importance of this
357	position, all duties and responsibilities of the vice-chairperson, as well as
358	limitations of the vice-chairperson shall be specifically listed here.
359	(4) Responsibilities of Additional Officers. There may be additional sections as
360	needed for every officer position created in subsection one (1) above. These
361	sections shall state all duties and responsibilities of the officer, as well as any
362	limitations of the officer.
363	(5) Selection of Officers. This section shall identify how a member of the entity
364	shall be selected for an official officer position in the entity.
365	(6) Purchases and Travel. This section shall identify how the entity shall approve
366	purchases or travel on behalf of the entity.
367	(A) An entity shall follow the Nation's policies and procedures regarding
368	purchasing and sign-off authority.
369	(B) Upon formal approval of a purchase by an entity, the Business
370	Committee Support Office shall have official budgetary sign off authority
371	for the entity.
372	(C) An entity shall approve a member's request to travel on behalf of the
373	entity by majority vote at a regular or emergency meeting of the entity.
374	(7) Personnel. This section shall state the entity's authority for hiring personnel,
375	if any, and the duties of such personnel.
376	(c) "Article III. Meetings" shall consist of the following:
377	(1) Regular meetings. This section shall identify when and where regular meetings
378	shall be held, and how the entity shall provide notice of the meeting agenda,
379	documents, and minutes.
380	(2) Emergency meetings. This section shall identify what constitutes an emergency
381	meeting, how emergency meetings shall be called, and how the entity shall provide
382	notice of the emergency meeting.
383	(A) All bylaws shall include a provision requiring that within seventy-two
384	(72) hours after an emergency meeting, the entity shall provide the Nation's
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qualified voter of the Nation, unless a law, policy, or directive sets forth a minimum age requirement. (6) Termination or Removal. This section shall identify causes for termination or ws and/or policies of the be any trainings and/or to responsibly serve the ates the chairperson and tions may also be created portance of this position, ell as limitations of the f the importance of this hairperson, as well as

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427 428 Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular meeting.

- (3) *Joint Meetings*. This section shall identify if joint meetings shall be held, the frequency and location of joint meetings, and how the entity shall provide notice of the meeting agenda, documents, and minutes.
- (4) *Quorum*. This section shall identify how many members of an entity create a quorum.
- (5) Order of Business. This section sets out how the agenda will be set up.
- (6) *Voting*. This section shall identify voting requirements, such as, but not limited to:
  - (A) the percentages that shall be needed to pass different items;
  - (B) if, and when, the chairperson is allowed to vote;
  - (C) if the use of an e-poll is permissible; and
  - (D) if the use of and e-poll is permissible, who will serve as the Chairperson's designee for the responsibility of conducting an e-poll, if a designee is utilized.
- (d) "Article IV. Expectations" shall consist of the following information:
  - (1) Behavior of Members. This section shall identify the behavioral expectations and requirements of a member of the entity, and identify how the entity shall enforce these behavioral expectations.
  - (2) *Prohibition of Violence*. This section shall prohibit any violent intentional act committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property, and set forth any further expectations regarding the prohibition of violence.
  - (3) Drug and Alcohol Use. This section shall prohibit the use of alcohol and prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and alcohol.
  - (4) Social Media. This section shall identify expectations for the use of social media in regards to official business of the entity.
  - (5) Conflict of Interest. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities resulting from disclosed conflicts of interest, and means by which a party can alleviate or mitigate the conflict of interest.
- (e) "Article V. Stipends and Compensation" shall consist of the following information:
  - (1) Stipends. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.
  - (2) Compensation. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.
- (f) "Article VI. Records and Reporting" shall consist of the following information:
  - (1) Agenda Items. Agenda items shall be maintained in a consistent format as

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identified by this section.

- (2) *Minutes*. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the Business Committee Support Office.
- (3) *Attachments*. Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented. This section shall identify how records of attachments shall be kept.
- (4) Oneida Business Committee Liaison. Entities shall regularly communicate with the Oneida Business Committee member who is their designated liaison. This section shall identify a format and frequency for communication which may be as the liaison and entity agree to, but not less than that required in any law or policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. The purpose of the liaison relationship is to uphold the ability of the liaison to act as a support to that entity.
- (5) Audio Recordings. An entity shall audio record all meetings. This section shall state how the entity shall audio record meetings, and how the entity shall maintain the audio records.
  - (A) *Exception*. Audio recordings of executive session portions of a meeting shall not be required.
- (g) "Article VII. Amendments" consists of:
  - (1) Amendments to Bylaws. This section shall describe how amendments to the bylaws are made. Any amendments to bylaws shall conform to the requirements of this and any other policy of the Nation. Amendments to bylaws shall be approved by the Oneida Business Committee, in addition to the General Tribal Council when applicable, prior to implementation.

## 105.11. Electronic Polling

- 105.11-1. An entity may utilize an e-poll when approval of an action may be required before the next available meeting agenda of the entity.
- 105.11-2. *Conducting an E-Poll.* The Chairperson of the entity, or designee, shall e-mail the e-poll to all members of the entity. Requests for an e-poll shall be sent only from an official e-mail address of the entity. The e-poll's message shall include the following information:
  - (a) The e-mail subject line shall begin with "E-poll Request:" and include a short title describing the purpose of the request.
  - (b) The body of the e-poll shall contain the following elements:
    - (1) An executive summary of the reason for the request and why the request cannot be presented at the next available meeting of the entity;
    - (2) A proposed motion which shall be in bold and identified in a separate paragraph by the words "Requested Action;"
    - (3) All attachments in \*.pdf format, which are necessary to understand the request being made; and

(4) A deadline date for a response to be returned regarding the results of the electronic poll which shall be in bold and identified in a separate paragraph by the words "Deadline for Response."

 (A) E-poll requests shall be open for response not less than one (1) hour and no more than twenty-four (24) hours.

 (B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.

105.11-3. Response to an E-Poll. Only the member of an entity shall respond to an e-poll. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.

(a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.

 (b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.

 (c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.

(d) The Chairperson, or designee, shall monitor all responses and deadline dates for responses.

105.11-4. *Entering an E-Poll in the Record.* Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:

(a) Original e-poll request and all supporting documentation;

 (b) A summary of the e-poll results identifying each member of the entity and his or her response; and

 (c) A copy of any comment by a member of the entity if comments are made beyond a vote.

## **105.12.** Reporting Requirements

 105.12-1. *Minutes*. All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.

 (a) Actions taken by an entity are valid upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.(b) Minutes shall be filed according to this section, and any specific directions within

approved bylaws.

(c) No action or approval of minutes is required by the Oneida Business Committee on

(c) No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.

105.12-2. *Standard Operating Procedures*. All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.

105.12-3. Quarterly Reports to the Oneida Business Committee. Entities shall provide quarterly

reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:

- (a) Contact Information. The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.
- (b) *Meetings*. When and how often the entity is holding meetings and whether any emergency meetings have been held.
  - (1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.
- (c) *Accomplishments*. Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.
- (d) Goals. Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.
- (e) *Budget*. The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.
- (f) Requests. Details of any requests to the Oneida Business Committee.
- (g) Other. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.
- 105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.
  - (a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.
  - (b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.
- 105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

## 105.13. Stipends, Reimbursement and Compensation

- 105.13-1. Stipends and reimbursement for expenses shall follow the procedures as set out in this section and according to procedures for payment as set out by the Nation, unless otherwise declined by the entity through its bylaws, or declined by a member.
- 558 105.13-2. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida 559 Business Committee shall periodically review the amounts provided for stipends and, based on the 560 availability of funds, shall adjust those amounts accordingly by amending the resolution. Stipends

are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards. 105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.

- (a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than twelve (12) meeting stipends per fiscal year.
- (b) *Meeting Stipends for an Elected Entity*. An individual serving on an elected entity shall be paid no more than twenty-four (24) meeting stipends per fiscal year.
- (c) Demonstrating Presence During a Meeting. An entity shall demonstrate the presence of its members during a meeting by taking roll call on the record at both the beginning and conclusion of a meeting.
- (d) Technological Issues Affecting Presence During a Meeting. If a member of an entity experiences a technological issue during a regular or emergency meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the meeting, the member shall notify the entity of the technological issue as soon as possible.
  - (1) An exemption to the stipend eligibility requirement to be present for the entire meeting may be granted if the entity certifies by a majority vote that the member was present for a majority of the meeting despite the technological issue which disrupted the member's presence during the meeting.
- 105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
    - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
  - (b) Demonstrating Presence During a Joint Meeting. An entity shall demonstrate the presence of its members during a joint meeting by taking roll call on the record at both the beginning and conclusion of a joint meeting.
  - (c) Technological Issues Affecting Presence During a Joint Meeting. If a member of an entity experiences a technological issue during a joint meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the joint meeting, the member shall notify the entity of the technological issue as soon as possible.
    - (1) An exemption to the stipend eligibility requirement to be present for the entire joint meeting may be granted if the entity certifies by a majority vote that the member was present for a majority of the joint meeting despite the technological issue which disrupted the member's presence during the joint meeting.
- 105.13-5. Oneida Judiciary Hearings. A member of an entity shall receive a Judiciary hearing

- stipend if the member's attendance at the Judiciary hearing is required by official subpoena.
- 606 105.13-6. Hearings of an Entity. A member of an entity that maintains hearing authority may 607 obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of 608 all functions related to the resolution of the matter notwithstanding the amount of time it takes to 609 resolve the matter, including, but not limited to, any continuations of the hearing and decision 610 drafting.
- 611 105.13-7. *Other Stipends*. The Oneida Business Committee shall determine if, and when, any 612 other stipends are appropriate to compensate members of entities for their official actions. All 613 possible stipends shall be included in the Oneida Business Committee resolution which sets stipend 614 amounts.
  - 105.13-8. *Conferences and Training*. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:
    - (a) A member shall be eligible for a stipend for attending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
      - (1) The amount of the stipend a member is eligible to receive for attendance at a conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a conference or training.
    - (b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.
    - (c) No stipend payments shall be made for those days spent traveling to and from the conference or training.
  - 105.13-9. *Business Expenses*. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.
  - 105.13-10. *Task Force and Ad Hoc Subcommittees*. Members of task force, ad hoc committees and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

## 105.14. Confidential Information

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- 105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order to protect the interest of the Nation and ensure that no persons engaged in by the Nation, nor their relatives or associates, benefit from the use of confidential information.
  - (a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.
  - (b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the

Nation and the entity.

- (c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.
- (d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.
- 105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and shall only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents shall be made in accordance with the Nation's laws and policies governing open records and open meetings.
- 105.14-3. Official Oneida Nation E-mail Address. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
  - (a) If a member is also an employee of the Nation, he or she shall receive a separate email address from his or her regular work e-mail address.
  - (b) A member of an entity shall have thirty (30) days upon election or appointment to an entity to activate his or her official e-mail address.
  - (c) An individual who holds a position as an ad hoc or alternate member of an entity shall be exempt from the requirement to be provided an official e-mail address, unless determined that an e-mail address is necessary for the role and responsibilities of the ad hoc or alternate member.
  - (d) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
  - (e) A member of an entity shall exclusively use his or her official e-mail address to electronically conduct any business of the entity, and shall not use a personal or work e-mail address to electronically conduct any business of the entity.
  - (f) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

## 105.15. Conflicts of Interest

- 105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.
- 105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.
  - (a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action shall be taken by the Nation regarding the status of the official.
- 105.15-3. *Ineligibility Due to Conflicts of Interest*. Due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed

or elected entity:

- (a) political appointees;
- (b) an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, or Intergovernmental Affairs and Communications; and
- (c) an employee who serves as a direct report to the Oneida Business Committee or General Manager.

## 105.16. Use of the Nation's Assets

- 105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.
- 105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:
  - (a) all transactions are executed in accordance with management's authorization; and
  - (b) access to assets is permitted only in accordance with management's authorization; and
  - (c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.
- 105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

## 105.17. Dissolution of an Entity

- 105.17-1. *Dissolution of a Task Force or Ad Hoc Committee*. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.
- 721 105.17-2. *Dissolution of an Entity*. All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee.
- 723 105.17-3. *Notice of Dissolution*. Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida Business Committee shall provide the entity written notice of the dissolution.
  - 105.17-4. *Management of Records and Materials*. All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.
    - (a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

## 105.18. Enforcement

## Draft 2 for OBC Consideration 2020 08 12

131	105.18-1. Any member of an entity found to be in violation of this law may be subject to:
738	(a) sanctions and penalties in accordance with any laws or policies of the Nation governing
739	sanctions and/or penalties;
740	(b) removal pursuant to any laws or policies of the Nation's governing removal, if the
741	individual is a member of an elected entity; or
742 743	(c) termination of appointment by the Oneida Business Committee, if the individual is a member of an appointed entity.
744	End.
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748	Adopted - BC-08-02-95-A
749	Amended - BC-05-14-97-F
750	Emergency Amended - BC-04-12-06-JJ
751	Amended - BC-09-27-06-E (permanent adoption of emergency amendments)
752	Amended – BC-09-22-10-C
753	Amended – BC-09-26-18-C
754	Emergency Amended – BC-03-11-20-B
755	Emergency Amended – BC-03-17-20-C
756	Amended – BC
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# FINANCE ADMINISTRATION Fiscal Impact Statement



## **MEMORANDUM**

TO: Lawrence Barton, Chief Financial Officer

FROM: RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

DATE: July 24, 2020

RE: Fiscal Impact of the Boards, Committees, and Commissions Law

**Amendments** 

I. Estimated Fiscal Impact Summary

Law: Boards, Committees, and Com	nmissions Law Amendments	3	Draft 2
	Oneida Election Board, Or	_	·
	Land Claims Commission, Oneida Land Commission, Oneida		
	Nation Commission on Aging, Oneida Nation School Board,		
	Oneida Trust Enrollment Committee, Anna John Resident t		
	Centered Care Community	Board, Oneida Com	munity Library
Implementing Agency	Board, Oneida Environmental Resource Board, Oneida Nation		
	Arts Board, Oneida Personnel Commission, Oneida Police		
	Commission, Oneida Pow Wow Committee Oneida Nation		
	Veterans Affairs Committee, Pardon and Forgiveness		
	Screening committee, Southeastern WI Oneida Tribal Services		
	Advisory Board.		
<b>Estimated time to comply</b>	10 days, in compliance wit	h the Legislative Pro	cedures Act
Estimated Impact	Current Fiscal Year	10 Year Es	timate
<b>Total Estimated Fiscal Impact</b>	Indeterminate	Indeterminate	

## II. Background

## A. Legislative History

This law was adopted by the Oneida Business Committee by resolution BC 05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C, BC-03-11-20-B, and BC-03-17-20-C.

## B. Summary of Content

The amendment allows the Business Committee Support Office to repost a vacancy for an additional time period if insufficient applications are received, request additional time for the Oneida Business Committee to compile application, summarize qualifications, or results of investigations. The Business Committee Support Office shall have official budgetary sign off for all boards, committees, and commissions after formal approval of a purchase by the board, committee, or commission.

The amendment provides a deadline the deadline for the recommendation for appointment by the Chair of an entity shall be the submission deadline for the Oneida Business Committee meeting. The amendment provides that all appointed and elected positions are official after taking an oath during a regular or special Oneida Business Committee meeting or a time and location determined by the Secretary where a quorum of the Oneida Business Committee members are present. The amendment reinstates the requirement that boards, committees, or commission audio record all meetings.

The amendment provides clarification that the use of a proxy to respond to e-poll requests shall not be allowed.

The amendment provides more flexibility in the payment and frequency of stipends for attending board, committee or commission meetings. An appointed entity may be eligible for up to 12 meeting stipends per fiscal year and an elected entity may be eligible for up to 24meeting stipends per fiscal year.

The amendment provides clarification on eligibility of stipends and allowable methods of attendance for joint meetings.

The amendment designates attendance at conference and trainings shall be eligible for a stipend when attendance is required by law, by-law, or resolution.

The amendment specifies the member of an entity shall have thirty (30) days to activate the official email address.

The amendment specifies employees of Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, Intergovernmental



Affairs, Communications, and direct reports of the Oneida Business Committee are ineligible to be on boards, committees, or commissions due a real or perceived conflict of interest.

## 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.

## IV. Agency

There are no startup, personnel, office or documentation costs associated with this legislation. The amendments will become effective 10 days from adoption.

## V. Financial Impact

The financial impact of the amendments is indeterminate.

## VI. Recommendation

Finance Department does not make a recommendation regarding 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

1		BC Resolution #
1		Amended Boards, Committees, and Commissions Law Stipends
1 2 3 4 5 6 7	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
6 7	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
	WHEREAS,	the Boards, Committees, and Commissions law ("the Law") was adopted by the Oneida Business Committee through resolution BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C, and BC; and
	WHEREAS,	the Law provides stipends paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for the board, committee, or commission for the betterment of the Nation; and
	WHEREAS,	the Law requires the Oneida Business Committee to set stipend amounts by resolution; and
23 24 25 26	WHEREAS,	the Oneida Business Committee is required to periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending this resolution; and
26 27 28 29 30 31	WHEREAS,	on September 26, 2018, the Oneida Business Committee adopted resolution BC-09-26-18-D titled, "Boards, Committees, and Commissions Law Stipends" which set forth the specific stipend amounts allowed to be paid to a member of a board, committee, or commission; and
32 33 34 35 36	WHEREAS,	on May 8, 2019, the Oneida Business Committee adopted resolution BC-05-08-19-B titled, "Amending Resolution BC-09-26-18-D Boards, Committees, and Commissions Law Stipends" to allow the Oneida Nation School Board to be eligible to receive a stipend for participating in interviews and/or job description prescreens; and
37 38 39 40 41	WHEREAS,	on March 17, 2019, the Oneida Business Committee adopted resolution BC-03-27-20-D titled, "Amending Resolution BC-05-08-19-B Boards, Committees, and Commissions Law Stipends" to reflect emergency amendments that were made to the Law through resolution BC-03-17-20-C to address the requirements of holding stipend eligible meetings during the COVID-19 pandemic by providing that the meeting stipend limitation for appointed entities

would be revised from up to "one (1) stipend per month" to up to "twelve (12) stipends per

BC Resolution #\_\_\_\_ Amended Boards, Committees, and Commissions Law Stipends Page 2 of 3

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year," and for elected entities revised from up to "two (2) stipends per month" to up to "twenty-four (24) stipends per year"; and

**WHEREAS,** the Legislative Operating Committee adopted the emergency amendments to the Law setting the limitation on meeting stipends per fiscal year, instead of per month, on a permanent basis through resolution BC- - - - ; and

whereas, the Legislative Operating Committee has reviewed this resolution and provided revisions to be consistent with the amendments to the Law adopted through resolution BC-\_\_-\_\_- and

**NOW THEREFORE BE IT RESOLVED,** that the Oneida Business Committee sets forth the following stipend amounts allowed to be paid to a member of a board, committee, or commission of the Nation:

- 1. Meetings of a Board, Committee, or Commission of the Nation. A member of a board, committee, or commission of the Nation shall receive a stipend for attending a duly called meeting of the board, committee, or commission in accordance with the Law.
  - a. Appointed Boards, Committees, and Commissions. A member of an appointed board, committee, or commission of the Nation shall receive a stipend of seventy-five dollars (\$75) for a duly called meeting of the board, committee, or commission for up to twelve (12) meetings per fiscal year.
    - i. Appointed boards, committees, and commissions of the Nation include the following:
      - 1. Anna John Resident Centered Care Community Board;
      - 2. Oneida Community Library Board;
      - 3. Environmental Resource Board:
      - 4. Oneida Nation Arts Board;
      - 5. Oneida Nation Veterans Affairs Committee;
      - 6. Oneida Personnel Commission;
      - 7. Oneida Police Commission:
      - 8. Oneida Pow-wow Committee:
      - 9. Pardon and Forgiveness Screening Committee; and
      - 10. Southeastern Oneida Tribal Services Advisory Board.
  - b. *Elected Boards, Committees, and Commissions.* A member of an elected board, committee, or commission of the Nation shall receive a stipend of one hundred dollars (\$100) for a duly called meeting of the board, committee, or commission for up to twenty-four (24) meetings per fiscal year.
    - i. Elected boards, committees, and commissions of the Nation include the following:
      - 1. Oneida Nation Commission on Aging;
      - 2. Oneida Election Board:
      - 3. Oneida Land Claims Commission:
      - 4. Oneida Land Commission;
      - 5. Oneida Nation School Board:
      - 6. Oneida Trust Enrollment Committee; and
      - 7. Oneida Gaming Commission;
        - a. Although the Oneida Gaming Commission is an elected commission of the Nation, the Oneida Nation Gaming Ordinance provides that the compensation of Oneida Nation Gaming Commissioners is not subject to the Nation's Boards, Committees, and Commissions law.
- 2. Joint Meetings with the Oneida Business Committee. A member of a board, committee, or commission of the Nation shall receive a stipend for attending a duly called joint meeting between

BC Resolution # \_\_\_\_\_ Amended Boards, Committees, and Commissions Law Stipends Page 3 of 3

 the board, committee, or commission and the Oneida Business Committee in accordance with the Law.

a. Appointed Boards, Committees, and Commissions. A member of an appointed board, committee, or commission of the Nation shall receive a stipend of seventy-five dollars (\$75) for a duly called joint meeting.

 b. *Elected Boards, Committees, and Commissions*. A member of an elected board, committee, or commission of the Nation shall receive a stipend of one hundred dollars (\$100) for a duly called joint meeting.

3. Oneida Judiciary Hearings. A member of a board, committee, or commission of the Nation shall receive a stipend of fifty dollars (\$50) for attending a hearing of the Oneida Judiciary if the member's attendance at the hearing is required by official subpoena.

4. Hearings of a Board, Committee, or Commission of the Nation. A member of a board, committee, or commission of the Nation shall receive a stipend of fifty dollars (\$50) for conducting an official hearing of the board, committee, or commission.

5. *Miscellaneous Stipends*. The Oneida Business Committee shall have the discretion to determine any other stipends deemed appropriate.

 a. Pow-wow Activities. A member of the Oneida Pow-wow Committee shall receive a stipend of twenty-five dollars (\$25) per hour for services he or she provides during each Pow-wow, not to exceed two hundred dollars (\$200) per day, contingent upon available budgeted funds.

b. *Election Activities*. A member of the Oneida Election Board shall receive a stipend of twenty-five dollars (\$25) per hour, not to exceed two hundred dollars (\$200) per day, contingent upon available budgeted funds, for services he or she provides during an election including, but not limited to, managing the polling sites, recounts, and lot drawings.

c. General Tribal Council Meetings. A member of the Oneida Election Board shall receive a stipend of one hundred dollars (\$100) for attendance and service provided at a General Tribal Council meeting of the Nation.

d. Interviews and Job Selection Pre-Screening. A member of the Oneida Personnel Commission and/or the Oneida Nation School Board shall receive a stipend of twenty-five dollars (\$25) for up to four (4) hours of participating in interviews and/or job description prescreens, and a stipend of fifty dollars (\$50) for more than four (4) hours of participating in interviews and/or job description pre-screens.

6. Conferences and Training. A member of a board, committee, or commission of the Nation shall receive a stipend of fifty dollars (\$50) for up to four (4) hours of attendance at a conference or training that is required by law, bylaw, or resolution, or a stipend of one hundred dollars (\$100) for more than four (4) hours of attendance at a conference or training that is required by law, bylaw, or resolution.

**BE IT FINALLY RESOLVED,** that this resolution is hereby adopted and shall become effective on August 26, 2020.



## Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



#### Statement of Effect

Amended Boards, Committees, and Commissions Law Stipends

## **Summary**

This resolution sets forth specific stipend amounts allowed to be paid to a member of a board, committee, or commission of the Nation.

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

Date: July 30, 2020

## Analysis by the Legislative Reference Office

The Boards, Committees, and Commissions law ("the Law") was adopted by the Oneida Business Committee for the purpose of governing boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1].

Stipends are paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation. [1 O.C. 105.3-1(n)].

The Law requires that the Oneida Business Committee set stipend amounts by resolution. [1 O.C. 105.13-2]. On September 26, 2018, the Oneida Business Committee adopted resolution BC-09-26-18-D titled, "Boards, Committees, and Commissions Law Stipends" which set forth the specific amounts for the various stipends a member of a board, committee, or commission may be eligible to receive.

The Oneida Business Committee is delegated the responsibility to periodically review the amounts provided for stipends, and based on the availability of funds, adjust those amounts accordingly by amending the stipend resolution. [1 O.C. 105.13-2].

On May 8, 2019, the Oneida Business Committee adopted resolution BC-05-08-19-B titled, "Amending Resolution BC-09-26-18-D Boards, Committees, and Commissions Law Stipends" to allow the Oneida Nation School Board to be eligible to receive a stipend for participating in interviews and/or job description prescreens.

On March 17, 2020, the Oneida Business Committee adopted resolution BC-03-17-20-D titled, "Amending Resolution BC-05-08-19-B Boards, Committees, and Commissions Law Stipends" to reflect emergency amendments that were made to the Law through resolution BC-03-17-20-C to address the requirements of holding stipend eligible meetings during the COVID-19 pandemic. The emergency amendments to the Law provided that the meeting stipend limitation for appointed

entities would be revised from up to "one (1) stipend per month" to up to "twelve (12) stipends per year," and for elected entities revised from up to "two (2) stipends per month" to up to "twenty-four (24) stipends per year."

The Oneida Business Committee will consider the adoption of permanent amendments to the Boards, Committees, and Commissions law on August 12, 2020. This resolution provides that the Legislative Operating Committee has reviewed this resolution and provided revisions to be consistent with the most recent amendments to the Law. This resolution adjusts the meeting stipend limitation for appointed entities from up to "one (1) stipend per month" to up to "twelve (12) stipends per fiscal year," and for elected entities from up to "two (2) stipends per month" to up to "twenty-four (24) stipends per fiscal year."

This resolution also changes how the stipend for conferences and trainings will be calculated to be consistent with amendments made to the Law. Previously, a member of a board, committee, or commission of the Nation was eligible to receive a stipend of one hundred dollars (\$100) per day for attendance at a conference or training that is required by law, bylaw, or resolution. This resolution provides that a member of a board, committee, or commission of the Nation is eligible to receive a stipend of fifty dollars (\$50) for up to four (4) hours of attendance at a conference or training that is required by law, bylaw, or resolution, or a stipend of one hundred dollars (\$100) for more than four (4) hours of attendance at a conference or training that is required by law, bylaw, or resolution.

#### Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> Other Actions to Note When Discussing Stipends of Boards, Committees, and Commissions:

<sup>-</sup> Resolution BC-04-08-20-B placed many boards, committees, and commissions into temporary closure status for the remainder of Fiscal Year 2020 and during any continuing resolution for Fiscal Year 2021. Any board, committee, or commission placed into temporary closure status is not eligible to receive stipends.

<sup>-</sup> Through resolution BC-04-08-20-C the Oneida Business Committee adopted Tier V budget reductions from the Budget Contingency Plan beginning immediately in accordance with the Budget Management and Control law. Tier V budget reductions include a five percent (5%) mandatory cut across the Nation and a reduction of funding to essential services only. The Tier V Budget reductions may affect a board, committee, or commission's ability to collect a stipend.

# July 31, 2020, Legislative Operating Committee E-Poll Approval of the Boards, Committees, and Commissions Law Amendments Adoption Packet

E-POLL REQUEST: Approval of the Boards, Committees, and Commissions Law Amendments Adoption Packet



**Good Afternoon Legislative Operating Committee,** 

This e-mail serves as the e-poll for the approval of the Boards, Committees, and Commissions law amendments adoption packet, and the "Amended Boards, Committees, and Commissions Law Stipends" resolution.

#### **EXECUTIVE SUMMARY**

On March 11, 2020, the Oneida Business Committee adopted emergency amendments to the Boards, Committees, and Commissions law through resolution BC-03-11-20-B to address the ineligibility of an individual to serve on a board, committee, or commission due to the potential for a conflict of interest to exist based on his or her employment with the Nation. Then on March 17, 2020, additional emergency amendments to the Boards, Committees, and Commissions law were made through resolution BC-03-17-20-C to address how meetings are held, and the limitations on stipends in response to the COVID-19 pandemic. The emergency amendments are set to expire on September 17, 2020.

The Legislative Operating Committee has since been developing permanent amendments to the Boards, Committees, and Commissions law. The adoption packet for the Boards, Committees, and Commissions law amendments is ready for approval by the Legislative Operating Committee so that it can be sent to the Oneida Business Committee to consider adoption at the August 12, 2020, Oneida Business Committee meeting. The proposed amendments to the Boards, Committees, and Commissions law will:

- Allow the Business Committee Support Office to repost a vacancy for an additional time period if
  insufficient applications are received, as long as notification is provided to the Oneida Business
  Committee [1 O.C. 105.5-5];
- Allow the Business Committee Support Office to request additional time from the Oneida Business Committee in compiling the applications, summary of qualifications, or results of any investigation [1 O.C. 105.7-1(a)(3)];
- Clarify a deadline for when a Chairperson of an entity has to submit a recommendation for an appointment to the entity for the Oneida Business Committee's consideration [1 O.C. 105.7-1(b)(1)];
- Allow for the oath of office to be taken at an alternative time and location other than during a
  regular or special Oneida Business Committee meeting as determined by the Secretary, as long as
  a quorum of the Oneida Business Committee is present to witness the oath [1 O.C. 105.9-1];
- Require that the entity's bylaws provide how the entity shall approve purchases or travel on behalf of the entity, but clarify the Business Committee Support Office has budgetary sign off authority on behalf of the entity [1 O.C. 105.10-3(b)(6)];

- Reinstate the requirement that an entity audio record all meetings [1 O.C. 105.10-3(f)(5)];
- Clarify that only a member of an entity shall respond to e-polls [1 O.C. 105.11-3];
- Eliminate the requirement that a member of a board, committee, or commission be physically present during the entirety of a meeting or joint meeting in order to be eligible to receive a meeting stipend, but still require the member to be present and participate for the entire meeting through some means [1 O.C. 105.13-3, 105.13-4];
- Address how technological issues during a meeting held through telecommunications is addressed and how it may affect a member's eligibility for a meeting stipend [1 O.C. 105.13-3(d), 105.13-4(c)];
- Provide that meetings and joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications [1 O.C. 105.13-3, 105.13-4];
- Revise how the limitation of stipend eligible meetings is calculated [1 O.C. 105.13-3, 105.13-4];
- Clarify how eligibility for a conference or training stipend is calculated [1 O.C. 105.13-8];
- Provide a deadline for a member to activate his or her e-mail address, and clarify when an ad hoc
  or alternate member of an entity must have an official e-mail address [1 O.C. 105.14-3(b)]; and
- Specify that certain positions within the Nation are ineligible to serve on a board, committee, or commission of the Nation due to the potential for a real or perceived conflict of interest to exist. [1 O.C. 105.15-3].

Additionally, the "Amended Boards, Committees, and Commissions Law Stipends" resolution, which sets forth specific stipend amounts allowed to be paid to a member of a board, committee, or commission of the Nation, is also ready for approval by the Legislative Operating Committee so it can be forwarded to the Oneida Business Committee for consideration alongside the amendments to the Boards, Committees, and Commissions law.

An e-poll is necessary for this matter because Legislative Operating Committee meetings have been canceled due to the COVID-19 pandemic, and immediate action is required by the Legislative Operating Committee to approve the Boards, Committees, and Commissions law amendments adoption packet and the "Amended Boards, Committees, and Commissions Law Stipends" resolution so the materials may be forwarded to the Oneida Business Committee for consideration during the August 12, 2020, Oneida Business Committee meeting.

\*An e-poll was conducted to approve these materials on July 30, 2020. This e-poll failed due to lack of responses received during the designated e-poll response timeframe. The lack of responses were not due to a lack of support for the materials, an additional response for approval was received minutes after the deadline expired. The Legislative Operating Committee is not currently holding meetings due to the COVID-19 pandemic, therefore this e-poll is being resent for consideration by the Legislative Operating Committee.\*

#### **REQUESTED ACTION**

Approve the Boards, Committees, and Commissions law amendments adoption packet and the "Amended Boards, Committees, and Commissions Law Stipends" resolution and forward to the Oneida Business Committee for consideration.

#### **DEADLINE FOR RESPONSE**

August 1, 2020 at 12:00 p.m.

All supporting documentation has been attached to this email for your convenience.



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

## **E-POLL RESULTS:**

The e-poll was approved by David P. Jordan, Ernest Stevens III, Kirby Metoxen, and Jennifer Webster. Daniel Guzman King did not provide a response.

RE: E-POLL REQUEST: Approval of the Boards, Committees, and Commissions Law Amendments Adoption Packet ← Reply ≪ Reply All → Forward David P. Jordan To LOC; Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan Fri 7/31/2020 12:54 PM Cc Clorissa N. Santiago; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster Approve Re: E-POLL REQUEST: Approval of the Boards, Committees, and Commissions Law Amendments Adoption Packet ≪ Reply All → Forward Ernest L. Stevens To LOC; Daniel P. Guzman; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan Fri 7/31/2020 12:55 PM Cc Clorissa N. Santiago; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster Sent from my Verizon, Samsung Galaxy smartphone Get Outlook for Android Re: E-POLL REQUEST: Approval of the Boards, Committees, and Commissions Law Amendments Adoption Packet ← Reply ≪ Reply All → Forward Kirby W. Metoxen To Ernest L. Stevens; LOC; Daniel P. Guzman; Jennifer A. Webster; David P. Jordan Fri 7/31/2020 12:56 PM Cc Clorissa N. Santiago; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster Approve RE: E-POLL REQUEST: Approval of the Boards, Committees, and Commissions Law Amendments Adoption Packet ← Reply ≪ Reply All → Forward Jennifer A. Webster To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen Fri 7/31/2020 1:10 PM Cc Clorissa N. Santiago; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster Approve, Jenny Sent from my Samsung Galaxy smartphone.



## Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson 🔟

DATE: August 12, 2020

RE: Amendments to the Boards, Committees, and Commissions Law

Please find the following attached backup documentation for your consideration of the amendments to the Boards, Committees, and Commissions law:

- 1. Resolution: Amendments to the Boards, Committees, and Commissions Law
- 2. Statement of Effect: Amendments to the Boards, Committees, and Commissions Law
- 3. Boards, Committees, and Commissions Law Amendments Legislative Analysis
- 4. Boards, Committees, and Commissions Law Amendments (Redline)
- 5. Boards, Committees, and Commissions Law Amendments (Clean)
- 6. Boards, Committees, and Commissions Law Fiscal Impact Statement

#### Overview

On March 11, 2020, the Oneida Business Committee adopted emergency amendments to the Boards, Committees, and Commissions law through resolution BC-03-11-20-B to address the ineligibility of an individual to serve on a board, committee, or commission due to the potential for a conflict of interest to exist based on his or her employment with the Nation. Then on March 17, 2020, additional emergency amendments to the Boards, Committees, and Commissions law were made through resolution BC-03-17-20-C to address how meetings are held, and the limitations on stipends in response to the COVID-19 pandemic. The emergency amendments are set to expire on September 17, 2020.

The Legislative Operating Committee has now prepared permanent amendments to the Boards, Committees, and Commissions law for the Oneida Business Committee's consideration. The purpose of the Boards, Committees, and Commissions law is to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1]. This resolution adopts permanent amendments to the Boards, Committees, and Commissions law which will:

- Allow the Business Committee Support Office to repost a vacancy for an additional time period if insufficient applications are received, as long as notification is provided to the Oneida Business Committee [1 O.C. 105.5-5];
- Allow the Business Committee Support Office to request additional time from the Oneida Business Committee in compiling the applications, summary of qualifications, or results of any investigation [1 O.C. 105.7-1(a)(3)];
- Clarify a deadline for when a Chairperson of an entity has to submit a recommendation for an appointment to the entity for the Oneida Business Committee's consideration [1 O.C.

- 105.7-1(b)(1)1;
- Allow for the oath of office to be taken at an alternative time and location other than during a regular or special Oneida Business Committee meeting as determined by the Secretary, as long as a quorum of the Oneida Business Committee is present to witness the oath [1 O.C. 105.9-1];
- Require that the entity's bylaws provide how the entity shall approve purchases or travel on behalf of the entity, but clarify the Business Committee Support Office has budgetary sign off authority on behalf of the entity [1 O.C. 105.10-3(b)(6)];
- Reinstate the requirement that an entity audio record all meetings [1 O.C. 105.10-3(f)(5)];
- Clarify that only a member of an entity shall respond to e-polls [1 O.C. 105.11-3];
- Eliminate the requirement that a member of a board, committee, or commission be physically present during the entirety of a meeting or joint meeting in order to be eligible to receive a meeting stipend, but still require the member to be present and participate for the entire meeting through some means [1 O.C. 105.13-3, 105.13-4];
- Address how technological issues during a meeting held through telecommunications is addressed and how it may affect a member's eligibility for a meeting stipend [1 O.C. 105.13-3(d), 105.13-4(c)];
- Provide that meetings and joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications [1 O.C. 105.13-3, 105.13-4];
- Revise how the limitation of stipend eligible meetings is calculated [1 O.C. 105.13-3, 105.13-4];
- Clarify how eligibility for a conference or training stipend is calculated [1 O.C. 105.13-8];
- Provide a deadline for a member to activate his or her e-mail address, and clarify when an ad hoc or alternate member of an entity must have an official e-mail address [1 O.C. 105.14-3(b)]; and
- Specify that certain positions within the Nation are ineligible to serve on a board, committee, or commission of the Nation due to the potential for a real or perceived conflict of interest to exist. [1 O.C. 105.15-3].

The Legislative Operating Committee developed the proposed amendments to the Boards, Committees, and Commissions law through input received from the following departments and entities during the one (1) year review of the Boards, Committees, and Commissions law as adopted through resolution BC-09-26-18-C: Oneida Law Office, Business Committee Support Office, Oneida Land Commission, Oneida Trust Enrollment Committee, Oneida Nation Commission on Aging, Oneida Nation School Board, Oneida Police Commission, Oneida Personnel Commission, and Oneida Nation Arts Board.

A public meeting, in accordance with the Legislative Procedures Act, was not held for the proposed amendments to the Boards, Committees, and Commissions law due to the COVID-19 pandemic. In early 2020 the world was hit with the COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts. On March 12, 2020, Chairman Tehassi Hill signed a "*Declaration of Public Health State of Emergency*" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. This Public Health State of Emergency was extended through August 11, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, and BC-07-08-20-A.



On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibits all public gatherings of any number of people. On April 21, 2020, the COVID-19 Core Decision Making Team issued an "Updated Safer at Home" declaration which allowed for gaming and golf operations to resume. On May 19, 2020, the COVID-19 Core Decision Making Team issued a "Safer at Home Declaration, Amendment, Open for Business" which directs that individuals within the Oneida Reservation should continue to stay at home, businesses can re-open under certain safer business practices, and social distancing should be practiced by all persons. Then on June 10, 2020, the COVID-19 Core Decision Making Team issued a "Stay Safer at Home" declaration which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.

On March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

Although no public meeting for the proposed amendments to the Boards, Committees, and Commissions law was held in person, the public comment period was still held open until July 9, 2020, for the submission of written comments. Five (5) individuals submitted written comments during the public comment period for a total of twenty-four (24) comments received. All public comments received were reviewed and considered by the Legislative Operating Committee July 9, 2020, and July 16, 2020. Any changes made based on those comments have been incorporated into this draft.

## **Requested Action**

Approve the Resolution: Amendments to the Boards, Committees, and Commissions Law



## **Oneida Nation**

Post Office Box 365

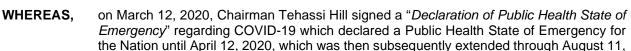
Phone: (920)869-2214



Oneida, WI 54155

## BC Resolution # Amendments to the Boards, Committees, and Commissions Law

1 2 3	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and
	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
	WHEREAS,	the Boards, Committees, and Commissions law ("the Law") was adopted by the Oneida Business Committee through BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C; and
	WHEREAS,	the purpose of the Law is to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions; and
	WHEREAS,	the Oneida Business Committee adopted emergency amendments to the Law through resolution BC-03-11-20-B and BC-03-17-20-C in accordance with the emergency adoption process set forth by the Legislative Procedures Act; and
	WHEREAS,	the emergency amendments addressed the ineligibility of an individual to serve on a board, committee, or commission due to the potential for a conflict of interest to exist based on his or her employment with the Nation, as well as how meetings are held and the limitations on stipends in response to the COVID-19 pandemic; and
26 27	WHEREAS,	the emergency amendments are set to expire on September 17, 2020; and
28 29 30 31 32 33 34 35	WHEREAS,	the Legislative Operating Committee has developed permanent amendments to the Law for consideration by the Oneida Business Committee; and
	WHEREAS,	the amendments to the Law allow the Business Committee Support Office to repost a vacancy for an additional time period if insufficient applications are received, as long as notification is provided to the Oneida Business Committee; and
36 37 38 39	WHEREAS,	the amendments to the Law allow the Business Committee Support Office to request additional time from the Oneida Business Committee for compiling the applications, summary of qualifications, or results of any investigation; and
40 41 42 43	WHEREAS,	the amendments to the Law clarify a deadline for when a Chairperson of an entity has to submit a recommendation for an appointment to the entity for the Oneida Business Committee's consideration; and



the Nation until April 12, 2020, which was then subsequently extended through August 11, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-

A, and BC-07-08-20-A; and

whereas, on March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their

place of residence, with certain exceptions allowed; and

whereas, the Nation's COVID-19 Core Decision Making Team modified the "Safer at Home" declaration on April 21, 2020, with the issuance of the "Updated Safer at Home" declaration, on May 19, 2020, with the "Safer at Home Declaration, Amendment, Open for Business" declaration, and then again on June 10, 2020, with the issuance of the "Stay

Safer at Home" declaration; and

whereas, on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment

period; and

WHEREAS, although a public meeting was not held for the proposed amendments to this Law, the public comment period for the amendments to this Law was held open until July 9, 2020; and

an

**WHEREAS,** the Legislative Operating Committee reviewed and considered all public comments received on July 9, 2020, and July 16, 2020; and

**NOW THEREFORE BE IT RESOLVED,** that the amendments to the Boards, Committees, and Commissions law are hereby adopted and shall be effective on August 26, 2020.

**BE IT FURTHER RESOLVED**, that the amended Boards, Committees, and Commissions law hereby supersedes any conflicting language that may be found in the bylaws of boards, committees, or commissions of the Nation.

**BE IT FINALLY RESOLVED**, that an individual employed in a position identified in section 105.15-3(a)-(c) that is currently simultaneously serving on an elected board, committee, or commission of the Nation shall be allowed to complete his or her term.



## Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



## **Statement of Effect**

Amendments to the Boards, Committees, and Commissions Law

## **Summary**

This resolution adopts amendments to the Boards, Committees, and Commissions law.

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

Date: July 30, 2020

## Analysis by the Legislative Reference Office

The Boards, Committees, and Commissions law ("the Law") was adopted by the Oneida Business Committee for the purpose governing boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1]. The Boards, Committees, and Commissions law was most recently amended on an emergency basis through the adoption of resolution BC-03-11-20-B and BC-03-17-20-C for the purpose of addressing the ineligibility of an individual to serve on a board, committee, or commission due to the potential for a conflict of interest to exist based on his or her employment with the Nation, as well as addressing how meetings are held, and the limitations on stipends in response to the COVID-19 pandemic. The emergency amendments are set to expire on September 17, 2020.

This resolution seeks permanent amendments to the Boards, Committees, and Commissions law which will:

- Allow the Business Committee Support Office to repost a vacancy for an additional time period if insufficient applications are received, as long as notification is provided to the Oneida Business Committee [1 O.C. 105.5-5];
- Allow the Business Committee Support Office to request additional time from the Oneida Business Committee in compiling the applications, summary of qualifications, or results of any investigation [1 O.C. 105.7-1(a)(3)];
- Clarify a deadline for when a Chairperson of an entity has to submit a recommendation for an appointment to the entity for the Oneida Business Committee's consideration [1 O.C. 105.7-1(b)(1)];
- Allow for the oath of office to be taken at an alternative time and location other than during a regular or special Oneida Business Committee meeting as determined by the Secretary, as long as a quorum of the Oneida Business Committee is present to witness the oath [1 O.C. 105.9-1];
- Require that the entity's bylaws provide how the entity shall approve purchases or travel on behalf of the entity, but clarify the Business Committee Support Office has budgetary sign off authority on behalf of the entity [1 O.C. 105.10-3(b)(6)];
- Reinstate the requirement that an entity audio record all meetings [1 O.C. 105.10-3(f)(5)];
- Clarify that only a member of an entity shall respond to e-polls [1 O.C. 105.11-3];
- Eliminate the requirement that a member of a board, committee, or commission be

physically present during the entirety of a meeting or joint meeting in order to be eligible to receive a meeting stipend, but still require the member to be present and participate for the entire meeting through some means [1 O.C. 105.13-3, 105.13-4];

- Address how technological issues during a meeting held through telecommunications is addressed and how it may affect a member's eligibility for a meeting stipend [1 O.C. 105.13-3(d), 105.13-4(c)];
- Provide that meetings and joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications [1 O.C. 105.13-3, 105.13-4];
- Revise how the limitation of stipend eligible meetings is calculated [1 O.C. 105.13-3, 105.13-4];
- Clarify how eligibility for a conference or training stipend is calculated [1 O.C. 105.13-8];
- Provide a deadline for a member to activate his or her e-mail address, and clarify when an ad hoc or alternate member of an entity must have an official e-mail address [1 O.C. 105.14-3(b)]; and
- Specify that certain positions within the Nation are ineligible to serve on a board, committee, or commission of the Nation due to the potential for a real or perceived conflict of interest to exist. [1 O.C. 105.15-3].

The Legislative Procedures Act ("the LPA") was adopted by the General Tribal Council for the purpose of providing a process for the adoption or amendment of laws of the Nation. [1 O.C. 109.1-1]. The LPA requires that for all proposed legislation both a legislative and fiscal analysis be developed. [1 O.C. 109.6 and 109.7]. The proposed amendments to the Boards, Committees, and Commissions law comply with these requirements.

The LPA also requires that there be an opportunity for public review during a public meeting and public comment period. [1 O.C. 109.8]. A public meeting for the Boards, Committees, and Commissions law amendments was not held due to the COVID-19 pandemic. In early 2020 the world experienced a COVID-19 pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts.

In accordance with the Emergency Management and Homeland Security law, on March 12, 2020, Chairman Tehassi Hill signed a "*Declaration of Public Health State of Emergency*" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. [3 O.C. 302.8-1]. The Public Health State of Emergency for the Nation has been extended until August 11, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, and BC-07-08-20-A.

On March 17, 2020, the Oneida Business Committee adopted emergency amendments to the Emergency Management and Homeland Security law to create and delegate authority to a COVID-19 Core Decision Making Team ("COVID-19 Team"). [3 O.C. 302.10]. When a public health emergency has been declared, the COVID-19 Team has the authority to declare exceptions to the Nation's laws, policies, procedures, regulations, or standard operating procedures during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees. [3 O.C. 302.10-2]. These declarations remain in effect for the duration of the Public Health State of Emergency. [3 O.C. 302.10-3].



On March 24, 2020, the Nation's COVID-19 Team made a "Safer at Home" declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. On April 21, 2020, the COVID-19 Core Decision Making Team issued an "Updated Safer at Home" declaration which allowed for gaming and golf operations to resume. On May 19, 2020, the COVID-19 Core Decision Making Team issued a "Safer at Home Declaration, Amendment, Open for Business" which directs that individuals within the Oneida Reservation should continue to stay at home, businesses can re-open under certain safer business practices, and social distancing should be practiced by all persons. Then on June 10, 2020, the COVID-19 Core Decision Making Team issued a "Stay Safer at Home" declaration which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.

On March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

Although a public meeting for the Boards, Committees, and Commissions law amendments was not held, the public comment period was still held open until July 9, 2020. The Legislative Operating Committee reviewed and considered the public comments that were received on July 9, 2020, and July 16, 2020.

Adoption of this resolution complies with the process and procedures of the LPA as it has been modified by the COVID-19 Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration.

This resolution provides that the amendments to the Boards, Committees, and Commissions law would become effective on August 26, 2020, in accordance with the LPA. [1 O.C. 109.9-3].

## **Conclusion**

Adoption of this resolution would not conflict with any of the Nation's laws. Adoption of this resolution complies with the Legislative Procedures Act as it has been modified by the COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration.





# AMENDMENTS TO THE BOARDS, COMMITTEES, and COMMISSIONS LAW LEGISLATIVE ANALYSIS

### SECTION 1. EXECUTIVE SUMMARY

SECTION 1. EXECUTIVE SUMMARY			
	Analysis by the Legislative Reference Office		
Intent of the Proposed	<ul> <li>Allow the Business Committee Support Office to repost a vacancy for an additional time period if insufficient applications are received, as long as notification is provided to the Oneida</li> </ul>		
Amendments	Business Committee;  Allow the Business Committee Support Office to request additional time from the Oneida		
	Business Committee in compiling the applications, summary of qualifications, or results of any investigation;		
	<ul> <li>Clarify a deadline for when a Chairperson of a board, committee, or commission of the Nation has to submit a recommendation for an appointment to the entity for the Oneida Business</li> </ul>		
	Committee's consideration;  Allow for the oath of office to be taken at an alternative time and location than during a regular or special Oneida Business Committee meeting as determined by the Secretary, as long as a		
	quorum of the Oneida Business Committee is present to witness the oath;  Require that the entity's bylaws provide how the entity shall approve purchases or travel on		
	behalf of the entity, but clarify the Business Committee Support Office has budgetary sign off authority on behalf of the entity;		
	■ Require that an entity audio record all meetings;		
	<ul> <li>Clarify that only a member of an entity shall respond to e-polls;</li> <li>Eliminate the requirement that a member of a board, committee, or commission be physically.</li> </ul>		
	Eliminate the requirement that a member of a board, committee, or commission be physically present during the entirety of a meeting or joint meeting in order to be eligible to receive a meeting stipend, but still require the member to be present and participate for the entire meeting through some means;		
	<ul> <li>Address how technological issues during a meeting held through telecommunications is address and how it may affect a member's eligibility for a meeting stipend;</li> </ul>		
	<ul> <li>Provide that meetings and joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications;</li> </ul>		
	<ul> <li>Revise how the limitation of stipend eligible meetings is calculated;</li> </ul>		
	Clarify how eligibility for a conference or training stipend is calculated;		
	<ul> <li>Provide a deadline for a member to activate his or her e-mail address, and clarify when an ad hoc or alternate member of an entity must have an official e-mail address;</li> </ul>		
	<ul> <li>Specify that certain positions within the Nation are ineligible to serve on a board, committee, or commission of the Nation due to the potential for a real or perceived conflict of interest to exist.</li> </ul>		
Purpose	To govern boards, committees, and commissions of the Nation, including the procedures regarding		
	the appointment and election of persons to boards, committees and commissions, creation of		
	bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1]		
Affected	Oneida Election Board, Oneida Gaming Commission, Oneida Land Claims Commission, Oneida		
Entities	Land Commission, Oneida Nation Commission on Aging, Oneida Nation School Board, Oneida		
	Trust Enrollment Committee, Anna John Resident Centered Care Community Board, Oneida		
	Community Library Board, Oneida Environmental Resource Board, Oneida Nation Arts Board,		
	Oneida Personnel Commission, Oneida Police Commission, Oneida Pow Wow Committee, Oneida		
	Nation Veterans Affairs Committee, Pardon and Forgiveness Screening Committee, Southeastern WI Oneida Tribal Services Advisory Board		
Public	A public comment period was held open until July 9, 2020. A public meeting was not held in		
Meeting	accordance with the Nation's COVID-19 Core Decision Making Team's declaration titled, "Suspension of Public Meetings under the Legislative Procedures Act."		
<b>Fiscal Impact</b>	A fiscal impact statement was provided by the Finance Department on July 20, 2020.		

### **SECTION 2. LEGISLATIVE DEVELOPMENT**

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- **A.** *Background*. The Boards, Committees, and Commissions law ("the Law") was first adopted by the Oneida Business Committee on August 2, 1995, for the purpose of governing boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1]. The Law was last amended on a permanent basis thorough the adoption of resolution BC-09-26-18-C, and then amended on an emergency basis through the adoption of resolutions BC-03-11-20-B and BC-03-17-20-C.
- B. The Legislative Operating Committee proposed amendments be made to this Law to permanently adopt some of the emergency amendments that were recently made to the Law, as well as to address various considerations that arose during the one (1) year review of the Law as adopted through BC-09-26-18 C.
  - C. Table 1 illustrates the various boards, committees, and commissions of the Nation this Law applies to. This Law does not apply to the Oneida Business Committee, standing committees of the Oneida Business Committee, corporate entities, or members of the Judiciary.

Table 1. Boards, Committees and Commissions of the Nation

Table 1. Boards, Committees and Commissions of the Nation		
ELECTED	APPOINTED	
<ul> <li>Oneida Election Board</li> </ul>	■ Anna John Resident Centered Care Community	
<ul> <li>Oneida Gaming Commission</li> </ul>	Board (AJRCC)	
<ul> <li>Oneida Land Claims Commission</li> </ul>	<ul> <li>Oneida Community Library Board</li> </ul>	
<ul> <li>Oneida Land Commission</li> </ul>	<ul> <li>Oneida Environmental Resource Board (ERB)</li> </ul>	
<ul> <li>Oneida Nation Commission on</li> </ul>	<ul> <li>Oneida Nation Arts Board</li> </ul>	
Aging (ONCOA)	<ul> <li>Oneida Personnel Commission</li> </ul>	
<ul> <li>Oneida Nation School Board</li> </ul>	<ul> <li>Oneida Police Commission</li> </ul>	
■ Oneida Trust Enrollment	<ul> <li>Oneida Pow Wow Committee</li> </ul>	
Committee	■ Oneida Nation Veterans Affairs Committee	
	(ONVAC)	
	<ul> <li>Pardon and Forgiveness Screening Committee</li> </ul>	
	Southeastern WI Oneida Tribal Services Advisory	
	Board (SEOTS)	

### SECTION 3. CONSULTATION AND OUTREACH

- **A.** Representatives from the following departments or entities participated in the one (1) year review of the Law as adopted through resolution BC-09-26-28-C which was then used in development of amendments to this Law and legislative analysis:
  - Oneida Law Office;
  - Business Committee Support Office;
- Oneida Land Commission:
  - Oneida Trust Enrollment Committee;
  - Oneida Nation Commission on Aging;
    - Oneida Nation School Board;
    - Oneida Police Commission;

- Oneida Personnel Commission; and
  - Oneida Nation Arts Board.
  - **B.** The following laws were reviewed in the drafting of this analysis: Election Law, Removal law, Code of Ethics, Conflict of Interest Policy, Oneida Nation Gaming Ordinance, Computer Resources Ordinance, Social Media Policy.

### **SECTION 4. PROCESS**

- **A.** The amendments to this Law have followed the process set forth in the Legislative Procedures Act.
  - On February 12, 2020, the Oneida Business Committee adopted a motion "to request the Legislative Operating Committee to consider amendments to the Boards, Committees and Commissions law as agreed upon at the February 3, 2020, joint meeting with the Oneida Land Commission."
  - The LOC added the amendments to the Active Files List on February 19, 2020.
  - The Oneida Business Committee adopted emergency amendments to the Law on March 11, 2020, through the adoption of resolution BC-03-11-20-B, to address ineligibility due to a conflict of interest. These emergency amendments were set to expire on September 11, 2020.
  - The Oneida Business Committee adopted emergency amendments to the Law on March 17, 2020, through the adoption of resolution BC-03-17-20-C, to address how meetings are held, and limitations on stipends. These emergency amendments will expire on September 17, 2020.
  - **B.** At the time this legislative analysis was developed the following work meetings had been held regarding the development of these amendments:
    - April 23, 2020: LOC work meeting.
    - April 30, 2020: LOC work meeting.
    - May 7, 2020: LOC work meeting.
    - June 2, 2020: LOC work meeting.
- June 4, 2020: LOC work meeting.
  - June 16, 2020: Oneida Business Committee work meeting.
  - July 9, 2020: LOC work meeting.
  - July 16, 2020: LOC work meeting.
    - July 30, 2020: LOC work meeting.
- C. COVID-19 Pandemic's Effect on the Legislative Process. The world is currently facing a pandemic of the coronavirus disease 2019 (COVID-19). The COVID-19 outbreak originated in Wuhan, China and has spread to many other countries throughout the world, including the United States. The COVID-19 pandemic has resulted in high rates of infection and mortality, as well as vast economic impacts including effects on the stock market and the closing of all non-essential businesses. A public meeting for the proposed amendments to this Law was not held due to the COVID-19 pandemic.
  - Declaration of a Public Health State of Emergency.
    - On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

- On March 28, 2020, the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's Public Health State of Emergency declaration until May 12, 2020.
- On May 6, 2020, the Oneida Business Committee adopted resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until June 11, 2020" which further extended the Nation's Public Health State of Emergency until June 11, 2020.
- On June 10, 2020, the Oneida Business Committee adopted resolution BC-06-10-20-A titled, "Extension of Declaration of Public Health State of Emergency until July 12, 2020" which further extend the Nation's Public Health State of Emergency until July 12, 2020.
- On July 8, 2020, the Oneida Business Committee adopted resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until August 11, 2020" which further extended the Nation's Public Health State of Emergency until August 11, 2020.
- COVID-19 Core Decision Making Team Declarations: Safer at Home.

- On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which ordered all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibited all public gatherings of any number of people.
- On April 21, 2020, the COVID-19 Core Decision Making Team issued an "*Updated Safer at Home*" declaration which allowed for gaming and golf operations to resume.
- On May 19, 2020, the COVID-19 Core Decision Making Team issued a "Safer at Home Declaration, Amendment, Open for Business" which directs that individuals within the Oneida Reservation should continue to stay at home, businesses can re-open under certain safer business practices, and social distancing should be practiced by all persons.
- On June 10, 2020, the COVID-19 Core Decision Making Team issued a "Stay Safer at Home" declaration which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.
- COVID-19 Core Decision Making Team Declaration: Suspension of Public Meetings under the Legislative Procedures Act.
  - On March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.
- Although a public meeting was not held on the proposed amendments to the Boards, Committees, and Commissions law, a public comment period was still held open until July 9, 2020, in accordance with the Legislative Procedures Act and the COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration.
  - Five (5) individuals provided a written submission during the public comment period, for a total of twenty-four (24) comments received on the proposed amendments to the Law.

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

A. Reposting for Insufficient Applications. The proposed amendments to the Law allow the Business Committee Support Office to repost a vacancy for an additional time period when insufficient applications are received after the deadline date has passed for appointed positions. [1 O.C. 105.5-5]. The Law clarifies that if the number of applicants is equal to or less than the number of vacancies then it shall be determined to be an insufficient number of applicants. [1 O.C. 105.5-5(a)]. The Business Committee Support Office is required to provide the Oneida Business Committee notification that a position will be reposted. [1 O.C. 105.5-5(a)]. Previously, if an insufficient number of applications were received after the deadline date has passed for appointed positions, it was the Oneida Business Committee who could elect to repost the vacancy for an additional time period.

- Effect. The proposed amendments make the process for reposting a vacancy for an additional time period when insufficient applications are received more efficient because the Business Committee Support Office can take this action immediately, as long as notification is provided to the Oneida Business Committee, instead of having to take the request to the Oneida Business Committee and wait for official action to be taken by the Oneida Business Committee as to whether to repost. Additionally, the Law now provides clarification as to what constitutes an insufficient number of applicants so that the Business Committee Support Office can repost a vacancy when insufficient applicants are received in a consistent manner.
- **B.** Appointment Selection Process. The Law provides that within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made. [1 O.C. 105.7-1(a)(1)-(2)]. The proposed amendments to the Law provide that if delays in compiling the applications, summary of qualifications, or results of any investigations exist, the Business Committee Support Office shall request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2). [1 O.C. 105.7-1(a)(3)].
  - Effect. The proposed amendments to the Law provide flexibility to the Business Committee Support Office to request additional time to complete the compilation of materials and submission onto the next executive session portion of an Oneida Business Committee meeting if delays exist. The Business Committee Support Office identified that during the first year of this provision being in effect a situation arose where results of a drug test were not available during the twenty-one (21) day time-period. The Business Committee Support Office wants to ensure that if there are any delays in receiving results of a background investigation or drug test, additional time can be requested so that the Business Committee Support Office can ensure that all available relevant information is shared with the Oneida Business Committee and the entity's Chairperson.
- C. Deadline for Recommendation for Appointment by the Chair of an Entity. The proposed amendments to the Law provide that the Chairperson of an entity may review the application materials and submit to the Business Committee Support Office a recommendation to the Oneida Business Committee of an applicant for appointment. [1 O.C. 105.7-1(b)(1)]. The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida Business Committee meeting in which the appointment is intended to be made. [1 O.C. 105.7-

I(b)(1)(A)J. Previously, the Law simply stated that the entity's Chairperson may have until the executive session to review the application materials and provide the Oneida Business Committee a recommendation of an applicant for appointment.

- Effect. The proposed amendments to the Law provide more clarification as to a specific deadline and method for recommendations to be submitted. The Business Committee Support Office provided that how recommendations were being submitted was inconsistent, and that issues arose with recommendations being submitted once the Oneida Business Committee was already in executive session. The proposed amendment will provide more guidance to Chairs of boards, committees, and commissions to ensure they know how to properly submit a recommendation to the Oneida Business Committee.
- **D.** *Oath of Office*. The proposed amendments provide that all appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternative time and location as determined by the Secretary. [1 O.C. 105.9-1]. The Law clarifies that if an oath of office is administered outside of an Oneida Business Committee meeting, then a quorum of Oneida Business Committee members is required to be present to witness the oath. [1 O.C. 105.9-1]. Previously, the Law only allowed for an oath of office to be taken at an Oneida Business Committee meeting, although a person was allowed to appear by video conferencing equipment if granted permission by the Secretary.
  - Effect. The proposed amendments provide more flexibility as to when and where an oath of office can be taken. Many members of boards, committees, and commissions expressed that it was burdensome to only allow oaths of office to occur during an Oneida Business Committee meeting. This allows the Secretary to use his or her discretion to allow for an oath of office to be taken at an alternative time or place other than an Oneida Business Committee meeting.
- **E.** Requirement to Audio Record Meetings. The proposed amendments reinstate the requirement that a board, committee, or commission audio record all meetings, and the requirement that the bylaws of a board, committee, or commission address how this will be accomplished. [1 O.C. 105.10-3(f)(5)]. The emergency amendments adopted through resolution BC-03-17-20-C removed this provision from the Law due to the COVID-19 pandemic and the uncertainty of whether a board, committee, or commission will have the capability to audio record meetings.
  - Effect. The proposed amendment simply return this provision back to the Law. The Legislative Operating Committee determined that the requirement to audio record meetings is an important function. The Legislative Operating Committee is confident that boards, committees, and commissions have the ability to audio record meetings even if meetings have to be held remotely through telecommunications. For example, Microsoft Teams has the capability to record meetings that are held through the video call and call functions.
- **F.** Budgetary Sign Off Authority. The proposed amendments revise the requirements for how a board, committee, or commission addresses its purchases and budgetary sign off authority in its bylaws. The proposed amendments require that in its bylaws an entity identify how it shall approve purchases and travel on behalf of the entity. [1 O.C. 105.10-3(b)(6)]. The Law then provides that upon formal approval of a purchase by an entity, the Business Committee Support Office shall have official budgetary sign off authority for the entity. [1 O.C. 105.10-3(b)(6)(B)]. Previously, the bylaws were required to identify the entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and how the entity shall handle approving purchases or travel on behalf of the entity. [1

204 O.C. 105.10-3(b)(6)]. The Law has always required that an entity follow the Nation's policies and procedures regarding purchasing and sign off authority. [1 O.C. 105.10-3(b)(6)(A)].

- Effect. Requiring that a board, committee, or commission still formally approve a purchase, but changing formal budgetary sign off authority from the board, committee, or commission to the Business Committee Support Office will allow boards, committees, and commissions to transfer to the automatic procurement process, instead of the manual paper procurement process boards, committees, and commissions have currently been using.
- **G.** Clarification for Responding to an Electronic Poll. The proposed amendments provide clarification that only a member of an entity can respond to an electronic poll, or "e-poll," of an entity. [1 O.C. 105.11-3]. Previously, the Law provided that a response from a member of an entity shall be valid if received from an official e-mail address of the entity.
  - *Effect*. The proposed amendment provides additional clarify that it is to be the member of a board, committee, or commission himself or herself, and therefore, the use of a proxy to respond to an epoll is not allowed.
- **G.** *Meetings Eligible for Stipends.* The proposed amendments eliminate the requirement that a member of a board, committee, or commission be *physically* present during the entirety of a meeting in order to be eligible to receive a meeting stipend, although the member is still required to be present for the entirety of the meeting. [1 O.C. 105.13-3]. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications. [1 O.C. 105.13-3]. The proposed amendments also provide that an entity shall demonstrate presence during an entire meeting by taking roll call on the record at both the beginning and conclusion of a meeting. [1 O.C. 105.13-3(c)]. Previously, the Law required that a member of a board, committee, or commission be physically present for the entirety of a meeting because meetings had to occur in person in order to be eligible for a stipend.
  - Effect. The proposed amendments provide more flexibility to boards, committees, and commissions of the Nation in how they can hold meetings that are eligible for a stipend. Flexibility for how a meeting is held is especially important during times such as this COVID-19 pandemic. Holding meetings by telephone, video conferencing, or other telecommunications will help eliminate any unnecessary contact between individuals which could spread COVID-19, without disrupting the ability of a board, committee, and commission to conduct business and receive a stipend for the business they are conducting. Although the Legislative Operating Committee wants to provide boards, committees, or commissions with more flexibility, it is still important that members of a board, committee, or commission participate and be present for the entirety of a meeting, especially when meetings are not held in person. For that reason, the Legislative Operating Committee included the provision on how a board, committee, or commission can demonstrate presence during a meeting through taking roll call at the beginning and end of a meeting.
- **H.** Frequency of Meeting Stipends. The proposed amendments revise how many meetings a board, committee, or commission is eligible to receive a stipend for. The proposed amendments provide that a member of an appointed entity may be eligible for up to twelve (12) meeting stipends per fiscal year, while a member of an elected entity may be eligible for up to twenty-four (24) meeting stipends per fiscal year. [1 O.C. 105.13-3(a)-(b)]. Previously, the Law provided that an individual serving on an appointed entity shall be paid no more than one (1) meeting stipend per month, while an individual serving on an elected entity shall be paid no more than two (2) meeting stipends per month.
  - *Effect*. The proposed amendments do not change the overall number of meetings a member of a board, committee, or commission may be eligible to receive per fiscal year. Providing the limitation

on number of meetings that are eligible for a stipend per fiscal year instead of per month provides boards, committees, and commissions with more flexibility in determining when stipend eligible meetings should be held.

- **I.** Joint Meetings Eligible for Stipends. The proposed amendments eliminate the requirement that a member of a board, committee, or commission be *physically* present during the entirety of a joint meeting with the Oneida Business Committee in order to be eligible to receive a joint meeting stipend. [1 O.C. 105.13-4]. The amendments also provide that joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications. [1 O.C. 105.13-4].
  - *Effect*. The proposed amendments provide more flexibility to boards, committees, and commissions of the Nation in how they can hold joint meetings with the Oneida Business Committee that are eligible for a stipend
  - The Oneida Business Committee adopted resolution BC-03-27-19-D titled, "Oneida Business Committee and Joint Meetings with Boards, Committees and Commissions Definitions and Impact" to set standard rules and understandings for joint meetings. Adoption of the proposed amendments result in no conflict or impact on this resolution.
- **J.** Technological Issues Affecting Presence During a Meeting. The proposed amendments provide that if a member of an entity experiences technological issues during a regular, emergency, or joint meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the meeting, the member shall notify the entity of the technical issue as soon as possible. [1 O.C. 105.13-3(d), 1-5.13-4(c)]. The Law also allows the an exemption to the stipend eligibility requirement to be present for the entire meeting to be granted if the entity certifies by a majority vote that the member was present for a majority of the meeting despite the technological issue which disrupted the member's presence during the meeting. [1 O.C. 105.13-3(d)(1), 1-5.13-4(c)(1)].
  - Effect. Since meetings may be held by telephone, through videoconferencing, or through other telecommunications it can be assumed that technological problems may arise. [1 O.C. 105.13-3, 105.13-4]. The Legislative Operating Committee added this provision to the Law to allow for exemptions so that a meeting stipend can still be paid to a member of an entity that experiences a technological problem that resulted in the member not being present for the entire meeting, but who still was present for a majority of the meeting.
- **K.** Stipends for Attendance at Conferences and Trainings. The proposed amendments provide that a member of a board, committee, or commission shall be eligible for a stipend for attending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution. [1 O,C. 105.13-8(a)]. The proposed amendments further provide that the amount of the stipend a member is eligible to receive for attendance at a conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a conference or training. [1 O.C. 105.13-8(a)(1)]. Previously, the Law provided that a member shall be eligible for a stipend for each full day the member is present at a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
  - Effect. The proposed amendments provide clarification as to how a stipend for attendance at a conference or training will be determined. Previously, there were many questions as to how to interpret what a "full day" of attending a conference and training meant. Many members of boards, committees, and commissions expressed that requiring attendance at a conference or training be a full day was inequitable as it did not reflect the reality of many trainings and conferences being less

than a full day. The proposed amendment is modeled after how stipends for participation in interviews are handled. This will provide not only clarification on how eligibility for a stipend for attending a conference or training will be determined, but also provide more flexibility to members of boards, committees, and commissions for what trainings or conferences they are eligible to receive a stipend for.

- **L.** Official Oneida E-Mail Address. The proposed amendments provide that a member of an entity shall have thirty (30) days upon election or appointment to an entity to activate his or her official e-mail address. [1 O.C. 105.14-3(b)]. Previously, there was no deadline associated with when a member of an entity had to activate his or her account. The proposed amendments also clarify that an individual who holds a position as an ad hoc or alternate member of an entity shall be exempt from the requirement to be provided an official e-mail address, unless determined that an e-mail address is necessary for the role and responsibilities of the ad hoc or alternate member. [1 O.C. 105.14-3(c)]. Previously, the Law was not clear as to whether ad hoc or alternate members of an entity were required to be provided an official e-mail address.
  - Effect. The proposed amendments provide clarification for how an official e-mail address for a member of an entity should be used. A deadline for activating the e-mail account was included in the Law because the Business Committee Support Office reported issues with members not activating or using their e-mail. It is very important that a member of an entity have the e-mail address ready for use to ensure that there is a consistent form of communication available to reach all members of a board, committee, and commission, as well as to encourage and ensure confidentiality when conducting business electronically for the entity. The Law clarifies that an ad hoc or alternate member of an entity does not have to be provided an official e-mail address, unless determined that an e-mail address is necessary for the role and responsibilities of the ad hoc or alternate member, because it would not be a good utilization of resources to provide an official e-mail address to an individual that is brought on for a temporary basis, or who will have a limited role and responsibilities.
- **M.** *Ineligibility Due to Conflicts of Interest*. The proposed amendments to the Law provide that due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed or elected entity: political appointees; an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office or Intergovernmental Affairs and Communications; and an employee who serves as a direct report to the Oneida Business Committee or General Manager. [1 O.C. 105.15-3]. Previously, the Law only provided that political appointees could not serve on an appointed or elected entity due to the potential for a real or perceived conflict of interest to exist.
  - Effect. The proposed amendments expand the restriction to serve on a board, committee, or commission from political appointees to other employees of the Nation. The potential for a real or perceived conflict of interest to exist for an employee of the Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, Intergovernmental Affairs and Communications, or any employee who holds a position as a direct report to the Oneida Business Committee or General Manager is due to the nature of employment in those areas. Those employees have access to confidential information which requires a higher level of professionalism and fiscal responsibilities than other areas. Therefore, it is in the best interest of the Nation to recognize the potential for a conflict of interest to exist and amend the Law to restrict employee related actions on this matter to better protect the Nation from a potential conflict of interest.

- Number of Employees Impacted. At the time this legislative analysis was drafted, the following number of employees would be impacted as a result of this proposed amendment to the Law:
  - Internal Audit Department: nine (9) employees;
  - Oneida Law Office: eight (8) employees;
  - Finance Administration Office: three (3) employees;
  - Intergovernmental Affairs and Communications: seven (7) employees;
  - Business Committee Support Office: five (5) employees; and
  - Direct Reports: eight (8) employees including the following positions as identified in resolution BC-08-14-19-N:
    - Chief Counsel;

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- General Manager;
- Gaming General Manager;
- Intergovernmental Affairs and Communications Director;
- Emergency Management Director;
- Area Manager, Human Resources Division;
- Area Manager, Retail-Profit; and
- Business Compliance Analyst.
- Nothing in this Law limits the ability of any department of the Nation from placing their own restrictions and expectations within employment contracts, job descriptions, or standard operating procedures. As a result, there may be employees of the Nation who are already restricted from serving on a board, committee or commission outside of this Law.

### **SECTION 6. EXISTING LEGISLATION**

- **A.** References to other Laws of the Nation. The following laws of the Nation are referenced in this Law:
  - *Election law*. The Election law governs the procedures for the conduct of orderly elections of the Nation, including pre-election activities. [1 O.C. 102.1-1].
    - The Boards, Committees, and Commissions law provides that applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. [1 O.C. 105.5-4].
    - The Boards, Committees, and Commissions law provides that all elected positions shall be nominated at a caucus called by the Oneida Election Board, or apply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment. [1 O.C. 105.8-1]. Additionally, this Law provides that all other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections. [1 O.C. 105.8-2].
  - Open Records and Open Meetings law. The Open Records and Open Meetings law advances the democratic principle of open government by providing access to information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees. [1 O.C. 107.1-1].
    - The Boards, Committees, and Commissions law provides that all removal or destruction of documents of an entity shall be made in accordance with the Nation's laws and policies governing open records and open meetings. [1 O.C. 105.14-2].

\* Computer Resources Ordinance. The Computer Resources Ordinance regulates the usage of computer resources owned and operated by the Nation. [2 O.C. 215.1-1].

- The Boards, Committees, and Commissions law provides that a member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. [1 O.C. 105.14-3(b)].
- Social Media Policy. The Social Media Policy regulates social media accounts, including a social networking web page, blog or microblog, that is administered on behalf of the Nation or an entity of the Nation. [2 O.C. 218.1-1].
  - The Boards, Committees, and Commissions law provides that a member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. [1 O.C. 105.14-3(b)].
- Conflict of Interest law. The purpose of the Conflict of Interest law is to ensure that all employees, contractors, elected officials, officers, political appointees, appointed and elected members and all others who may have access to information or materials that are confidential or may be used by competitors of the Nation's enterprises or interests be subject to specific limitations to which such information and materials may be used in order to protect the interests of the Nation. [2 O.C. 217.1-1].
  - The Boards, Committees, and Commissions law provides that all members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest. [1 O.C. 105.15-1].
- Removal law. The Removal law provides an orderly and fair process that governs the removal of persons elected to serve on boards, committees, and commissions of the Nation. [1 O.C. 104.1-1]. The Removal law provides the various grounds for removal [1 O.C. 104.4-1], as well as the removal process which consists of a petition [1 O.C. 104.5], preliminary review [1 O.C. 104.6], hearing at the Judiciary [1 O.C. 104.7], and ultimate decision by the General Tribal Council [1 O.C. 104.8].
  - The Boards, Committees, and Commissions law provides that any elected member of an entity found to be in violation of this Law may be subject to removal pursuant to any laws or policies of the Nation governing removal. [1 O.C. 105.18-1].
  - The Boards, Committees, and Commissions law also provides that a position in an entity shall be considered vacant upon removal whenever the removal is effective in accordance to any law or policy of the Nation regarding removal. [1 O.C. 105.6-2(b)].
- **B.** References to Conflicts of Interest in Other Laws. The following laws of the Nation reference conflict of interest as it relates to employees and elected or appointed officials of the Nation. Employees and/or elected and appointed officials are already subject to comply with the following provisions within other laws:
  - Conflict of Interest law. The Conflict of Interest law applies to "all agents, elected officials, officers, political appointees, contractors, appointed and or elected members." [2 O.C. 217.4-1].
    - The Conflict of Interest law requires employees and elected or appointed officials to disclose any conflicts of interest.
      - Failure to disclose a conflict of interest may result in removal in accordance with the Removal law, penalties pursuant to laws of the Nation regarding penalties, or termination of employment. [2 O.C. 217.6-2 and 217.6-3].

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- When an existing conflict of interest is disclosed, no employee, elected official, or appointed official may participate in the selection, award or administration of a contract, including contracts supported by federal award and/or any other prohibited activities identified in any other law, policy or rule of the Nation. 12 O.C. 217.71.
- There is no conflict with the proposed amendments and compliance with the Conflicts of Interest law. Upon adoption of the proposed amendments, serving on a board, committee, or commission of the Nation while being employed in the Internal Audit Department, Law Office, Finance Administration Office, or Intergovernmental Affairs and Communications, or employed in a position that serves as a direct report to the Oneida Business Committee will become a "prohibited activity identified in a law of the Nation" in accordance with the Conflict of Interest law.
- Code of Ethics law. The Code of Ethics law promotes the highest ethical conduct in all of its elected and appointed officials and employees and represents a minimum standard of conduct which is expected. [1 O.C. 103.1-1]. All government officials, including persons elected to serve on a board, committee or commission are subject to the Nation's Code of Ethics law.
  - The Code of Ethics law provides that a government official shall create and maintain an independent and honorable political system and shall observe high standards of conduct... including, but not limited to:" [1 O.C. 103.3-3(a)].
    - Encouraging separation between departments or entities of tribal government, and should avoid contact or duty that violates such a separation.
    - Avoid participation in action or decision making (except where participation is in accordance with the traditions of the Nation) that would present an appearance of conflict of interest or an actual conflict of interest.
  - The Code of Ethics law provides that a government official should disqualify themselves when their action or inaction might reasonably be questioned, including, but not limited to personal bias..." [1 O.C. 103.3-5].
  - The Code of Ethics law provides that a government official shall regulate their extra governmental activities to minimize the risk of conflict with duties of their office." [1 O.C. 103.3-61.
  - The Code of Ethics law provides that government officials may be subject to either removal, if elected, or termination, if appointed, for a violation of any part of this ethics code as it applies to them." [1 O.C. 103.6-1].
  - There is no conflict between the proposed amendments and compliance with the Code of Ethics law.
- Election law. The Election law states that "No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election." [1 O.C. 102.5-3].
  - This means that although the proposed amendments to the Boards, Committees, and Commissions law prohibit employees of the Internal Audit Department, Law Office, Finance Administration Office, Intergovernmental Affairs and Communications, or any person employed in a position that serves as a direct report to the Oneida Business Committee from serving on a board, committee, or commission of the Nation, those

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individuals may still be nominated for office, run in an election, and win election to a board, committee or commission. However, the winning candidate would have to eliminate their conflict of interest prior to taking office by resigning from their position of employment.

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C. Restrictions on Employees in Current Bylaws. Boards, committees and commissions may place additional qualifications for membership within their bylaws. Bylaws are a document that provides a framework for the operation and management of a board, committee or commission. Examples of these qualifications include age, residency, education, and experience. Some boards already place restrictions on whether employees of the Oneida Nation may serve on their entity. Below is a review of current restrictions on employees of the Nation. For a full review of qualifications for each entity, please see each entity's bylaws. Table 2 Destrictions on Employees in Comment Dylavys

Table 2. Restrictions on Employees in Current Bylaws.				
Board, Committee or	<b>Employees who may not serve on that entity:</b>			
Commission				
Land Commission	Employees of the Nation's Audit Department, Finance Department, Law Office "or other department associated with items (a) – (j) in section 1-3 of the Land Commission bylaws:  • the Real Property law, • Leasing law, • Building Code, • Condominium Ordinance, • Zoning and Shoreland Protection law, • Eviction and Termination law, • Mortgage and Foreclosure law, • the Cemetery law, • and any other delegating law, policy, rule and/or resolution of the Nation Division Directors or Area Managers for the Oneida Nation, Independent contractor for Land Management or any other department of the Nation associated with items (a) – (j)			
Anna John Resident	Employees of Anna John Resident Centered Care			
Centered Care Community	Community.			
Board				
Oneida Community	Employees or contractors of any Oneida Nation Library			
Library Board	Branch.			
Oneida Environmental	Employees of the Oneida Environmental, Health, Safety and			
Resource Board (ERB)	Land Division			
Oneida Nation Arts Board	Employees of the Oneida Nation Arts Board.			
Oneida Personnel	Employees of the Oneida Nation.			
Commission				
Oneida Police Commission	Employees of the Oneida Police Department or individuals			
	terminated from the Oneida Police Department.			
Oneida Land Claims	Shall not serve in the capacity of "consultant, contractor or			
Commission	attorney for the Land Claims Commission."			

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**D.** Restrictions on Employees in Current Laws. The following laws of the Nation already restrict certain employees of the Nation from serving on certain boards, committees and commissions of the Nation:

Table 3. Restrictions on Employees in Other Laws of the Nation.

Law or Bylaw	Entity	Restrictions on Oneida Nation Employees
Oneida Law	Oneida Police	"Must not be an employee of the Oneida
Enforcement	Commission	Police Department" [3 O.C. 301.6-3(e)].
Ordinance		
Oneida Nation	Oneida Gaming	"Commissioners shall perform duties on a
Gaming	Commission	full-time basis and may not, during tenure
Ordinance		in office, be engaged in any other profession
		or business activity" [5 O.C. 501.6-9].

### **SECTION 7. OTHER CONSIDERATIONS**

- A. Updates to the Stipend Resolution. The Law requires that the Oneida Business Committee set stipend amounts by resolution. [1 O.C. 105.13-2]. On September 26, 2018, the Oneida Business Committee adopted resolution BC-09-26-18-D titled, "Boards, Committees, and Commissions Law Stipends" which set forth the specific stipend amounts allowed to be paid to a member of a board, committee, or commission. On May 8, 2019, the Oneida Business Committee adopted resolution BC-05-08-19-B titled, "Amending Resolution BC-09-26-18-D Boards, Committees, and Commissions Law Stipends" to allow the Oneida Nation School Board to be eligible to receive a stipend for participating in interviews and/or job description prescreens. Then on March 17, 2020, the Oneida Business Committee adopted resolution BC-03-17-20-D titled, "Amending Resolution BC-05-18-19-B Boards, Committees, and Commissions Law Stipends" to address emergency amendments that were made to the Law. Based on the proposed amendments, revisions to resolution BC-03-17-20-D will have to be made to permanently reflect the new proposal on how to address the limitation of meeting stipends, as well as how stipends for conferences and trainings are determined.
  - Conclusion. The Legislative Operating Committee should consider bringing an amended stipend
    resolution for consideration when the Legislative Operating Committee presents the proposed
    amendments to the Oneida Business Committee for consideration.
- **B.** Suspension of all Non-Emergent Expenses and Stipends and Activity by Certain Boards, Committees, and Commissions. On March 19, 2020, the Nation's COVID-19 Core Decision Making Team issued a declaration titled, "Suspension of all Non-Emergent Expenses and Stipends and Activity by Certain Boards, Committees, and Commissions." This declaration identified that the Nation needed to preserve cash flow to provide funds for regular wages to employees throughout the emergency declaration period, and that activities of boards, committees, and commissions could create contact and spread of COVID-19 through meetings and gatherings. This declaration then suspended all budget expenditures and stipends for certain boards, committees, and commissions of the Nation, as well as discontinued meetings for certain boards, committees, and commissions. For those boards, committees, and commissions of the Nation not specifically identified, the declaration recommended that meetings be discontinued or held remotely.
  - The boards, committees, and commissions of the Nation who had all budget expenditures and stipends suspended by this declaration included:
    - Oneida Community Library Board;
    - Oneida Environmental Resources Board;
    - Oneida Nation Arts Board;
    - Oneida Nation Veterans Affairs Committee;
- Oneida Personnel Commission:

■ Oneida Pow Wow Committee:

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- Pardon and Forgiveness Screening Committee;
- 520 Southeast Wisconsin Oneida Tribal Social Services Advisory Board;
- Finance Committee, Public Member;
  - Audit Committee, Public Member;
    - Oneida Land Claims Commission; and
    - Oneida Nation Commission on Aging.
    - The boards, committees, and commissions of the Nation who had all meetings discontinued by this declaration included:
      - Oneida Community Library Board;
      - Oneida Environmental Resources Board;
      - Oneida Nation Arts Board;
        - Oneida Nation Veterans Affairs Committee;
- Oneida Personnel Commission:
- Oneida Pow Wow Committee;
  - Pardon and Forgiveness Screening Committee;
- Southeast Wisconsin Oneida Tribal Social Services Advisory Board;
  - Oneida Land Claims Commission; and
  - Oneida Nation Commission on Aging.
  - *Conclusion*. The Legislative Operating Committee should be informed that this declaration was issued by the Nation's COVID-19 Core Decision Making Team.
  - C. Boards, Committees and Commissions in Temporary Closure Status. On April 4, 2020, the Oneida Business Committee adopted resolution BC-04-08-20-B titled, "Placing Listed Boards, Committees, and Commissions in Temporary Closure Status." Based on the Nation's Public Health State of Emergency and the necessity to enter into Tier V Budget Contingency measures through resolution BC-04-08-20-C, the Oneida Business Committee reviewed the list of boards, committees and commissions and determined that certain boards, committees, or commissions continuing to operate, generating expenses would affect the overall financial status of the Nation, and therefore those entities should be placed on temporary closure to preserve funding for necessary governmental services and activities. This resolution places certain identified boards, committees, and commissions into temporary closure for the remainder of Fiscal Year 2020 and during any continuing resolution for Fiscal Year 2021, also identifies that posting of vacancies shall be discontinued for the remainder of Fiscal Year 2020 and during any continuing resolution for Fiscal Year 2021.
    - The boards, committees, and commissions of the Nation that were placed on temporary closure include:
      - Oneida Community Library Board;
      - Oneida Environmental Resources Board;
      - Oneida Nation Arts Board:
      - Oneida Nation Veterans Affairs Committee;
    - Oneida Personnel Commission;
      - Oneida Pow Wow Committee;
        - Pardon and Forgiveness Screening Committee;
- Southeast Wisconsin Oneida Tribal Social Services Advisory Board;
  - Oneida Land Claims Commission; and

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- Oneida Nation Commission on Aging.
- Conclusion. The Legislative Operating Committee should be informed that there are boards,
   committees, and commissions that are currently in temporary closure status based on the financial
   impacts of the COVID-19 pandemic.
  - **D.** *Fiscal Impact*. A fiscal impact statement of the proposed amendments to the Law was provided by the Finance Department on July 20, 2020. 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 titled, "Interpreting 'Fiscal Impact Statement' in the Legislative Procedures Act," 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.

### Draft 2 for OBC Consideration (Redline to Last Permanent Draft - BC-09-26-18-C) 2020 08 12

### Title 1. Government and Finances – Chapter 105 BOARDS. COMMITTEES AND COMMISSIONS

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### **BOARDS, COMMITTEES, AND COMMISSIONS**

105.1. Purpose and Policy	105.10. Bylaws
105.2. Adoption, Amendment, Repeal	105.11 Electronic Polling
105.3. Definitions	105.12. Reporting Requirements
105.4. Creation of an Entity	105.13. Stipends, Reimbursement and Compensation
105.5. Applications	105.14. Confidential Information
105.6. Vacancies	105.15. Conflicts of Interest
105.7. Appointment to an Entity	105.16. Use of the Nation's Assets
105.8. Election to an Entity	105.17. Dissolution of an Entity
105.9. Oath of Office	105.18. Enforcement

### 105.1. Purpose and Policy

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105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

- (a) This law shall not apply to the Oneida Business Committee, or Standing Committees of the Oneida Business Committee.
- (b) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.

105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

### 105.2. Adoption, Amendment, Repeal

105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, and BC-09-26-18-C- and amended by BC-

- 105.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 22 105.2-3. Should a provision of this law or the application thereof to any person or circumstances 23 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
- 24 to have legal force without the invalid portions.
- 105.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 27 105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

### 29 **105.3. Definitions**

105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Application" means the form by which a person seeks to be appointed to fill a vacancy on an entity.
   (b) "Appointment" means the process by which a person is chosen to fill a vacancy on an
  - (b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.
  - (c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
  - (d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.
  - (e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.
  - (f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.
  - (g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.
  - (h(h) "Direct report" means a position which requires direct contact and supervision by the Oneida Business Committee because of the position, the duties, or the services provided. Direct reports shall be identified by the Oneida Business Committee through resolution
  - (i) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.
  - (ij) "E-poll" means an electronic poll, which is the act of delivering an e-mail to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.
  - (jk) "Joint meeting" means a meeting with the Oneida Business Committee.
  - (kl) "Nation" means the Oneida Nation.
  - (1) Am) "Per Diem≅" means the payment made by the Nation to offset the costs of being on travel on behalf of the Oneida Nation.
  - (mn) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member's daily activities and operations.
  - (no) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance

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included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

(o) Ap) "Stipend≅" means the amount paid by the Oneida Nation to a person serving on

a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or

(pq) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on

(gr) "Substantiated complaint" means a complaint or allegation in a complaint that was

(FS) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal,

the accomplishment of which means the disbanding of the group. The goal is generally

accomplished in a short time period, i.e. less than one year, but the goal itself may be long-

(st) "Vacancy" means any position on any board, committee or commission caused by

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105.4. Creation of an Entity

behalf of the entity.

- 105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.
- 98 105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all 99 powers and responsibilities delegated to the entity.

resignation, end of term, removal, termination, or creation of a new position.

100 105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of 101 the entity.

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105.5. Applications

105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

commission for the betterment of the Nation.

found to be valid by clear and convincing evidence.

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- (a) All applications shall include:
  - (1) a statement explaining the attendance requirements of section 105.12-3; and (2) a section regarding disclosures of conflicts of interest.
- (b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.

116 105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of 117 the deadline date.

118 105.5-3. Within eight (8) days after the posted deadline for filing applications, the Business 119 Committee Support Office shall notify all persons who have filed an application of the date his or

- her application was received and if his or her application met the deadline to be considered for the election or appointment.
- 122 105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or
- policies governing elections. Applications for appointed positions shall be verified by the Business
- 124 Committee Support Office as needed or as required in the bylaws of the entity.
- 125 105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Oneida Business Committee Support Office may elect to:repost for an additional time period.
  - (a) include within the pool of appointed persons late applications, or
  - (a) If the number of applicants is equal to or less than the number of vacancies then it shall be determined to be an insufficient number of applicants.
  - (b) repostThe Business Committee Support Office shall notify the Oneida Business Committee if a position will be reposted for an additional time period.
  - (c) In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.
  - (d) The Oneida Business Committee may elect to include within the pool of appointed persons late applications.

### 105.6. Vacancies

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- 105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.
- 105.6-2. A position on an entity shall be considered vacant in the following situations:
  - (a) End of Term. A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.
    - (1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.
  - (b) *Removal*. Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.
  - (c) Termination of Appointment. A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.
  - (d) Resignation. A resignation is effective upon:
    - (1) Deliverance of a letter to the Business Committee Support Office and to the Chairperson of the entity, or designee; or-
    - (2) Acceptance by motion of the entity of a verbal resignation.
- (e) New Positions. Vacancies on new entities are effective upon adoption of bylaws.
- 105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.
- 162 105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee

- (a) End of Term. Automatically sixty (60) days prior to completion of the term.
- (b) *Removal*. No later than the next Oneida Business Committee meeting following the effective date of the removal.
- (c) Resignation. No later than the next Oneida Business Committee meeting following the Business Committee Support Office's receipt of notice of an effective resignation from the entity.
- (d) New Positions. Upon one of the following conditions:
  - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
  - (2) upon date specified when creating the entity.
- (e) *Termination of appointment*. No later than the next Oneida Business Committee meeting following the effective date of the termination.
- 105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

### 105.7. Appointment to an Entity

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- 105.7-1. *Appointment Selection*. The following procedures shall be used to determine how the applicant for an appointed position is selected:
  - (a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
    - (1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and
    - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made.; or
    - (3) if delays in compiling the applications, summary of qualifications, or results of any investigations exist, request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2).
  - (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
    - (1) The entity's Chairperson may have until the executive session to review the application materials and providesubmit to the Business Committee Support Office a recommendation to the Oneida Business Committee a recommendation of an applicant for appointment.
      - (A) The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida

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- Business Committee meeting in which the appointment is intended to be made.
- (c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:
  - (1) chooseselect an applicant for appointment, or
  - (2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.
- (d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.
- (e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:
  - (1) accept the selected applicant and vote to appoint the individual to the vacant
  - (2) reject the selected applicant and vote to oppose the appointment of the individual.
- (f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.
- 105.7-2. Notification of Appointment. Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.
  - (a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.
  - (b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: A"The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income. "."
- 105.7-3. Declination of Appointment. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.
  - (a) An individual may decline an appointment to an entity in the following ways:
    - (1) Delivery of ana letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or

(2) The failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee.

(b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined in section 105.7-1 to select another applicant for appointment.

105.7-4. *Termination of Appointment*. An appointed member of an entity serves at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.

(a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.

(b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

### 105.8. Election to an Entity

105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or petitionapply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.

(a) When the Election Board notifies a petitioneran applicant or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: A: The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income.

105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

#### 105.9. Oath of Office

105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternative time and location as determined by the Secretary. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.

(a) The When taking an oath, the appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by through video conferencing equipment, or through other telecommunications.

- (b) If an oath is administered outside of an Oneida Business Committee meeting, a quorum of Oneida Business Committee members shall be present to witness the oath.
- 105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths

- shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.
- 298 105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded to the new member of the entity and the entity.
- 105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will carry out the duties and responsibilities as a member of the [entity name], and all recommendations shall be made in the best interest of the Oneida Nation as a whole.
  - 105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware of their duty to the Nation and as members of the entity.

### 105.10. Bylaws

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- 105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.
  - (a) All existing entities <u>mustshall</u> comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law.
  - (b) Bylaws <u>mustshall</u> contain at least the minimum information required by law, although more information is not prohibited.
  - (c) *Exception*. Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities mustshall have, at minimum, mission or goal statements for completion of the task.
- 105.10-2. Articles. Bylaws shall contain, at a minimum, the following Articles:
  - (a) Article I. Authority.
  - (b) Article II. Officers.
  - (c) Article III. Meetings.
  - (d) Article IV. Expectations.
  - (e) Article V. Stipends and Compensation.
  - (f) Article VI. Records and Reporting.
  - (g) Article VII. Amendments.
- 105.10-3. Sections. Articles shall be divided into "sections" as set out.
  - (a) "Article I. Authority" shall consist of the following:
    - (1) *Name*. The full name of the entity shall be stated, along with any short name that will be officially used.
    - (2) *Establishment*. This section shall state the citation and name, if any, of the creation document.
    - (3) *Authority*. This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.
    - (4) Office. There shall be listed the official office or post box of the entity.

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340 (5) *Membership*. The following information shall be in this section: (A) Number of members on the entity; 341 (B) If members on the entity are elected or appointed, and how a member 342 343 is elected or appointed; 344 (C) How vacancies are filled; and (D) Qualifications for membership on the entity. 345 346 (i) In order to qualify for membership on an entity, a person shall meet the minimum age requirements set forth for status as a 347 qualified voter of the Nation, unless a law, policy, or directive sets 348 349 forth a minimum age requirement. 350 (6) Termination or Removal. This section shall identify causes for termination or removal, if any, in addition to those already identified in laws and/or policies of the 351 352 Nation. 353 (7) Trainings and Conferences. This section shall describe any trainings and/or 354 conferences that the entity deems necessary for members to responsibly serve the entity, if any. 355 356 (b) "Article II. Officers" shall consist of the following: (1) Chairperson and Vice-Chairperson. This section creates the chairperson and 357 vice-chairperson positions of the entity. Other officer positions may also be created 358 359 here. 360 (2) Responsibilities of the Chairperson. Because of the importance of this position, all duties and responsibilities of the chairperson, as well as limitations of the 361 chairperson shall be specifically listed here. 362 (3) Responsibilities of the Vice-Chairperson. Because of the importance of this 363 position, all duties and responsibilities of the vice-chairperson, as well as 364 365 limitations of the vice-chairperson shall be specifically listed here. (4) Responsibilities of Additional Officers. There may be additional sections as 366 367 needed for every officer position created in subsection one (1) above. These 368 sections shall state all duties and responsibilities of the officer, as well as any 369 limitations of the officer. 370 (5) Selection of Officers. This section shall identify how a member of the entity 371 shall be selected for an official officer position in the entity. 372 (6) Budgetary Sign-Off Authority Purchases and Travel. This section shall identify 373 the entity's varying levels of budgetary sign-off authority, the members that are 374 authorized to sign-off at each level, and how the entity shall handle 375 approvingapprove purchases or travel on behalf of the entity. (A) An entity shall follow the Nation's policies and procedures regarding 376 377 purchasing and sign-off authority. 378 (B) Upon formal approval of a purchase by an entity, the Business 379 Committee Support Office shall have official budgetary sign off authority 380 for the entity. 381 (C) An entity shall approve a member's request to travel on behalf of the

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- entity by majority vote at a regular or emergency meeting of the entity.
- (7) Personnel. This section shall state the entity's authority for hiring personnel,

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384 if any, and the duties of such personnel. (c) "Article III. Meetings" shall consist of the following: 385 (1) Regular meetings. This section shall identify when and where regular meetings 386 387 shall be held, and how the entity shall provide notice of the meeting agenda, 388 documents, and minutes. 389 (2) Emergency meetings. This section shall identify what constitutes an emergency 390 meeting, how emergency meetings shall be called, and how the entity shall provide 391 notice of the emergency meeting. 392 (A) All bylaws shall include a provision requiring that within seventy-two 393 (72) hours after an emergency meeting, the entity shall provide the Nation's Secretary with notice of the meeting, the reason for the emergency meeting, 394 395 and an explanation of why the matter could not wait for a regular meeting. 396 (3) Joint Meetings. This section shall identify if joint meetings shall be held, the frequency and location of joint meetings, and how the entity shall provide notice of 397 398 the meeting agenda, documents, and minutes. 399 (4) Quorum. This section shall identify how many members of an entity create a 400 quorum. 401 (5) Order of Business. This section sets out how the agenda will be set up. (6) Voting. This section shall identify voting requirements, such as, but not limited 402 403 to: 404 (A) the percentages that shall be needed to pass different items; (B) if, and when, the chairperson is allowed to vote; 405 (C) if the use of an e-poll is permissible; and 406 (D) if the use of and e-poll is permissible, who will serve as the 407 Chairperson's designee for the responsibility of conducting an e-poll, if a 408 409 designee is utilized. (d) "Article IV. Expectations" shall consist of the following information: 410 411 (1) Behavior of Members. This section shall identify the behavioral expectations 412 and requirements of a member of the entity, and identify how the entity shall 413 enforce these behavioral expectations. 414 (2) Prohibition of Violence. This section shall prohibit any violent intentional act 415 committed by a member of the entity that inflicts, attempts to inflict, or threatens 416 to inflict emotional or bodily harm on another person, or damage to property, and 417 set forth any further expectations regarding the prohibition of violence. 418 (3) Drug and Alcohol Use. This section shall prohibit the use of alcohol and 419 prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and 420 421 alcohol. 422 (4) Social Media. This section shall identify expectations for the use of social 423 media in regards to official business of the entity. 424 (5) Conflict of Interest. This section shall state any standards and expectations 425 additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities 426 427 resulting from disclosed conflicts of interest, and means by which a party can

alleviate or mitigate the conflict of interest.

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105.11. Electronic Polling

105.11-1. An entity may utilize an e-poll when approval of an action may be required before the next available meeting agenda of the entity.

105.11-2. Conducting an E-Poll. The Chairperson of the entity, or designee, shall e-mail the epoll to all members of the entity. Requests for an e-poll shall be sent only from an official e-mail

- (e) "Article V. Stipends and Compensation" shall consist of the following information:
  - (1) Stipends. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.
  - (2) Compensation. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.
- (f) "Article VI. Records and Reporting" shall consist of the following information:
  - (1) Agenda Items. Agenda items shall be maintained in a consistent format as identified by this section.
  - (2) Minutes. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the Business Committee Support Office.
  - (3) Attachments. Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented. This section shall identify how records of attachments shall be kept.
  - (4) Oneida Business Committee Liaison. Entities shall regularly communicate with the Oneida Business Committee member who is their designated liaison. This section shall identify a format and frequency for communication which may be as the liaison and entity agree to, but not less than that required in any law or policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. The purpose of the liaison relationship is to uphold the ability of the liaison to act as a support to that entity.
  - (5) Audio Recordings. An entity shall audio record all meetings. This section shall state how the entity shall audio record meetings, and how the entity shall maintain the audio records.
    - (A) Exception. Audio recordings of executive session portions of a meeting shall not be required.
- (g) "Article VII. Amendments" consists of:
  - (1) Amendments to Bylaws. This section shall describe how amendments to the bylaws are made. Any amendments to bylaws shall conform to the requirements of this and any other policy of the Nation. Amendments to bylaws shall be approved by the Oneida Business Committee, in addition to the General Tribal Council when applicable, prior to implementation.

address of the entity. The e-poll's message shall include the following information:

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- (a) The e-mail subject line shall begin with "E-poll Request:" and include a short title describing the purpose of the request.
- (b) The body of the e-poll shall contain the following elements:
  - (1) An executive summary of the reason for the request and why the request cannot be presented at the next available meeting of the entity;
  - (2) A proposed motion which shall be in bold and identified in a separate paragraph by the words "Requested Action;"
  - (3) All attachments in \*.pdf format, which are necessary to understand the request being made; and
  - (4) A deadline date for a response to be returned regarding the results of the electronic poll which shall be in bold and identified in a separate paragraph by the words "Deadline for Response."
    - (A) E-poll requests shall be open for response not less than one (1) hour and no more than twenty-four (24) hours.
    - (B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.
- 105.11-3. Response to an E-Poll. Only the member of an entity shall respond to an e-poll. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.
  - (a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.
  - (b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.
  - (c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.
  - (d) The Chairperson, or designee, shall monitor all responses and deadline dates for responses.
- 105.11-4. *Entering an E-Poll in the Record*. Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:
  - (a) Original e-poll request and all supporting documentation;
  - (b) A summary of the e-poll results identifying each member of the entity and his or her response; and
  - (c) A copy of any comment by a member of the entity if comments are made beyond a vote.

### 105.12. Reporting Requirements

- 105.12-1. *Minutes*. All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.
  - (a) Actions taken by an entity are valid upon approval of the action by vote, unless the

bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.

- (b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.
- (c) No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.
- 105.12-2. *Standard Operating Procedures*. All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.
- 105.12-3. Quarterly Reports to the Oneida Business Committee. Entities shall provide quarterly reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:
  - (a) *Contact Information*. The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.
  - (b) *Meetings*. When and how often the entity is holding meetings and whether any emergency meetings have been held.
    - (1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.
  - (c) Accomplishments. Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.
  - (d) Goals. Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.
  - (e) *Budget*. The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.
  - (f) Requests. Details of any requests to the Oneida Business Committee.
  - (g) Other. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.
- 105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.
  - (a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.
  - (b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.

105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

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### 105.13. Stipends, Reimbursement and Compensation

- 105.13-1. Stipends and reimbursement for expenses shall follow the procedures as set out in this section and according to procedures for payment as set out by the Nation, unless otherwise declined by the entity through its bylaws, or declined by a member.
- 105.13-2. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending the resolution. Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards. 105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than one (1twelve (12) meeting stipends per month fiscal year.
  - (b) Meeting Stipends for an Elected Entity. An individual serving on an elected entity shall be paid no more than two (2twenty-four (24) meeting stipends per month fiscal year.
  - (c) Demonstrating Presence During a Meeting. An entity shall demonstrate the presence of its members during a meeting by taking roll call on the record at both the beginning and conclusion of a meeting.
  - (d) Technological Issues Affecting Presence During a Meeting. If a member of an entity experiences a technological issue during a regular or emergency meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the meeting, the member shall notify the entity of the technological issue as soon as possible.
    - (1) An exemption to the stipend eligibility requirement to be present for the entire meeting may be granted if the entity certifies by a majority vote that the member was present for a majority of the meeting despite the technological issue which disrupted the member's presence during the meeting.
- 105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
    - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
  - (b) Demonstrating Presence During a Joint Meeting. An entity shall demonstrate the presence of its members during a joint meeting by taking roll call on the record at both the beginning and conclusion of a joint meeting.

(c) Technological Issues Affecting Presence During a Joint Meeting. If a member of an entity experiences a technological issue during a joint meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the joint meeting, the member shall notify the entity of the technological issue as soon as possible.

(1) An exemption to the stipend eligibility requirement to be present for the entire joint meeting may be granted if the entity certifies by a majority vote that the member was present for a majority of the joint meeting despite the technological issue which disrupted the member's presence during the joint meeting.

- 105.13-5. *Oneida Judiciary Hearings*. A member of an entity shall receive a Judiciary hearing stipend if the member's attendance at the Judiciary hearing is required by official subpoena.
- 105.13-6. *Hearings of an Entity*. A member of an entity that maintains hearing authority may obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.
- 105.13-7. *Other Stipends*. The Oneida Business Committee shall determine if, and when, any other stipends are appropriate to compensate members of entities for their official actions. All possible stipends shall be included in the Oneida Business Committee resolution which sets stipend amounts.
  - 105.13-8. *Conferences and Training*. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:
    - (a) A member shall be eligible for a stipend for each full day the member is present at the attending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
      - (1) The amount of the stipend a member is eligible to receive for attendance at a conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a conference or training.
    - (b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.
    - (c) No stipend payments shall be made for those days spent traveling to and from the conference or training.
  - 105.13-9. *Business Expenses*. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.
    - 105.13-10. *Task Force and Ad Hoc Subcommittees*. Members of task force, ad hoc committees and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

### 105.14. Confidential Information

105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order

- (a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.
- (b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Nation and the entity.
- (c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.
- (d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.
- 105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and <u>eanshall</u> only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents <u>mustshall</u> be made in accordance with the Nation's laws and policies <u>regardinggoverning</u> open records and open meetings.
- 105.14-3. *Official Oneida Nation E-mail Address*. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
  - (a) If a member is also an employee of the Nation, he or she shall receive a separate email address from his or her regular work e-mail address.
  - (b(b) A member of an entity shall have thirty (30) days upon election or appointment to an entity to activate his or her official e-mail address.
  - (c) An individual who holds a position as an ad hoc or alternate member of an entity shall be exempt from the requirement to be provided an official e-mail address, unless determined that an e-mail address is necessary for the role and responsibilities of the ad hoc or alternate member.
  - (d) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
  - (ee) A member of an entity shall exclusively use his or her official e-mail address to electronically conduct any business of the entity, and shall not use anya personal or work e-mail address to electronically conduct any business of the entity.
  - (df) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

#### 105.15. Conflicts of Interest

- 105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.
- 105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises, and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.
  - (a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action <u>mustshall</u> be taken by the Nation regarding the status of the official.
- 105.15-3. <u>Ineligibility Due to Conflicts of Interest.</u> Due to the potential for a real or perceived conflict of interest to exist, <u>political appointeesthe following individuals</u> shall not <u>be eligible to</u> serve on an appointed or elected entity:
  - (a) political appointees;
  - (b) an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, or Intergovernmental Affairs and Communications; and
  - (c) an employee who serves as a direct report to the Oneida Business Committee or General Manager.

### 105.16. Use of the Nation's Assets

- 105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.
- 105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:
  - (a) all transactions are executed in accordance with management's authorization; and
  - (b) access to assets is permitted only in accordance with management's authorization; and
  - (c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.
- 105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

### 105.17. Dissolution of an Entity

- 105.17-1. Dissolution of a Task Force or Ad Hoc Committee. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.
- 732 105.17-2. *Dissolution of an Entity*. All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee.
- 734 105.17-3. *Notice of Dissolution*. Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida

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- 736 Business Committee shall provide the entity written notice of the dissolution.
  - 105.17-4. *Management of Records and Materials*. All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.
    - (a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

#### 105.18. Enforcement

Amended – BC- - - -

- 105.18-1. Any member of an entity found to be in violation of this law may be subject to:
  - (a) sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;
  - (b) removal pursuant to any laws or policies of the Nation's governing removal, if the individual is a member of an elected entity; or
  - (c) termination of appointment by the Oneida Business Committee, if the individual is a member of an appointed entity.

End.

**756** 758 759 Adopted - BC-08-02-95-A 760 Amended - BC-05-14-97-F 761 Emergency Amendments Amended - BC-04-12-06-JJ 762 Amended - BC-09-27-06-E (permanent adoption of emergency amendments) 763 Amended - BC-09-22-10-C 764 Amended - BC-09-26-18-C 765 Emergency Amended – BC-03-11-20-B 766 Emergency Amended – BC-03-17-20-C

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### Title 1. Government and Finances – Chapter 105 Laotiyanlahsla?shúha katyohkwaya'tú'se? Their laws of the groups we have BOARDS, COMMITTEES, AND COMMISSIONS

105.1. Purpose and Policy	105.10. Bylaws
105.2. Adoption, Amendment, Repeal	105.11 Electronic Polling
105.3. Definitions	105.12. Reporting Requirements
105.4. Creation of an Entity	105.13. Stipends, Reimbursement and Compensation
105.5. Applications	105.14. Confidential Information
105.6. Vacancies	105.15. Conflicts of Interest
105.7. Appointment to an Entity	105.16. Use of the Nation's Assets
105.8. Election to an Entity	105.17. Dissolution of an Entity
105.9. Oath of Office	105.18. Enforcement

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### 105.1. Purpose and Policy

105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

- (a) This law shall not apply to the Oneida Business Committee, or standing committees of the Oneida Business Committee.
- (b) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.
- 105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

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### 105.2. Adoption, Amendment, Repeal

- 105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C and amended by BC- - .
- 105.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 105.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered
- 24 to have legal force without the invalid portions.
- 105.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
- 27 105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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### 105.3. Definitions

- 105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
  - (a) "Application" means the form by which a person seeks to be appointed to fill a vacancy

on an entity.

- (b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.
  - (c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
  - (d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.
  - (e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.
  - (f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.
  - (g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.
  - (h) "Direct report" means a position which requires direct contact and supervision by the Oneida Business Committee because of the position, the duties, or the services provided. Direct reports shall be identified by the Oneida Business Committee through resolution
- (i) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.
- (j) "E-poll" means an electronic poll, which is the act of delivering an e-mail to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.
- (k) "Joint meeting" means a meeting with the Oneida Business Committee.
- (1) "Nation" means the Oneida Nation.
- (m) "Per Diem" means the payment made by the Nation to offset the costs of being on travel on behalf of the Oneida Nation.
- (n) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member's daily activities and operations.
- (o) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used

in an unauthorized or unlawful manner.

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- (p) "Stipend" means the amount paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation.
- (q) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.
- (r) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by clear and convincing evidence.
- (s) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.
- (t) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

#### 105.4. Creation of an Entity

- 105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.
- 97 105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.
- 99 105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

#### 105.5. Applications

- 105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.
  - (a) All applications shall include:
    - (1) a statement explaining the attendance requirements of section 105.12-3; and
    - (2) a section regarding disclosures of conflicts of interest.
  - (b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.
- 105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date.
- 117 105.5-3. Within eight (8) days after the posted deadline for filing applications, the Business
- 118 Committee Support Office shall notify all persons who have filed an application of the date his or
- her application was received and if his or her application met the deadline to be considered for the election or appointment.

- 121 105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. Applications for appointed positions shall be verified by the Business Committee Support Office as needed or as required in the bylaws of the entity.
  - 105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Business Committee Support Office may repost for an additional time period.
    - (a) If the number of applicants is equal to or less than the number of vacancies then it shall be determined to be an insufficient number of applicants.
    - (b) The Business Committee Support Office shall notify the Oneida Business Committee if a position will be reposted for an additional time period.
    - (c) In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.
    - (d) The Oneida Business Committee may elect to include within the pool of appointed persons late applications.

#### 105.6. Vacancies

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- 105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.
- 105.6-2. A position on an entity shall be considered vacant in the following situations:
  - (a) *End of Term*. A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.
    - (1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.
  - (b) Removal. Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.
  - (c) Termination of Appointment. A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.
  - (d) Resignation. A resignation is effective upon:
    - (1) Deliverance of a letter to the Business Committee Support Office and to the Chairperson of the entity, or designee; or
    - (2) Acceptance by motion of the entity of a verbal resignation.
- (e) *New Positions*. Vacancies on new entities are effective upon adoption of bylaws. 105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns
- that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.
- 105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The Business Committee Support Office shall post notice of vacancies at the following times:
  - (a) End of Term. Automatically sixty (60) days prior to completion of the term.

- (b) Removal. No later than the next Oneida Business Committee meeting following the effective date of the removal.
   (c) Resignation. No later than the next Oneida Business Committee meeting following the Business Committee Support Office's receipt of notice of an effective resignation from
  - (d) New Positions. Upon one of the following conditions:
    - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
    - (2) upon date specified when creating the entity.
  - (e) *Termination of appointment*. No later than the next Oneida Business Committee meeting following the effective date of the termination.
  - 105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

#### 105.7. Appointment to an Entity

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- 105.7-1. *Appointment Selection*. The following procedures shall be used to determine how the applicant for an appointed position is selected:
  - (a) Within eight (8) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
    - (1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and
    - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made; or
    - (3) if delays in compiling the applications, summary of qualifications, or results of any investigations exist, request additional time from the Oneida Business Committee to complete requirements of section 105.7-1(a)(1)-(2).
  - (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
    - (1) The entity's Chairperson may review the application materials and submit to the Business Committee Support Office a recommendation to the Oneida Business Committee of an applicant for appointment.
      - (A) The recommendation shall be submitted to the Business Committee Support Office in accordance with the submission deadlines for the Oneida Business Committee meeting in which the appointment is intended to be made.
  - (c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough

209 discussion, the Oneida Business Committee shall: 210

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- (1) select an applicant for appointment, or
- ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.
- (d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.
- (e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:
  - (1) accept the selected applicant and vote to appoint the individual to the vacant position, or
  - (2) reject the selected applicant and vote to oppose the appointment of the individual.
- (f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.
- 105.7-2. Notification of Appointment. Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.
  - (a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.
  - (b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: "The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."
- 105.7-3. Declination of Appointment. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.
  - (a) An individual may decline an appointment to an entity in the following ways:
    - (1) Delivery of a letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or
    - (2) The failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee.
  - (b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined

in section 105.7-1 to select another applicant for appointment.

- 105.7-4. *Termination of Appointment*. An appointed member of an entity serves at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.
  - (a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.
  - (b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

#### 105.8. Election to an Entity

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- 105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or apply for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.
  - (a) When the Election Board notifies an applicant or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: "The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."
- 105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

#### 105.9. Oath of Office

- 105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting, or at an alternative time and location as determined by the Secretary. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.
  - (a) When taking an oath, the appointed or elected member shall appear in person to take his or her oath, except if granted permission by the Secretary to appear through video conferencing, or through other telecommunications.
  - (b) If an oath is administered outside of an Oneida Business Committee meeting, a quorum of Oneida Business Committee members shall be present to witness the oath.
- 105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.
- 291 105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded to the new member of the entity and the entity.
- 294 105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is 295 pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws 296 and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation

- 297 Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people 298 with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will 299 carry out the duties and responsibilities as a member of the [entity name], and all recommendations 300 shall be made in the best interest of the Oneida Nation as a whole.
- 301 105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware 302 of their duty to the Nation and as members of the entity.

#### 105.10. Bylaws

- 105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.
  - (a) All existing entities shall comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law.
  - (b) Bylaws shall contain at least the minimum information required by law, although more information is not prohibited.
  - (c) Exception. Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities shall have, at minimum, mission or goal statements for completion of the task.
- 105.10-2. Articles. Bylaws shall contain, at a minimum, the following Articles:
  - (a) Article I. Authority.
  - (b) Article II. Officers.
  - (c) Article III. Meetings.
  - (d) Article IV. Expectations.
  - (e) Article V. Stipends and Compensation.
  - (f) Article VI. Records and Reporting.
  - (g) Article VII. Amendments.
- 105.10-3. Sections. Articles shall be divided into "sections" as set out.
  - (a) "Article I. Authority" shall consist of the following:
    - (1) Name. The full name of the entity shall be stated, along with any short name that will be officially used.
    - (2) Establishment. This section shall state the citation and name, if any, of the creation document.
    - (3) Authority. This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.
    - (4) Office. There shall be listed the official office or post box of the entity.
    - (5) *Membership*. The following information shall be in this section:
      - (A) Number of members on the entity;
      - (B) If members on the entity are elected or appointed, and how a member is elected or appointed;
      - (C) How vacancies are filled; and
      - (D) Qualifications for membership on the entity.
        - (i) In order to qualify for membership on an entity, a person shall meet the minimum age requirements set forth for status as a

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qualified voter of the Nation, unless a law, policy, or directive sets

343	(6) Termination or Removal. This section shall identify causes for termination or
344	removal, if any, in addition to those already identified in laws and/or policies of the
345	Nation.
346	(7) Trainings and Conferences. This section shall describe any trainings and/or
347	conferences that the entity deems necessary for members to responsibly serve the
348	entity, if any.
349	(b) "Article II. Officers" shall consist of the following:
350	(1) Chairperson and Vice-Chairperson. This section creates the chairperson and
351	vice-chairperson positions of the entity. Other officer positions may also be created
352	here.
353	(2) Responsibilities of the Chairperson. Because of the importance of this position,
354	all duties and responsibilities of the chairperson, as well as limitations of the
355	chairperson shall be specifically listed here.
356	(3) Responsibilities of the Vice-Chairperson. Because of the importance of this
357	position, all duties and responsibilities of the vice-chairperson, as well as
358	limitations of the vice-chairperson shall be specifically listed here.
359	(4) Responsibilities of Additional Officers. There may be additional sections as
360	needed for every officer position created in subsection one (1) above. These
361	sections shall state all duties and responsibilities of the officer, as well as any
362	limitations of the officer.
363	(5) Selection of Officers. This section shall identify how a member of the entity
364	shall be selected for an official officer position in the entity.
365	(6) Purchases and Travel. This section shall identify how the entity shall approve
366	purchases or travel on behalf of the entity.
367	(A) An entity shall follow the Nation's policies and procedures regarding
368	purchasing and sign-off authority.
369	(B) Upon formal approval of a purchase by an entity, the Business
370	Committee Support Office shall have official budgetary sign off authority
371	for the entity.
372	(C) An entity shall approve a member's request to travel on behalf of the
373	entity by majority vote at a regular or emergency meeting of the entity.
374	(7) <i>Personnel</i> . This section shall state the entity's authority for hiring personnel,
375	if any, and the duties of such personnel.
376	(c) "Article III. Meetings" shall consist of the following:
377	(1) Regular meetings. This section shall identify when and where regular meetings
378	shall be held, and how the entity shall provide notice of the meeting agenda,
379	documents, and minutes.
380	(2) <i>Emergency meetings</i> . This section shall identify what constitutes an emergency
381	meeting, how emergency meetings shall be called, and how the entity shall provide
382	notice of the emergency meeting.
383	(A) All bylaws shall include a provision requiring that within seventy-two
384	(72) hours after an emergency meeting, the entity shall provide the Nation's

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forth a minimum age requirement.

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427 428 Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular meeting.

- (3) *Joint Meetings*. This section shall identify if joint meetings shall be held, the frequency and location of joint meetings, and how the entity shall provide notice of the meeting agenda, documents, and minutes.
- (4) *Quorum*. This section shall identify how many members of an entity create a quorum.
- (5) Order of Business. This section sets out how the agenda will be set up.
- (6) *Voting*. This section shall identify voting requirements, such as, but not limited to:
  - (A) the percentages that shall be needed to pass different items;
  - (B) if, and when, the chairperson is allowed to vote;
  - (C) if the use of an e-poll is permissible; and
  - (D) if the use of and e-poll is permissible, who will serve as the Chairperson's designee for the responsibility of conducting an e-poll, if a designee is utilized.
- (d) "Article IV. Expectations" shall consist of the following information:
  - (1) Behavior of Members. This section shall identify the behavioral expectations and requirements of a member of the entity, and identify how the entity shall enforce these behavioral expectations.
  - (2) *Prohibition of Violence*. This section shall prohibit any violent intentional act committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property, and set forth any further expectations regarding the prohibition of violence.
  - (3) Drug and Alcohol Use. This section shall prohibit the use of alcohol and prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and alcohol.
  - (4) Social Media. This section shall identify expectations for the use of social media in regards to official business of the entity.
  - (5) Conflict of Interest. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities resulting from disclosed conflicts of interest, and means by which a party can alleviate or mitigate the conflict of interest.
- (e) "Article V. Stipends and Compensation" shall consist of the following information:
  - (1) Stipends. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.
  - (2) Compensation. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.
- (f) "Article VI. Records and Reporting" shall consist of the following information:
  - (1) Agenda Items. Agenda items shall be maintained in a consistent format as

429	identified by this section.
430	(2) Minutes. Minutes shall be typed and in a consistent format designed to generate
431	the most informative record of the meetings of the entity. This may include a
432	summary of action taken by the entity. This section shall identify the format for
433	minutes, and a reasonable timeframe by which minutes shall be submitted to the
434	Business Committee Support Office.
435	(3) Attachments. Handouts, reports, memoranda, and the like may be attached to
436	the minutes and agenda, or may be kept separately, provided that all materials can
437	be identified to the meeting in which they were presented. This section shall
438	identify how records of attachments shall be kept.
439	(4) Oneida Business Committee Liaison. Entities shall regularly communicate with
440	the Oneida Business Committee member who is their designated liaison. This
441	section shall identify a format and frequency for communication which may be as
442	the liaison and entity agree to, but not less than that required in any law or policy
443	on reporting developed by the Oneida Business Committee or Oneida General
444	Tribal Council. The purpose of the liaison relationship is to uphold the ability of
445	the liaison to act as a support to that entity.
446	(5) Audio Recordings. An entity shall audio record all meetings. This section shall
447	state how the entity shall audio record meetings, and how the entity shall maintain
448	the audio records.
449	(A) Exception. Audio recordings of executive session portions of a meeting
450	shall not be required.
451	(g) "Article VII. Amendments" consists of:
452	(1) Amendments to Bylaws. This section shall describe how amendments to the
453	bylaws are made. Any amendments to bylaws shall conform to the requirements
454	of this and any other policy of the Nation. Amendments to bylaws shall be
455	approved by the Oneida Business Committee, in addition to the General Tribal
456	Council when applicable, prior to implementation.
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458	105.11. Electronic Polling
459	105.11-1. An entity may utilize an e-poll when approval of an action may be required before the

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- n may be required before the next available meeting agenda of the entity.
- 105.11-2. Conducting an E-Poll. The Chairperson of the entity, or designee, shall e-mail the epoll to all members of the entity. Requests for an e-poll shall be sent only from an official e-mail address of the entity. The e-poll's message shall include the following information:
  - (a) The e-mail subject line shall begin with "E-poll Request:" and include a short title describing the purpose of the request.
  - (b) The body of the e-poll shall contain the following elements:
    - (1) An executive summary of the reason for the request and why the request cannot be presented at the next available meeting of the entity;
    - (2) A proposed motion which shall be in bold and identified in a separate paragraph by the words "Requested Action;"
    - (3) All attachments in \*.pdf format, which are necessary to understand the request being made; and

 (4) A deadline date for a response to be returned regarding the results of the electronic poll which shall be in bold and identified in a separate paragraph by the words "Deadline for Response."

 (A) E-poll requests shall be open for response not less than one (1) hour and no more than twenty-four (24) hours.

 (B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.

105.11-3. Response to an E-Poll. Only the member of an entity shall respond to an e-poll. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.

(a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.

 (b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.

 (c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.(d) The Chairperson, or designee, shall monitor all responses and deadline dates for

responses. 105.11-4. *Entering an E-Poll in the Record*. Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:

(a) Original e-poll request and all supporting documentation;

 (b) A summary of the e-poll results identifying each member of the entity and his or her response; and

 (c) A copy of any comment by a member of the entity if comments are made beyond a vote.

#### 105.12. Reporting Requirements

105.12-1. *Minutes*. All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.

 (a) Actions taken by an entity are valid upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.

(b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.

 (c) No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.

105.12-2. *Standard Operating Procedures*. All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.

516 105.12-3. *Quarterly Reports to the Oneida Business Committee*. Entities shall provide quarterly

reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:

- (a) Contact Information. The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.
- (b) *Meetings*. When and how often the entity is holding meetings and whether any emergency meetings have been held.
  - (1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.
- (c) *Accomplishments*. Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.
- (d) Goals. Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.
- (e) *Budget*. The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.
- (f) Requests. Details of any requests to the Oneida Business Committee.
- (g) Other. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.
- 105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.
  - (a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.
  - (b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.
- 105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

#### 105.13. Stipends, Reimbursement and Compensation

- 105.13-1. Stipends and reimbursement for expenses shall follow the procedures as set out in this section and according to procedures for payment as set out by the Nation, unless otherwise declined by the entity through its bylaws, or declined by a member.
- 558 105.13-2. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida 559 Business Committee shall periodically review the amounts provided for stipends and, based on the 560 availability of funds, shall adjust those amounts accordingly by amending the resolution. Stipends

are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards. 105.13-3. *Meeting Stipends*. A member of an entity shall only receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.

- (a) *Meeting Stipends for an Appointed Entity*. An individual serving on an appointed entity shall be paid no more than twelve (12) meeting stipends per fiscal year.
- (b) *Meeting Stipends for an Elected Entity*. An individual serving on an elected entity shall be paid no more than twenty-four (24) meeting stipends per fiscal year.
- (c) Demonstrating Presence During a Meeting. An entity shall demonstrate the presence of its members during a meeting by taking roll call on the record at both the beginning and conclusion of a meeting.
- (d) Technological Issues Affecting Presence During a Meeting. If a member of an entity experiences a technological issue during a regular or emergency meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the meeting, the member shall notify the entity of the technological issue as soon as possible.
  - (1) An exemption to the stipend eligibility requirement to be present for the entire meeting may be granted if the entity certifies by a majority vote that the member was present for a majority of the meeting despite the technological issue which disrupted the member's presence during the meeting.
- 105.13-4. *Joint Meeting Stipends*. A member of an entity shall only receive a stipend for a joint meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is present for the entire meeting. Joint meetings can occur in person, by telephone, through videoconferencing, or through other telecommunications.
  - (a) An individual shall receive a stipend for his or her attendance at a duly called joint meeting.
    - (1) A joint meeting stipend does not count towards the limitation on meeting stipends as provided for in section 105.13-3(a)-(b).
  - (b) Demonstrating Presence During a Joint Meeting. An entity shall demonstrate the presence of its members during a joint meeting by taking roll call on the record at both the beginning and conclusion of a joint meeting.
  - (c) Technological Issues Affecting Presence During a Joint Meeting. If a member of an entity experiences a technological issue during a joint meeting held by telephone, through videoconferencing, or through other telecommunications, and the technological issue disrupts the member's presence during the joint meeting, the member shall notify the entity of the technological issue as soon as possible.
    - (1) An exemption to the stipend eligibility requirement to be present for the entire joint meeting may be granted if the entity certifies by a majority vote that the member was present for a majority of the joint meeting despite the technological issue which disrupted the member's presence during the joint meeting.
- 105.13-5. Oneida Judiciary Hearings. A member of an entity shall receive a Judiciary hearing

- stipend if the member's attendance at the Judiciary hearing is required by official subpoena.
- 606 105.13-6. Hearings of an Entity. A member of an entity that maintains hearing authority may 607 obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of 608 all functions related to the resolution of the matter notwithstanding the amount of time it takes to 609 resolve the matter, including, but not limited to, any continuations of the hearing and decision 610 drafting.
- 611 105.13-7. *Other Stipends*. The Oneida Business Committee shall determine if, and when, any 612 other stipends are appropriate to compensate members of entities for their official actions. All 613 possible stipends shall be included in the Oneida Business Committee resolution which sets stipend 614 amounts.
  - 105.13-8. *Conferences and Training*. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:
    - (a) A member shall be eligible for a stipend for attending a conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
      - (1) The amount of the stipend a member is eligible to receive for attendance at a conference or training shall be dependent on whether the member attended up to four (4) hours of a conference or training, or more than four (4) hours of a conference or training.
    - (b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.
    - (c) No stipend payments shall be made for those days spent traveling to and from the conference or training.
    - 105.13-9. *Business Expenses*. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.
    - 105.13-10. *Task Force and Ad Hoc Subcommittees*. Members of task force, ad hoc committees and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

#### 105.14. Confidential Information

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- 105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order to protect the interest of the Nation and ensure that no persons engaged in by the Nation, nor their relatives or associates, benefit from the use of confidential information.
  - (a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.
  - (b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the

Nation and the entity.

- (c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.
- (d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.
- 105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and shall only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents shall be made in accordance with the Nation's laws and policies governing open records and open meetings.
- 105.14-3. Official Oneida Nation E-mail Address. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.
  - (a) If a member is also an employee of the Nation, he or she shall receive a separate email address from his or her regular work e-mail address.
  - (b) A member of an entity shall have thirty (30) days upon election or appointment to an entity to activate his or her official e-mail address.
  - (c) An individual who holds a position as an ad hoc or alternate member of an entity shall be exempt from the requirement to be provided an official e-mail address, unless determined that an e-mail address is necessary for the role and responsibilities of the ad hoc or alternate member.
  - (d) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
  - (e) A member of an entity shall exclusively use his or her official e-mail address to electronically conduct any business of the entity, and shall not use a personal or work e-mail address to electronically conduct any business of the entity.
  - (f) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

#### 105.15. Conflicts of Interest

- 105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.
- 105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.
  - (a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action shall be taken by the Nation regarding the status of the official.
- 105.15-3. *Ineligibility Due to Conflicts of Interest*. Due to the potential for a real or perceived conflict of interest to exist, the following individuals shall not be eligible to serve on an appointed

or elected entity:

- (a) political appointees;
- (b) an employee of the Nation's Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, or Intergovernmental Affairs and Communications; and
- (c) an employee who serves as a direct report to the Oneida Business Committee or General Manager.

#### 105.16. Use of the Nation's Assets

- 105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.
- 105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:
  - (a) all transactions are executed in accordance with management's authorization; and
  - (b) access to assets is permitted only in accordance with management's authorization; and
  - (c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.
- 105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

#### 105.17. Dissolution of an Entity

- 105.17-1. Dissolution of a Task Force or Ad Hoc Committee. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.
- 721 105.17-2. *Dissolution of an Entity*. All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee.
- 723 105.17-3. *Notice of Dissolution*. Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida Business Committee shall provide the entity written notice of the dissolution.
  - 105.17-4. *Management of Records and Materials*. All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.
    - (a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

#### 105.18. Enforcement

## Draft 2 for OBC Consideration 2020 08 12

737	105.18-1. Any member of an entity found to be in violation of this law may be subject to:				
738	(a) sanctions and penalties in accordance with any laws or policies of the Nation governing				
739	sanctions and/or penalties;				
740	(b) removal pursuant to any laws or policies of the Nation's governing removal, if the				
741	individual is a member of an elected entity; or				
742 743	(c) termination of appointment by the Oneida Business Committee, if the individual is a member of an appointed entity.				
744	End.				
746					
747 748	Adopted DC 09 02 05 A				
7 <del>4</del> 8	Adopted - BC-08-02-95-A Amended - BC-05-14-97-F				
750	Emergency Amended - BC-04-12-06-JJ				
751	Amended - BC-09-27-06-E (permanent adoption of emergency amendments)				
752	Amended – BC-09-22-10-C				
753	Amended – BC-09-26-18-C				
754	Emergency Amended – BC-03-11-20-B				
755	Emergency Amended – BC-03-17-20-C				
756	Amended – BC				
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# FINANCE ADMINISTRATION Fiscal Impact Statement



### **MEMORANDUM**

TO: Lawrence Barton, Chief Financial Officer

FROM: RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

DATE: July 24, 2020

RE: Fiscal Impact of the Boards, Committees, and Commissions Law

**Amendments** 

I. Estimated Fiscal Impact Summary

Law: Boards, Committees, and Commissions Law Amendments  Draft 2			Draft 2
	Oneida Election Board, Or	$\mathbf{c}$	
	Land Claims Commission, Oneida Land Commission, Oneida		
	Nation Commission on Aging, Oneida Nation School Board,		
	Oneida Trust Enrollment Committee, Anna John Resident t		
	Centered Care Community Board, Oneida Community Library		
Implementing Agency	Board, Oneida Environmental Resource Board, Oneida Nation		
	Arts Board, Oneida Personnel Commission, Oneida Police		
	Commission, Oneida Pow Wow Committee Oneida Nation		
	Veterans Affairs Committee, Pardon and Forgiveness		
	Screening committee, Southeastern WI Oneida Tribal Services		
	Advisory Board.		
<b>Estimated time to comply</b>	10 days, in compliance with the Legislative Procedures Act		
<b>Estimated Impact</b>	<b>Current Fiscal Year</b>	10 Year Es	stimate
<b>Total Estimated Fiscal Impact</b>	Indeterminate	Indeterminate	

#### II. Background

#### A. Legislative History

This law was adopted by the Oneida Business Committee by resolution BC 05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C, BC-03-11-20-B, and BC-03-17-20-C.

#### B. Summary of Content

The amendment allows the Business Committee Support Office to repost a vacancy for an additional time period if insufficient applications are received, request additional time for the Oneida Business Committee to compile application, summarize qualifications, or results of investigations. The Business Committee Support Office shall have official budgetary sign off for all boards, committees, and commissions after formal approval of a purchase by the board, committee, or commission.

The amendment provides a deadline the deadline for the recommendation for appointment by the Chair of an entity shall be the submission deadline for the Oneida Business Committee meeting. The amendment provides that all appointed and elected positions are official after taking an oath during a regular or special Oneida Business Committee meeting or a time and location determined by the Secretary where a quorum of the Oneida Business Committee members are present. The amendment reinstates the requirement that boards, committees, or commission audio record all meetings.

The amendment provides clarification that the use of a proxy to respond to e-poll requests shall not be allowed.

The amendment provides more flexibility in the payment and frequency of stipends for attending board, committee or commission meetings. An appointed entity may be eligible for up to 12 meeting stipends per fiscal year and an elected entity may be eligible for up to 24meeting stipends per fiscal year.

The amendment provides clarification on eligibility of stipends and allowable methods of attendance for joint meetings.

The amendment designates attendance at conference and trainings shall be eligible for a stipend when attendance is required by law, by-law, or resolution.

The amendment specifies the member of an entity shall have thirty (30) days to activate the official email address.

The amendment specifies employees of Internal Audit Department, Finance Administration, Law Office, Business Committee Support Office, Intergovernmental



Affairs, Communications, and direct reports of the Oneida Business Committee are ineligible to be on boards, committees, or commissions due a real or perceived conflict of interest.

#### 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.

#### IV. Agency

There are no startup, personnel, office or documentation costs associated with this legislation. The amendments will become effective 10 days from adoption.

#### V. Financial Impact

The financial impact of the amendments is indeterminate.

#### VI. Recommendation

Finance Department does not make a recommendation regarding 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

1 2	BC Resolution # Amended Boards, Committees, and Commissions Law Stipends
3 WHEREAS, 4 5	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
6 WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and
8 WHEREAS, 9	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
WHEREAS,	the Boards, Committees, and Commissions law ("the Law") was adopted by the Oneida Business Committee through resolution BC-05-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, BC-09-26-18-C, and BC; and
WHEREAS, 6 7 8 9	the Law provides stipends paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for the board, committee, or commission for the betterment of the Nation; and
0 WHEREAS,	the Law requires the Oneida Business Committee to set stipend amounts by resolution; and
21 22 23 WHEREAS, 24 25 26 27 WHEREAS,	the Oneida Business Committee is required to periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending this resolution; and
WHEREAS, 18 19 10 11	on September 26, 2018, the Oneida Business Committee adopted resolution BC-09-26-18-D titled, "Boards, Committees, and Commissions Law Stipends" which set forth the specific stipend amounts allowed to be paid to a member of a board, committee, or commission; and
WHEREAS, 33 44 55 66	on May 8, 2019, the Oneida Business Committee adopted resolution BC-05-08-19-B titled, "Amending Resolution BC-09-26-18-D Boards, Committees, and Commissions Law Stipends" to allow the Oneida Nation School Board to be eligible to receive a stipend for participating in interviews and/or job description prescreens; and
77 <b>WHEREAS</b> , 88 9 .0 .1	on March 17, 2019, the Oneida Business Committee adopted resolution BC-03-27-20-D titled, "Amending Resolution BC-05-08-19-B Boards, Committees, and Commissions Law Stipends" to reflect emergency amendments that were made to the Law through resolution BC-03-17-20-C to address the requirements of holding stipend eligible meetings during the COVID-19 pandemic by providing that the meeting stipend limitation for appointed entities

COVID-19 pandemic by providing that the meeting stipend limitation for appointed entities would be revised from up to "one (1) stipend per month" to up to "twelve (12) stipends per BC Resolution #\_\_\_\_ Amended Boards, Committees, and Commissions Law Stipends Page 2 of 3

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year," and for elected entities revised from up to "two (2) stipends per month" to up to "twenty-four (24) stipends per year"; and

whereas, the Legislative Operating Committee adopted the emergency amendments to the Law setting the limitation on meeting stipends per fiscal year, instead of per month, on a permanent basis through resolution BC-\_--\_; and

whereas, the Legislative Operating Committee has reviewed this resolution and provided revisions to be consistent with the amendments to the Law adopted through resolution BC-\_\_-\_\_- and

**NOW THEREFORE BE IT RESOLVED,** that the Oneida Business Committee sets forth the following stipend amounts allowed to be paid to a member of a board, committee, or commission of the Nation:

- 1. Meetings of a Board, Committee, or Commission of the Nation. A member of a board, committee, or commission of the Nation shall receive a stipend for attending a duly called meeting of the board, committee, or commission in accordance with the Law.
  - a. Appointed Boards, Committees, and Commissions. A member of an appointed board, committee, or commission of the Nation shall receive a stipend of seventy-five dollars (\$75) for a duly called meeting of the board, committee, or commission for up to twelve (12) meetings per fiscal year.
    - i. Appointed boards, committees, and commissions of the Nation include the following:
      - 1. Anna John Resident Centered Care Community Board;
      - 2. Oneida Community Library Board;
      - 3. Environmental Resource Board:
      - 4. Oneida Nation Arts Board;
      - 5. Oneida Nation Veterans Affairs Committee;
      - 6. Oneida Personnel Commission;
      - 7. Oneida Police Commission:
      - 8. Oneida Pow-wow Committee:
      - 9. Pardon and Forgiveness Screening Committee; and
      - 10. Southeastern Oneida Tribal Services Advisory Board.
  - b. *Elected Boards, Committees, and Commissions.* A member of an elected board, committee, or commission of the Nation shall receive a stipend of one hundred dollars (\$100) for a duly called meeting of the board, committee, or commission for up to twenty-four (24) meetings per fiscal year.
    - i. Elected boards, committees, and commissions of the Nation include the following:
      - 1. Oneida Nation Commission on Aging;
      - 2. Oneida Election Board:
      - 3. Oneida Land Claims Commission:
      - 4. Oneida Land Commission;
      - 5. Oneida Nation School Board:
      - 6. Oneida Trust Enrollment Committee; and
      - 7. Oneida Gaming Commission;
        - a. Although the Oneida Gaming Commission is an elected commission of the Nation, the Oneida Nation Gaming Ordinance provides that the compensation of Oneida Nation Gaming Commissioners is not subject to the Nation's Boards, Committees, and Commissions law.
- 2. Joint Meetings with the Oneida Business Committee. A member of a board, committee, or commission of the Nation shall receive a stipend for attending a duly called joint meeting between

BC Resolution # \_\_\_\_\_ Amended Boards, Committees, and Commissions Law Stipends Page 3 of 3

 the board, committee, or commission and the Oneida Business Committee in accordance with the Law.

a. Appointed Boards, Committees, and Commissions. A member of an appointed board, committee, or commission of the Nation shall receive a stipend of seventy-five dollars (\$75) for a duly called joint meeting.

b. Elected Boards, Committees, and Commissions. A member of an elected board, committee, or commission of the Nation shall receive a stipend of one hundred dollars (\$100) for a duly called joint meeting.

 3. Oneida Judiciary Hearings. A member of a board, committee, or commission of the Nation shall receive a stipend of fifty dollars (\$50) for attending a hearing of the Oneida Judiciary if the member's attendance at the hearing is required by official subpoena.

4. Hearings of a Board, Committee, or Commission of the Nation. A member of a board, committee, or commission of the Nation shall receive a stipend of fifty dollars (\$50) for conducting an official hearing of the board, committee, or commission.

 5. *Miscellaneous Stipends*. The Oneida Business Committee shall have the discretion to determine any other stipends deemed appropriate.

a. Pow-wow Activities. A member of the Oneida Pow-wow Committee shall receive a stipend of twenty-five dollars (\$25) per hour for services he or she provides during each Pow-wow, not to exceed two hundred dollars (\$200) per day, contingent upon available budgeted funds.

b. *Election Activities*. A member of the Oneida Election Board shall receive a stipend of twenty-five dollars (\$25) per hour, not to exceed two hundred dollars (\$200) per day, contingent upon available budgeted funds, for services he or she provides during an election including, but not limited to, managing the polling sites, recounts, and lot drawings.

c. General Tribal Council Meetings. A member of the Oneida Election Board shall receive a stipend of one hundred dollars (\$100) for attendance and service provided at a General Tribal Council meeting of the Nation.

d. Interviews and Job Selection Pre-Screening. A member of the Oneida Personnel Commission and/or the Oneida Nation School Board shall receive a stipend of twenty-five dollars (\$25) for up to four (4) hours of participating in interviews and/or job description prescreens, and a stipend of fifty dollars (\$50) for more than four (4) hours of participating in interviews and/or job description pre-screens.

6. Conferences and Training. A member of a board, committee, or commission of the Nation shall receive a stipend of fifty dollars (\$50) for up to four (4) hours of attendance at a conference or training that is required by law, bylaw, or resolution, or a stipend of one hundred dollars (\$100) for more than four (4) hours of attendance at a conference or training that is required by law, bylaw, or resolution.

**BE IT FINALLY RESOLVED,** that this resolution is hereby adopted and shall become effective on August 26, 2020.



### Oneida Nation

**Oneida Business Committee** Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



#### Statement of Effect

Amended Boards, Committees, and Commissions Law Stipends

#### Summary

This resolution sets forth specific stipend amounts allowed to be paid to a member of a board, committee, or commission of the Nation.

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

Date: July 30, 2020

#### Analysis by the Legislative Reference Office

The Boards, Committees, and Commissions law ("the Law") was adopted by the Oneida Business Committee for the purpose of governing boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1].

Stipends are paid by the Oneida Nation to a person serving on a board, committee, or commission of the Nation in order to compensate the individual for his or her contribution of time, effort, and work for his or her board, committee, or commission for the betterment of the Nation. [1 O.C. 105.3-1(n)].

The Law requires that the Oneida Business Committee set stipend amounts by resolution. [1 O.C. 105.13-21. On September 26, 2018, the Oneida Business Committee adopted resolution BC-09-26-18-D titled, "Boards, Committees, and Commissions Law Stipends" which set forth the specific amounts for the various stipends a member of a board, committee, or commission may be eligible to receive.

The Oneida Business Committee is delegated the responsibility to periodically review the amounts provided for stipends, and based on the availability of funds, adjust those amounts accordingly by amending the stipend resolution. [1 O.C. 105.13-2].

On May 8, 2019, the Oneida Business Committee adopted resolution BC-05-08-19-B titled, "Amending Resolution BC-09-26-18-D Boards, Committees, and Commissions Law Stipends" to allow the Oneida Nation School Board to be eligible to receive a stipend for participating in interviews and/or job description prescreens.

On March 17, 2020, the Oneida Business Committee adopted resolution BC-03-17-20-D titled, "Amending Resolution BC-05-08-19-B Boards, Committees, and Commissions Law Stipends" to reflect emergency amendments that were made to the Law through resolution BC-03-17-20-C to address the requirements of holding stipend eligible meetings during the COVID-19 pandemic. The emergency amendments to the Law provided that the meeting stipend limitation for appointed entities would be revised from up to "one (1) stipend per month" to up to "twelve (12) stipends per year," and for elected entities revised from up to "two (2) stipends per month" to up to "twenty-four (24) stipends per year."

The Oneida Business Committee will consider the adoption of permanent amendments to the Boards, Committees, and Commissions law on August 12, 2020. This resolution provides that the Legislative Operating Committee has reviewed this resolution and provided revisions to be consistent with the most recent amendments to the Law. This resolution adjusts the meeting stipend limitation for appointed entities from up to "one (1) stipend per month" to up to "twelve (12) stipends per fiscal year," and for elected entities from up to "two (2) stipends per month" to up to "twenty-four (24) stipends per fiscal year."

This resolution also changes how the stipend for conferences and trainings will be calculated to be consistent with amendments made to the Law. Previously, a member of a board, committee, or commission of the Nation was eligible to receive a stipend of one hundred dollars (\$100) per day for attendance at a conference or training that is required by law, bylaw, or resolution. This resolution provides that a member of a board, committee, or commission of the Nation is eligible to receive a stipend of fifty dollars (\$50) for up to four (4) hours of attendance at a conference or training that is required by law, bylaw, or resolution, or a stipend of one hundred dollars (\$100) for more than four (4) hours of attendance at a conference or training that is required by law, bylaw, or resolution.

#### Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> Other Actions to Note When Discussing Stipends of Boards, Committees, and Commissions:

<sup>-</sup> Resolution BC-04-08-20-B placed many boards, committees, and commissions into temporary closure status for the remainder of Fiscal Year 2020 and during any continuing resolution for Fiscal Year 2021. Any board, committee, or commission placed into temporary closure status is not eligible to receive stipends.

<sup>-</sup> Through resolution BC-04-08-20-C the Oneida Business Committee adopted Tier V budget reductions from the Budget Contingency Plan beginning immediately in accordance with the Budget Management and Control law. Tier V budget reductions include a five percent (5%) mandatory cut across the Nation and a reduction of funding to essential services only. The Tier V Budget reductions may affect a board, committee, or commission's ability to collect a stipend.

## August 3, 2020, Legislative Operating Committee E-Poll Approval of the LOC's FY2020 Third Quarter Report

E-POLL REQUEST: Approval of the LOC's FY2020 Third Quarter Report





#### **Good Morning Legislative Operating Committee,**

This e-mail serves as the e-poll for the approval of the Legislative Operating Committee's Fiscal Year 2020 Third Quarter Report.

#### **EXECUTIVE SUMMARY**

The Legislative Operating Committee is now prepared to approve its Fiscal Year 2020 Third Quarter Report so that it may be submitted to the Oneida Business Committee. This report details the accomplishments of the Legislative Operating Committee from April 2020 until June 2020.

An e-poll is necessary for this matter because the Legislative Operating Committee has canceled all meetings due to the COVID-19 pandemic, and immediate action is required by Legislative Operating Committee to approve these materials so that the FY2020 Third Quarter Report can be submitted to the Oneida Business Committee by the August 18, 2020, submission deadline.

#### **REQUESTED ACTION**

Approve the Legislative Operating Committee's Fiscal Year 2020 Third Quarter Report and forward to the Oneida Business Committee.

#### **DEADLINE FOR RESPONSE**

August 3, 2020 at 4:30 p.m.

All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by Jennifer Webster, Ernest Stevens III, Kirby Metoxen, Daniel Guzman King, and David P. Jordan.

#### RE: E-POLL REQUEST: Approval of the LOC's FY2020 Third Quarter Report



Jennifer A. Webster

To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen

Cc Clorissa N. Santiago; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster

← Reply ≪ Reply All ... → Forward Mon 8/3/2020 10:38 AM

≪ Reply All

← Reply

Approve, Jenny

#### Re: E-POLL REQUEST: Approval of the LOC's FY2020 Third Quarter Report



Ernest L. Stevens

To LOC; Daniel P. Guzman; David P. Jordan; Kirby W. Metoxen; Jennifer A. Webster

Cc Clorissa N. Santiago; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster

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#### Approve

Sent from my Verizon, Samsung Galaxy smartphone Get Outlook for Android

#### Approve: E-POLL REQUEST: Approval of the LOC's FY2020 Third Quarter Report



Kirby W. Metoxen To LOC

i The sender responded: Approve.



Mon 8/3/2020 10:51 AM

→ Forward

Mon 8/3/2020 10:49 AM

#### Re: E-POLL REQUEST: Approval of the LOC's FY2020 Third Quarter Report



Daniel P. Guzman

To LOC; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen

Cc Clorissa N. Santiago; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster

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Mon 8/3/2020 11:29 AM

Approve

#### Re: E-POLL REQUEST: Approval of the LOC's FY2020 Third Quarter Report



David P. Jordan

To Daniel P. Guzman; LOC; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen

Cc Clorissa N. Santiago; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster

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Approve



Mon 8/3/2020 12:14 PM



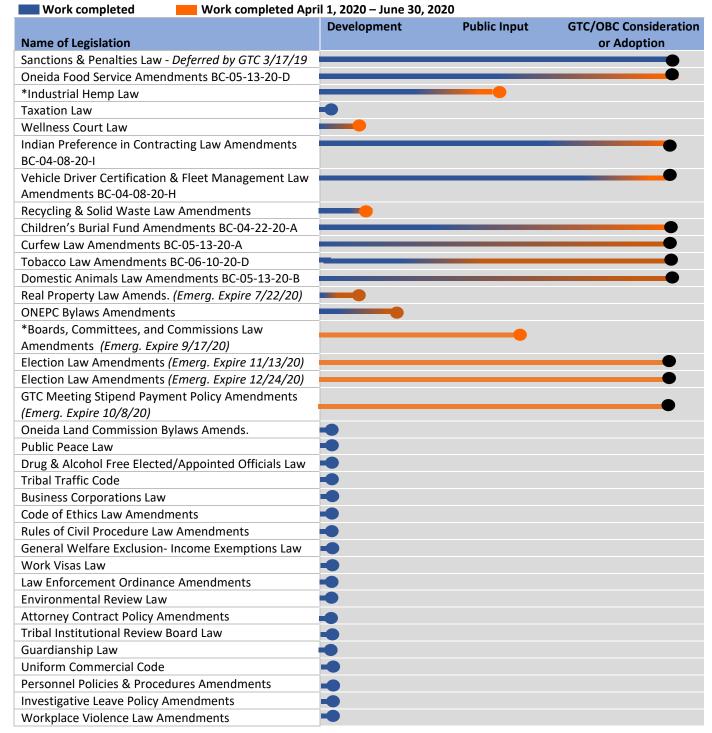
Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54215-0365
Oneida-Instrument



#### **Legislative Operating Committee FY2020 Third Quarter Report**

Current Active Files List – As of 6/30/2020

- \*An item that the LOC intends to finish by August 2020 (end of the 2017-2020 term)
- This item was completed and the LOC is no longer working on it



#### FY20 Third Quarter Executive Summary- COVID-19 Pandemic Response

The COVID-19 global pandemic began in early 2020. On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. The Public Health State of Emergency has since been extended until August 11, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, and BC-07-08-20-A.

As the Nation continues to respond to this public health crisis, it became clear that laws would require emergency amendments in order to maintain the public's health, safety, and general welfare. The Legislative Operating Committee brought forward the following laws for emergency action during the FY20 Third Quarter:

#### **General Tribal Council Meeting Stipend Payment Policy Emergency Amendments**

The General Tribal Council Meeting Stipend Payment Policy governs the payment of stipends for attendance at General Tribal Council meetings. Emergency amendments to the General Tribal Council Meeting Stipend Payment Policy were sought to:

Provide the Oneida Business Committee with authority to decide, through adoption of a resolution, to halt the payment of General Tribal Council meeting stipends to all eligible members for a period of time the Oneida Business Committee deems necessary to protect and safeguard the resources and general welfare of the Nation.

The Oneida Business Committee adopted these emergency amendments on April 8, 2020, through resolution BC-04-08-20-A. The emergency amendments will expire on October 8, 2020, with an opportunity for a six (6) month extension.

#### **Election Law Emergency Amendments**

The Election law governs the procedures for orderly elections of the Nation. Emergency amendments to the Election law were sought to:

- Allow the Election Board to cancel the primary election when large gatherings of people present a substantial risk to the health and safety of the Nation's citizens; and
- Clarify that if a primary election is canceled then all eligible candidates shall be placed on the ballot for the general election.

The Oneida Business Committee adopted these emergency amendments on May 13, 2020, through resolution BC-05-13-20-H. The emergency amendments will expire on November 13, 2020, with an opportunity for a six (6) month extension.

#### **Election Law Emergency Amendments**

The Election law governs the procedures for orderly elections of the Nation. Emergency amendments to the Election law were sought to:

• Provide that elections shall be held *at* an Oneida Nation facility, as opposed to *in* an Oneida Nation facility, to allow for outdoor, drive-through voting to be used during the 2020 General Election.

April 2020 - June 2020

The Oneida Business Committee adopted these emergency amendments on June 24, 2020, through

resolution BC-06-24-20-B. The emergency amendments will expire on December 24, 2020, with an opportunity for a six (6) month extension.

#### **COVID-19 Pandemic Response Resolutions**

During the FY20 Third Quarter the Legislative Reference Office provided statements of effect for the following resolutions related to the COVID-19 pandemic:

- Resolution BC-04-08-20-B Placing Listed Boards, Committees, and Commissions in Temporary Closure Status;
- Resolution BC-04-08-20-C Tier V Budget Contingency Declared for Remainder of Fiscal Year 2020;
- Resolution BC-04-08-20-D General Membership and Elder (Age 62+) Per Capita Payment for Fiscal Year 2020 Halted in Light of Public Health Emergency and Impact on Finances;
- Resolution BC-04-08-20-E Deferring Payments to OLIPP and Elder Endowments;
- Resolution BC-04-08-20-F Halting General Tribal Council Meeting Stipend Payments for FY2020 and FY2021;
- Resolution BC-04-08-20-G Reducing the General Tribal Council Higher Education Scholarship Payments for FY2020 and FY2021;
- Resolution BC-04-08-20-L Suspension of Collection of Rent, Leases, Mortgages and Utilities;
- Resolution BC-05-06-20-A Extension of Declaration of Public Health State of Emergency until June 11, 2020;
- Resolution BC-06-10-20-A Extension of Declaration of Public Health State of Emergency until July 12, 2020;
- Resolution BC-06-10-20-B Process for Authorization for Use of CARES Act COVID Relief Funds:
- Resolution BC-06-10-20-C COVID-19 Response Oneida Nation Small Business Assistance Program; and
- Resolution BC-06-24-20-C Adoption of the Oneida Small Business Assistance Program II –
  Off Reservation and Within State of Wisconsin.

## FY20 Third Quarter Executive Summary- Non-COVID-19 Pandemic Related Matters

The Legislative Operating Committee brought forward the following laws for action during the FY20 Third Quarter:

#### **Vehicle Driver Certification and Fleet Management Law Amendments**

The Vehicle Driver Certification and Fleet Management law establishes standards that certify employees, officials and volunteers to drive a fleet vehicle of the Nation or drive a personal vehicle on official business, and regulates the use of all vehicles owned and leased by the Nation. The Vehicle Driver Certification and Fleet Management law was amended to:

- Revise the qualifications to become a certified driver, including:
  - Reduce the restriction on drug and alcohol convictions from three (3) years without an OWI, DUI, or PAC to twelve (12) months without an OWI, DUI, or PAC;
  - Allow no more than three (3) moving violations or at-fault crashes within a two (2) year period;
  - Allow individuals with probationary licenses to become certified drivers if at least

April 2020 - June 2020

eighteen (18) years of age or older;

- Provide an exemption to the law for those individuals whose duties with respect to the implementation of a contract, agreement, or compact of the Nation include driving and may be subject to compliance with a motor vehicle operation policy as provided in the contract, agreement, or compact of the Nation when this law is less stringent than the said motor vehicle operation policy;
- Clarify the restriction on driving while using prescription or over the counter medications;
- Ban weapons in fleet vehicles and personal vehicles while in use for official business, with certain exceptions;
- Require all certified drivers to complete driver safety training every three (3) years, regardless of whether they drive fleet or personal vehicles, with certain exceptions;
- Ban the use of e-cigarettes in tribal fleet vehicles;
- Require mileage reimbursement requests to be submitted within thirty (30) days of driving the miles or by the end of the fiscal year, whichever is sooner;
- Revise and simplify the process for suspending driver certification:
  - An individual's driver certification is only suspended if his or her driver's license
    has been suspended or revoked by the state of Wisconsin;
  - All other violations of this law that do not result in the suspension or revocation of driver's license will be handled by disciplinary action;
- Allow a supervisor to require an employee take additional driver safety training if the individual is involved in certain circumstances, such as an at-fault motor vehicle crash or issuance of a moving violation, while driving a fleet vehicle or personal vehicle on official business; and
- Make additional changes to revise and reorganize the law to increase clarity.

During the FY20 Third Quarter the Oneida Business Committee adopted the proposed amendments to the Vehicle Driver Certification and Fleet Management law on April 8, 2020, through resolution BC-04-08-20-H. The amendments to the Vehicle Driver Certification and Fleet Management law will become effective on October 5, 2020.

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

The Indian Preference in Contracting law establishes an Indian Preference Office and increases 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. The Indian Preference in Contracting law was amended to:

- Update the definition of tribal corporation to include any corporation chartered and/or wholly owned by the Nation;
- Exempt tribal corporations from the requirement to submit a certification renewal application on an annual basis;
- Permit joint ventures to qualify for Indian Preference on a project-specific basis;
- Raise the contract threshold for when Indian Preference is applied from one thousand five hundred dollars (\$1,500) to three thousand dollars (\$3,000);
- Set a new timeframe for the Indian Preference Office's review of contracts prior to the posting or announcement of a contract;
- 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;

April 2020 - June 2020

• Make additional updates and clarify language throughout the law.

During the FY20 Third Quarter the Oneida Business Committee adopted the proposed amendments to the Indian Preference in Contracting law on April 8, 2020, through resolution BC-04-08-20-I. The amendments to the Indian Preference in Contracting law became effective on May 8, 2020.

The Oneida Business Committee also adopted resolution BC-04-08-20-J titled, "Indian Preference in Contracting Law Fine and Penalty Schedule" which set forth specific fine amounts and penalties to be issued against those individuals who violate the Indian Preference in Contracting law.

#### **Children's Burial Fund Policy Amendments**

The Children's Burial Fund Policy provides financial assistance towards the funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in the Nation. The Children's Burial Fund Policy is being amended to remove outdated restrictions and to create more flexibility in using the funds. The Children's Burial Fund Policy was amended to:

- Revise the eligibility qualifications for assistance from the Fund;
- 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;
- Allow the Fund to be used for any funeral related expenses as identified on 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;
- Prohibit the use of the Fund for travel and/or lodging to attend a funeral;
- 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; and
- Make additional changes to revise and reorganize the law to increase clarity.

During the FY20 Third Quarter the Oneida Business Committee adopted the proposed amendments to the Children's Burial Fund Policy on April 22, 2020, through resolution BC-04-22-20-A. The amendments to the Children's Burial Fund Policy became effective on May 6, 2020.

#### **Curfew Law Amendments**

The Curfew law protects the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor. The Curfew law was amended to:

- Remove an incorrect reference to the Nation's territorial jurisdiction as the Nation's territorial jurisdiction is provided by the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law; and
- Remove a duplicative provision regarding personal jurisdiction as personal jurisdiction is already provided by the Nation's Judiciary law.

April 2020 – June 2020

During the FY20 Third Quarter the Oneida Business Committee adopted the proposed amendments to the Curfew law on May 13, 2020, through resolution BC-05-13-20-A. The Curfew law amendments became effective on May 29, 2020.

#### **Domestic Animals Law Amendments**

The Domestic Animals law protects the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals; sets minimum standards for treatment of animals; prohibits certain species of animals from being brought onto the Reservation; regulates the keeping of livestock on lots zoned residential within the Reservation; and establishes consequences for damages caused by domestic animals. The Domestic Animals law was amended to:

- Remove an incorrect reference to the Nation's territorial jurisdiction as the Nation's territorial jurisdiction is provided by the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law;
- Remove a duplicative provision regarding personal jurisdiction as personal jurisdiction is already provided by the Nation's Judiciary law;
- Remove a duplicative provision regarding the citation process as the citation process is provided by the Nation's Citations law; and
- Include a new provision that prohibits the abandonment of an animal.

During the FY20 Third Quarter the Oneida Business Committee adopted the proposed amendments to the Domestic Animals law on May 13, 2020, through resolution BC-05-13-20-B. The amendments to the Domestic Animals law became effective on May 29, 2020.

The Oneida Business Committee also adopted resolution BC-05-13-20-C titled, "Amended Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule" which set forth specific fine amounts and penalties to be issued against those individuals who violate the Domestic Animals law, as well as the specific licensing costs. This resolution also became effective on May 29, 2020.

#### **Oneida Food Service Code Amendments**

The Oneida Food Service Code ensures the safety of food that is provided to consumers at retail or through an Oneida Food Service Program by establishing a system of overlapping safeguards designed to minimize foodborne illness; ensures employee health, industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable levels of sanitation on the premises of food service businesses; and promotes fair dealings with members of the community through adoption of licensing requirements, exemptions, regulations, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation. The Oneida Food Service Code was amended to:

- Change the name of the law from the Oneida Food Service Code to the Oneida Food Service law to be consistent with the Oneida Code of Laws;
- Remove the Licensing Department, Risk Management and Oneida Police Department from the law, leaving administrative and enforcement duties exclusively to the Environmental, Health and Safety Area within the Nation's Environmental, Health, Safety and Land Division ("Department");
- Allow applicants to satisfy the food safety training that is required to obtain a license to operate certain food service businesses either of the following ways: (1) by taking the

course offered through the Department (as is currently the only option); or (2) by presenting evidence of having received training or certification from an alternative source that the Department deems satisfactory;

- Require the Department to decide whether to issue or renew a license within thirty (30) days of receiving an application, and, if the application is denied, further require the Department to notify the applicant in writing, supplying him or her with the basis for said denial, as well as information on how to appeal its decision;
- Add exemptions for cottage food sales and prepackaged restaurants that eliminate the need for these operations to undergo the licensing process required of food service businesses so long as applicants fulfill the requirements to qualify for the exemption specific to their operation;
- Require the Department to waive the licensing fee when proof is submitted by a food service business or prepackaged restaurant of payment to an overlapping jurisdiction that covers the same term;
- Send appeals of Department decisions not issued pursuant to a citation to the Department's Area Manager, whose decision will be final unless challenged to the Trial Court of the Judiciary on grounds that it constitutes an abuse of power, is contrary to law and/or lacks any reasonable factual basis; while appeals of Department decisions issued pursuant to a citation will be processed according to the Nation's Citations law; and
- Make additional changes to revise and reorganize the law to increase clarity, as well as comply with the Nation's Legislative Procedures Act.

During the FY20 Third Quarter the Oneida Business Committee adopted the proposed amendments to the Oneida Food Service Code on May 13, 2020, through resolution BC-05-13-20-D. The amendments to the Food Service Code will become effective on November 13, 2020.

The Oneida Business Committee also adopted resolution BC-05-13-20-E titled, "Oneida Food Service Law Fine, Penalty, and Licensing Fee Schedule" which set forth specific fine amounts and penalties to be issued against those individuals who violate the Oneida Food Service law, as well as the specific licensing costs.

#### **Tobacco Law Amendments**

The Tobacco law regulates the sale, possession, and distribution of cigarettes within the Reservation. The Tobacco law was amended to:

- Provide a definition for "tobacco products";
- Permanently change the minimum age of sale from eighteen (18) to twenty-one (21) years old;
- 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;
- 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;
- Clarify that the process and procedure contained in the Nation's Citations law will govern citations issued under this law; and
- 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.

During the FY20 Third Quarter the Oneida Business Committee adopted the proposed amendments to the Tobacco law on June 10, 2020, through resolution BC-06-10-20-D. The amendments to the Tobacco law became effective on June 24, 2020.

The Oneida Business Committee also adopted resolution BC-06-10-20-E titled, "*Tobacco Law Penalty and Fine Schedule*" which set forth specific fine amounts and penalties to be issued against those individuals who violate the Tobacco law.

#### **FY20 Third Quarter LOC Meetings**

Typically, all LOC meetings are open to the public and held on the first and third Wednesday of each month, at 9:00 a.m. in the Norbert Hill Center's Business Committee Conference Room.

Due to the COVID-19 pandemic and the Nation's Public Health State of Emergency no in-person LOC meetings were held during the FY20 Third Quarter. The LOC conducted its business through the use of telecommunications and approval of e-polls. The LOC intends to resume in-person meetings as soon as it is safe to do so.

#### **LOC Plans for Fourth Quarter**

During the FY20 Fourth Quarter the LOC will focus its legislative efforts on the following matters:

- 1. Continued response to the COVID-19 Pandemic;
- 2. Adoption of the Boards, Committees, and Commissions Law Amendments;
- 3. Development of the Real Property Law Amendments;
- 4. Adoption of the Industrial Hemp law; and
- 5. Close out of the 2017-2020 Term and Transition to the 2020-2023 Term.

#### **Legislative Reference Office Update**

In addition to assisting the Legislative Operating Committee with its legislative actions throughout the FY20 Third Quarter, the Legislative Reference Office has completed various assessments of the Legislative Reference Office as directed by the Oneida Business Committee. The assessments of the Legislative Reference Office looked at:

- Purpose and composition of the Legislative Reference Office;
- Various outcomes produced by the Legislative Reference Office;
- How the Legislative Reference Office's outcomes related to the priorities of the Nation;
- Who the Legislative Reference Office serves;
- Summary of Legislative Reference Office staff productivity and workload distribution;
- Staffing needs of the Legislative Reference Office as we continue through and move forward beyond the COVID-19 pandemic and Tier V Budget Contingency Plan.

During the FY20 Third Quarter the Legislative Reference Office has operated with a Senior Legislative Staff Attorney and a Legislative Staff Attorney. Two (2) legislative analyst positions remain vacant. The Director of the Legislative Reference Office has been in furlough status since April 12, 2020.

During the FY20 Fourth Quarter the Legislative Reference Office will focus on the LOC's legislative priorities. In addition, the Legislative Reference Office will focus on:

Moving the Nation's legislative history to a digital and searchable format;

- Preparing for the 2020 General Election and subsequent transition; and
- Continued preparation of a recovery plan and staffing model for the Legislative Reference Office.

#### **Legislative Operating Committee Contact Information**

Feel free to contact the LOC with any questions or comments;

- David Jordan, LOC Chairperson, djordan1@oneidanation.org
- Kirby Metoxen, LOC Vice Chairperson, kmetox@oneidanation.org
- Jennifer Webster, LOC member, jwebste1@oneidanation.org
- Daniel King-Guzman, LOC Member, dguzman@oneidanation.org
- Ernest Stevens III, LOC Member, esteven4@oneidanation.org
- LOC@oneidanation.org





# August 5, 2020, Legislative Operating Committee E-Poll Approval of the Oneida General Welfare Law and the Oneida Higher Education Pandemic Relief Fund Law

E-POLL REQUEST: Approval of the Oneida General Welfare Law and the Oneida Higher Education Pandemic Relief Fund law.

LOC

To Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen
Cc Clorissa N. Santiago; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster

1) Vote by clicking Vote in the Respond group above.
This message was sent with High importance.

Oneida General Welfare Law Emergency Adoption Packet.pdf
638 KB

Oneida Higher Education Pandemic Relief Fund Law Emergency Adoption Packet.pdf

#### **Good Morning Legislative Operating Committee,**

This e-mail serves as the e-poll for the approval of the emergency adoption materials for the Oneida General Welfare law and the Oneida Higher Education Pandemic Relief Fund law.

#### **EXECUTIVE SUMMARY**

Emergency adoption of a Oneida General Welfare law and an Oneida Higher Education Pandemic Relief Fund law is being sought to address the economic needs of the Nation's members during the COVID-19 pandemic. The Oneida Business Committee is delegated the authority to temporarily enact emergency legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the adoption of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

#### Oneida General Welfare Law

Emergency adoption of an Oneida General Welfare law is being sought to provide assistance, on a non-taxable basis, to eligible Tribal members through approved programs that promote the general welfare of the Nation. [10 O.C. 1001.1-1, 1001.1-3]. The Law sets a framework and provides guidelines for the Nation to establish and operate approved programs which provide assistance to eligible Tribal members to promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment. [10 O.C. 1001.9-2].

The emergency adoption of this Law is necessary for the preservation of the general welfare of the Reservation population. The emergency adoption of this Law will assist in addressing the economic needs of the Reservation population during the public health crisis that is the COVID-19 pandemic by allowing the Nation to establish and operate approved programs that may provide assistance to Tribal members on a non-taxable basis. Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this Law would be contrary to public interest since the Nation is currently experiencing the vast effects of the COVID-19 pandemic, and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Law can be adopted to best assist members of the Nation during this COVID-19 pandemic through the development of approved programs which provide assistance to Tribal members.

#### Oneida Higher Education Pandemic Relief Fund Law

Emergency adoption of the Oneida Higher Education Pandemic Relief Fund law is being sought to create the Oneida Higher Education Pandemic Relief Fund to assist eligible Tribal members enrolled as students

in higher education institutions for the 2020 Fall Term. [10 O.C. 1003.1-1]. The Oneida Higher Education Pandemic Relief Fund law shall:

- Provide the guidelines and requirements for use of the Oneida Higher Education Pandemic Relief
   Fund [10 O.C. 1003.4];
- Describe the presumption of need and the General Test to be used to determine General Welfare Exclusion [10 O.C. 1003.5];
- Provide that the Nation allocate funds to the Oneida Higher Education Pandemic Relief Fund only from monies it received pursuant to the Coronavirus Relief Funds (CRF), and that this program is dependent on availability of funding from the CRF. [10 O.C. 1003.6].

The emergency adoption of the Law is necessary for the preservation of the general welfare of the Reservation population. Due to the COVID-19 pandemic many grants, scholarships, and loans were forsaken by the granting institutions or banks, and personal and family funds redirected to other needs during the ongoing Public Health State of Emergency, such as medical expenses and losses due to unemployment within the family. Emergency adoption of the Law creates an Oneida Higher Education Pandemic Relief Fund to assist eligible Tribal members enrolled as students in higher education institutions with funding from the Coronavirus Aid, Relief, and Economic Security (CARES) Act Coronavirus Relief Funds (CRF) in order to meet the higher education needs of its students during the COVID-19 Public Health Emergency. Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this Law would be contrary to public interest. The 2020 Fall Term for many higher education institutions begins in a couple weeks and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Oneida Higher Education Pandemic Relief Fund can be created for use by eligible students during the 2020 Fall Term.

An e-poll is necessary for this matter because the Legislative Operating Committee has canceled all meetings due to the COVID-19 pandemic, and immediate action is required by Legislative Operating Committee to approve the materials for the emergency adoption of the Oneida General Welfare law and the Oneida Higher Education Pandemic Relief Fund law so that the emergency laws can be submitted to the Oneida Business Committee for inclusion on the August 6, 2020, Special Oneida Business Committee meeting agenda.

#### **REQUESTED ACTION**

- Approve the Oneida General Welfare law emergency adoption packet and forward to the Oneida Business Committee.
- Add the Oneida Higher Education Pandemic Relief Fund law to the Active Files List as an emergency, with David P. Jordan as the sponsor, and approve the Oneida Higher Education Pandemic Relief Fund law emergency adoption packet and forward to the Oneida Business Committee.

#### **DEADLINE FOR RESPONSE**

August 5, 2020 at 4:30 p.m.

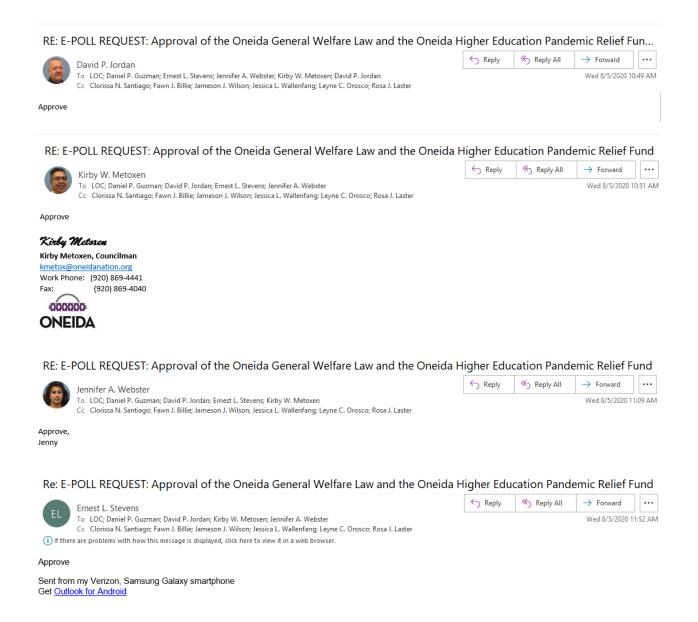
All supporting documentation has been attached to this email for your convenience.



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

#### **E-POLL RESULTS:**

The e-poll was approved by David P. Jordan, Kirby Metoxen, Jennifer Webster, and Ernest Stevens III. Daniel Guzman King did not provide a response during the designated timeframe.





# Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-365



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson

DATE: August 6, 2020

RE: Emergency Adoption of the Oneida General Welfare Law

Please find the following attached backup documentation for your consideration of the emergency adoption of the Oneida General Welfare law:

1. Resolution: Emergency Adoption of the Oneida General Welfare Law

- 2. Statement of Effect: Emergency Adoption of the Oneida General Welfare Law
- 3. Oneida General Welfare Law Legislative Analysis
- 4. Oneida General Welfare Law

#### Overview

Emergency adoption of an Oneida General Welfare law (the "Law") is being sought to create a law that provides a mechanism to address the economic needs of members of the Nation during the COVID-19 pandemic. The purpose of this Law is to provide assistance, on a non-taxable basis, to eligible Tribal members through approved programs that promote the general welfare of the Nation. [10 O.C. 1001.1-1, 1001.1-3]. The Law sets a framework and provides guidelines for the Nation to establish and operate approved programs which provide assistance to eligible Tribal members to promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment. [10 O.C. 1001.9-2].

In response to the outbreak of the COVID-19 pandemic, on March 12, 2020, in accordance with the Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and provided the necessary authority should action need to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. [3 O.C. 302.8-1]. This declaration of a Public Health State of Emergency was extended by the Oneida Business Committee until August 11, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, and BC-07-08-20-A.

On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which prohibited all public gatherings of any number of people and ordered all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. On April 21, 2020, the COVID-19 Core Decision Making Team issued an "Updated Safer at Home" declaration which allowed for gaming and golf operations to resume. Then on May 19, 2020, a "Safer at Home Declaration, Amendment, Open for Business"

declaration was issued which directed that individuals within the Reservation should continue to stay at home, businesses could re-open under certain safer business practices, and social distancing should be practiced by all persons. The COVID-19 Core Decision Making Team most recently issued a "Stay Safer at Home" declaration on June 10, 2020, which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.

The Oneida Business Committee is delegated the authority to temporarily enact emergency legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the adoption of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency adoption of this Law is necessary for the preservation of the general welfare of the Reservation population. The emergency adoption of this Law will assist in addressing the economic needs of the Reservation population during the public health crisis that is the COVID-19 pandemic by allowing the Nation to establish and operate approved programs that may provide assistance to Tribal members on a non-taxable basis.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this Law would be contrary to public interest since the Nation is currently experiencing the vast effects of the COVID-19 pandemic, and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Law can be adopted to best assist members of the Nation during this COVID-19 pandemic through the development of approved programs which provide assistance to Tribal members.

The Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months. There will be one (1) opportunity to extend the emergency adoption of this Law for an additional six (6) month period. [1 O.C. 109.9-5(b)].

#### **Requested Action**

Approve the Resolution: Emergency Adoption of the Oneida General Welfare Law



### **Oneida Nation**

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

# BC Resolution # Emergency Adoption of the Oneida General Welfare Law

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 31 32 33 34 35 36 36 37 38 37 38 37 38 37 38 37 37 38 37 37 38 37 37 37 37 37 37 37 37 37 37 37 37 37	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and
	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
	WHEREAS,	the federal government has proclaimed a public health emergency related to the spread of the COVID-19 virus and has identified that the spread of the virus has resulted in large numbers of individuals becoming ill and high mortality rates, impacts to the stock markets, and businesses; and
	WHEREAS,	state governors, including the State of Wisconsin, declared public health emergencies and state public health officers issued orders, for example, closing public schools, limiting public gatherings, and closing restaurants and bars except for take-out orders; and
	WHEREAS,	on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses; and
	WHEREAS,	the Nation's Public Health State of Emergency has since been extended by the Oneida Business Committee until August 11, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A; and
	WHEREAS,	on March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which prohibited all public gatherings of any number of people and ordered all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed; and
	WHEREAS,	the COVID-19 Core Decision Making Team has issued subsequent declarations modifying the "Safer at Home" declaration including the April 21, 2020 "Updated Safer at Home" declaration, the May 19, 2020, "Safer at Home Declaration, Amendment, Open for Business" declaration, and the June 10, 2020, "Stay Safer at Home" declaration; and
	WHEREAS,	the Oneida General Welfare law ("the Law") is being proposed for emergency adoption in an effort to provide a mechanism to address the economic needs of members of the Nation during the COVID-19 pandemic; and
42 43	WHEREAS,	the purpose of the Law is to provide assistance, on a non-taxable basis, to Tribal members through approved programs that promote the general welfare of the Nation; and

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the Law sets a framework and provides guidelines for the Nation to establish and operate approved programs which provide assistance to eligible Tribal members to promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment; and

the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the adoption of the legislation is required sooner than would be possible under the Legislative Procedures Act; and

emergency adoption of legislation is effective for a period of six (6) months, renewable by the Oneida Business Committee for an additional six (6) month term; and

the emergency adoption of this Law is necessary for the preservation of the general welfare of the Reservation population, as the Law shall assist in addressing the economic needs of the Reservation population during the public health crisis that is the COVID-19 pandemic by allowing the Nation to establish and operate approved programs that may provide assistance to Tribal members on a non-taxable basis; and

observance of the requirements under the Legislative Procedures Act for adoption of this Law would be contrary to public interest since the Nation is currently experiencing the vast effects of the COVID-19 pandemic, and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Law can be adopted to best assist members of the Nation during this COVID-19 pandemic; and

**WHEREAS,** the Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation; and

**NOW THEREFORE BE IT RESOLVED,** the Oneida Business Committee hereby adopts, on an emergency basis, the Oneida General Welfare law effective immediately.

**BE IT FINALLY RESOLVED,** the Oneida Business Committee hereby approves the creation of "Title 10. General Welfare Exclusion" in the Code of Laws and directs that the Oneida General Welfare law be codified under this Title as Chapter 1001.



### Oneida Nation

**Oneida Business Committee** Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



#### **Statement of Effect**

Emergency Adoption of the Oneida General Welfare Law

#### Summary

This resolution adopts an Oneida General Welfare law on an emergency basis in order to provide assistance, on a non-taxable basis, to Tribal members through approved programs that promote the general welfare of the Nation.

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

Date: August 5, 2020

#### Analysis by the Legislative Reference Office

This resolution adopts the Oneida General Welfare law ("the Law") on an emergency basis. The purpose of the Law is to provide assistance, on a non-taxable basis, to Tribal members through approved programs that promote the general welfare of the Nation. [10 O.C. 1001.1-1, 1001.1-3]. The Law sets a framework and provides guidelines for the Nation to establish and operate approved programs which provide assistance to eligible Tribal members to promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, selfsufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment. [10 O.C. 1001.9-2].

The Legislative Procedures Act ("the LPA") was adopted by the General Tribal Council for the purpose of providing a process for the adoption or amendment of laws of the Nation. [1 O.C. 109.1-1]. The LPA allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety or general welfare of the reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [1 O.C. 109.9-5]. A public meeting and fiscal impact statement are not required for emergency legislation. [1 O.C. 109.8-1(b),109.9-5(a)].

In response to the COVID-19 pandemic, on March 12, 2020, in accordance with the Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a Public Health State of Emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. This declaration of a Public Health State of Emergency was extended by the Oneida Business Committee until August 11, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, and BC-07-08-20-A.

On March 17, 2020, the Oneida Business Committee adopted emergency amendments to the Emergency Management and Homeland Security law to create and delegate authority to a COVID-19 Core Decision Making Team ("COVID-19 Team"). [3 O.C. 302.10]. When a public health emergency has been declared, the COVID-19 Team has the authority to declare exceptions to the Nation's laws, policies, procedures, regulations, or standard operating procedures during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees. [3 O.C. 302.10-2]. These declarations remain in effect for the duration of the Public Health State of Emergency. [3 O.C. 302.10-3].

On March 24, 2020, the Nation's COVID-19 Team issued a "Safer at Home" declaration which prohibited all public gatherings of any number of people and ordered all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. On April 21, 2020, the COVID-19 issued an "Updated Safer at Home" declaration which allowed for gaming and golf operations to resume. Then on May 19, 2020, a "Safer at Home Declaration, Amendment, Open for Business" declaration was issued which directed that individuals within the Oneida Reservation should continue to stay at home, businesses could reopen under certain safer business practices, and social distancing should be practiced by all persons. The COVID-19 Making Team most recently issued a "Stay Safer at Home" declaration on June 10, 2020, which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.

The resolution provides that the emergency adoption of this Law is necessary for the preservation of the general welfare of the Reservation population. The emergency adoption of this Law will assist in addressing the economic needs of the Reservation population during the public health crisis that is the COVID-19 pandemic by allowing the Nation to establish and operate approved programs that may provide assistance to Tribal members.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this amendment would be contrary to public interest. The Nation is currently experiencing the vast effects of the COVID-19 pandemic, and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Law can be adopted to best assist members of the Nation during this COVID-19 pandemic through the development of approved programs which provide assistance to Tribal members.

The emergency adoption of this the Law will take effect immediately upon adoption by the Oneida Business Committee. The emergency adoption of the Law will remain effective for six (6) months. The LPA provides the possibility to extend the emergency amendments for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

#### Conclusion

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





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# EMERGENCY ADOPTION OF THE ONEIDA GENERAL WELFARE LAW LEGISLATIVE ANALYSIS

#### **SECTION 1. EXECUTIVE SUMMARY**

Analysis by the Legislative Reference Office	
Intent of the Proposed Law	Set a framework and provide guidelines for the Nation to establish and operate approved programs which provide assistance to eligible Tribal members to promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment. [10 O.C. 1001.9-2].
Purpose	Provide assistance, on a non-taxable basis, to eligible Tribal members through approved programs that promote the general welfare of the Nation. [10 O.C. 1001.1-1, 1001.1-3].
Affected Entities	Oneida Business Committee, Approved Programs
Public Meeting	A public meeting is not required for emergency legislation [1 O.C. 109.8-1(b) and 109.9-5(a)].
Fiscal Impact	A fiscal impact statement is not required for emergency legislation [1 O.C. 109.9-5(a)].
Expiration of Emergency Legislation	Emergency legislation expires six (6) months after adoption and may be renewed for an additional six (6) month period.

#### **SECTION 2. LEGISLATIVE DEVELOPMENT**

- **A.** *Background*. The Oneida General Welfare law will be a new law adopted by the Nation on an emergency basis for the purpose of providing assistance, on a non-taxable basis, to Tribal members through approved programs that promote the general welfare of the Nation.
  - The Oneida Business Committee directed Inter-Governmental Affairs and Communications, Self-Governance, and the Law Office to develop a plan of action to create rules for exempting income per the Tribal General Welfare Exclusion Act. At the December 18, 2018, Oneida Business Committee work meeting, the Oneida Business Committee requested that the General Welfare Exclusions Act Income Exemptions item be sent over to the Legislative Operating Committee for consideration to develop a law that would define the income exemptions under the General Welfare Exclusion Act.
  - The Legislative Operating Committee added the General Welfare Exclusions Act Income Exemptions law to its Active Files List on January 2, 2019.
  - On August 1, 2020, the Oneida Law Office called a meeting with the Legislative Reference Office, Finance Administration, and the Parks and Recreation Department to discuss the potential adoption of an Oneida General Welfare law on an emergency basis.
  - Emergency adoption of the Oneida General Welfare law is being pursued to provide a mechanism to address the economic needs of members of the Nation during the COVID-19 pandemic. The Law sets a framework and provides guidelines for the Nation to establish and operate approved programs which provide assistance to eligible Tribal members to promote the general welfare of the Nation,

- including programs designed to enhance the promotion of health, education, self-sufficiency, selfdetermination, and the maintenance of culture and tradition, entrepreneurship, and employment
  - **B.** *COVID-19 Pandemic*. The world is currently facing a pandemic of the coronavirus disease 2019 (COVID-19). The COVID-19 outbreak originated in Wuhan, China and has spread to many other countries throughout the world, including the United States. The COVID-19 pandemic has resulted in high rates of infection and mortality, as well as vast economic impacts including effects on the stock market and the closing of all non-essential businesses.
    - Declaration of a Public Health State of Emergency.

- On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared the Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority should action need to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
- The Public Health State of Emergency has since been extended until August 11, 2020, by the Oneida Business Committee through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, and BC-07-08-20-A.
- Additional Action taken by the Nation in Response to COVID-19.
  - On March 17, 2020, the Oneida Business Committee adopted emergency amendments to the Emergency Management and Homeland Security law to create and delegate authority to a COVID-19 Core Decision Making Team ("COVID-19 Team"). [3 O.C. 302.10].
    - When a public health emergency has been declared, the COVID-19 Team has the authority to declare exceptions to the Nation's laws, policies, procedures, regulations, or standard operating procedures during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees. [3 O.C. 302.10-2].
    - These declarations remain in effect for the duration of the Public Health State of Emergency. [3 O.C. 302.10-3].
  - On April 8, 2020, the Oneida Business Committee adopted resolution BC-04-08-20-C titled, "*Tier V Budget Contingency Declared for Remainder of Fiscal Year 2020*," which required a great reduction in expenses as a result of zero gaming revenues supporting governmental functions and included initial and on-going layoffs.
- COVID-19 Team Declarations: Safer at Home.
  - On March 24, 2020, the Nation's COVID-19 Team issued a "Safer at Home" declaration which prohibited all public gatherings of any number of people and ordered all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed.
  - On April 21, 2020, the COVID-19 Team issued an "*Updated Safer at Home*" declaration which allowed for gaming and golf operations to resume.
  - On May 19, 2020, the COVID-19 Team issued a "Safer at Home Declaration, Amendment, Open for Business" which directed that individuals within the Oneida Reservation should continue to stay at home, businesses could re-open under certain safer business practices, and social distancing should be practiced by all persons.

• On June 10, 2020, the COVID-19 Team issued a "Stay Safer at Home" declaration which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.

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

- **A.** Representatives from the following departments or entities participated in the development of this Law and legislative analysis:
  - Oneida Law Office;
  - Finance Administration; and
  - Governmental Services Division.

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

- **B.** The adoption of this Law is being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency law "where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the Reservation population and enactment or amendment of legislation is required sooner than would be possible under this law." [1 O.C. 109.9-5].
  - Emergency adoption of this Law is being pursued for the preservation of the general welfare of the Reservation population. The emergency adoption of this Law will assist in addressing the economic needs of the Reservation population during the public health crisis that is the COVID-19 pandemic by allowing the Nation to establish and operate approved programs that may provide assistance to Tribal members on a non-taxable basis.
  - Observance of the requirements under the Legislative Procedures Act for the adoption of this Law would be contrary to public interest. The Nation is currently experiencing the vast effects of the COVID-19 pandemic, and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Law can be adopted to best assist members of the Nation during this COVID-19 pandemic through the development of approved programs which provide assistance to Tribal members.
- C. Emergency legislation typically expires six (6) months after adoption, with one (1) opportunity for a six (6) month extension of the emergency legislation. [1 O.C. 109.9-5(b)].
- **D.** The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact statement will eventually be required when considering permanent adoption of this Law.
- **D.** The following work meetings were held regarding the development of this law and legislative analysis:
  - August 3, 2020: Work meeting with Oneida Law Office, Finance Administration, and Parks and Recreation Department; and
  - August 4, 2020. LOC work meeting.

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

**A.** *Purpose and Policy*. The Nation has an inherent sovereign right to provide assistance to its eligible Tribal members on a non-taxable basis. [10 O.C. 1001.1-1]. This inherent sovereign right has been recognized by the federal government through the Tribal General Welfare Exclusion Act of 2014, and the Internal Revenue Service, through its traditional application of the general welfare doctrine and subsequent guidance. This Law provides a framework for the Nation to create approved programs that

will provide assistance to Tribal members that ensures compliance with the General Welfare Exclusion, and applicable Internal Revenue Service regulations. The intent of this Law is that all assistance provided under this law: is available to any recipients who satisfies the program policies, subject to budgetary restraints; is made under an approved program that does not discriminate in favor of members of the Nation's governing body; is not provided as compensation for goods and/or services; and is not lavish or extravagant under the facts and circumstances, as determined by the Oneida Business Committee. [10 O.C. 1001.1-3].

- *Effect*. The overall purpose of this Law is to codify the Nation's sovereign right to provide assistance to Tribal members on a non-taxable basis, and to provide a framework for the Nation to create approved programs to do so.
- **B.** *Ratification of Prior Acts.* The proposed Law provides that it shall not be construed as creating new general welfare assistance rights which are an inherent right of Nation, but rather, this Law is intended to codify existing procedures used by the Nation to administer its general welfare assistance. [10 O.C. 1001.4-1]. The Law clarifies that assistance provided prior to the enactment of this Law is hereby ratified and confirmed as general welfare assistance provided pursuant to the exercise by the Nation of its inherent tribal sovereignty. [10 O.C. 1001.4-2].
  - Effect. The Nation has always possessed the inherent sovereign right to provide general welfare assistance to eligible Tribal members on a non-taxable basis, this Law simply codifies existing procedures used by the Nation to administer its general welfare assistance. The codification of procedures results in greater transparency, and consistency.
- **B.** General Welfare Doctrine and IRS Revenue Procedure 2014-53/ Tribal General Welfare Exclusion of 2014. This section looks at various federal policies that recognize the Nation's sovereign right to provide assistance to its members on a non-taxable basis. This section clarifies that without limitation benefits shall be treated as non-taxable if they meet certain requirements contained in the Law. [10 O.C. 1001.5-6].
  - Effect. Benefits authorized by this law are intended to qualify non-taxable under the principles of the General Welfare Exclusion to the fullest extent permitted at law.
- C. Non-Recourse Designation. The Nation does not guarantee any benefits to a recipient under this Law. [10 O.C. 1001.6-1]. The Law clarifies that benefits shall not be treated as a resource or asset of a recipient for any purpose; and that no recipient shall have an interest in or right to any funds budgeted for, or set aside for, approved programs until paid. Id. The Oneida Business Committee reserves the right to cancel, adjust, modify or revoke any benefit. Id. The approved programs shall be administered at all times to avoid triggering of the doctrines of "constructive receipt" and/or "economic benefit."
  - Effect. This section clarifies that recipient is guaranteed benefits under the Law, and that a recipient should not treat the potential benefit as a resource or an asset until that asset is actually paid out to the recipient.
- **D.** Governing Law; Sovereignty. The Law confirms the Nation's sovereign status by providing that the rights and liabilities associated with the enactment of this law, or any assistance made as a result, shall be construed and enforced according to the Nation's laws and applicable federal law. [10 O.C. 1001/7-1]. The Law, or any related laws, policies, or procedures adopted for its implementation shall not be construed to make applicable to the Nation any laws or regulations which are otherwise inapplicable to the Nation, or from which the Nation is entitled to exemption because of its sovereign status. Id.
  - Effect. The Nation is considered sovereign, meaning it has the authority to govern itself. This section of the Law confirms that the Nation maintains that sovereign status through the adoption of

- this Law, and the Nation is not subject to any laws or regulations which are otherwise inapplicable to the Nation.
  - **E.** *Federal Trust Obligations*. The Law provides that the Nation has the right to provide assistance in circumstances where federal funding is insufficient to operate federal programs designed to benefit applicants and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations. [10 O.C. 1001.8-1]. This does not mean that the Nation's adoption of its approved programs is intended to relieve or diminish the federal government of its funding and trust responsibilities. *Id*.
    - Effect. This section provides that although the Nation may provide assistance in circumstances where federal funding is insufficient to operate federal programs designed to benefit applicants, this does not negate the federal government's trust responsibilities to fund this program. This also does not affect the Nation's right to seek funding, or the right to engage in government to government consultations and coordination in regard to these rights.
  - **F.** Approved Program Guidelines. This section of the Law sets forth guidelines for approved programs of the Nation to be created under. The Oneida Business Committee is responsible for designating approved programs for which funds shall be budgeted each fiscal year, consistent with the purposes of this Law and the principles of the General Welfare Exclusion as to purpose, eligibility, and funding. [10 O.C. 1001.9-1]. An approved program shall be established and operated to promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, selfsufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment. [10 O.C. 1001.9-2]. Any assistance intended to qualify under the General Welfare Exclusion is limited to Tribal members only. [10 O.C. 1001.9-3]. Each approved program is required to set forth the specific eligibility rules and limitations that will be applied to that program. Id. Programs comprising descriptions, including eligibility rules and limitations, may be presented to the Oneida Business Committee for approval. Id. Programs that are approved by the Oneida Business Committee are considered to be in force and effect. All assistance that is provided to a recipient is required to be used for the purpose stated in the approved program description. [10 O.C. 1001.9-4]. If a recipient uses assistance in a manner that is inconsistent with the purpose of the approved program, then the payment is considered forfeited and the Nation may secure repayment from the recipient. Id. Any benefit a Tribal member receives is not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the Tribal member. [10 O.C. 1001.9-5].
    - *Effect*. This section of the Law provides details on the framework for how approved programs under the Law are developed and handled.

#### **SECTION 6. EXISTING LEGISLATION**

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- **A.** *Related Legislation*. The following laws of the Nation are related to this Law:
  - Legislative Procedures Act. The Legislative Procedures Act was adopted by the General Tribal Council on January 7, 2013, for the purpose of providing a standard process for the adoption of laws of the Nation which includes taking into account comments from members of the Nation and input from agencies of the Nation. [1 O.C. 109.1-1, 109.1-2].
    - The Legislative Procedures Act provides a process for the adoption of emergency legislation when the legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population and the

enactment or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].

- The Legislative Operating Committee is responsible for first reviewing the emergency legislation and for forwarding the legislation to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
- The proposed emergency legislation is required to have a legislative analysis completed and attached prior to being sent to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
  - a. A legislative analysis is a plain language analysis describing the important features of the legislation being considered and factual information to enable the Legislative Operating Committee to make informed decisions regarding legislation. A legislative analysis includes a statement of the legislation's terms and substance; intent of the legislation; a description of the subject(s) involved, including any conflicts with Oneida or other law, key issues, potential impacts of the legislation and policy considerations. [1 O.C. 109.3-1(g)].
- Emergency legislation does not require a fiscal impact statement to be completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
- Upon the determination that an emergency exists the Oneida Business Committee can adopt emergency legislation. The emergency legislation becomes effective immediately upon its approval by the Oneida Business Committee. [1 O.C. 109.9-5(b)].
- Emergency legislation remains in effect for a period of up to six (6) months, with an opportunity for a one-time emergency law extension of up to six (6) months. [1 O.C. 109.9-5(b)].
- Emergency adoption of this Law would conform with the requirements of the Legislative Procedures Act.

#### **SECTION 7. OTHER CONSIDERATIONS**

- **A.** *Deadline for Permanent Adoption of Legislation.* The emergency adoption of this Law will expire six (6) months after adoption. The emergency legislation may be renewed for an additional six (6) month period.
  - Conclusion: The Legislative Operating Committee will need to consider the development and adoption of this Law on a permanent basis within the next six (6) to twelve (12) months.
- **B.** Creation of Title 10 General Welfare Exclusion in the Code of Laws. Upon adoption of this Law the Oneida Business Committee is also approving the creation of a new title in the Code of Laws. "Title 10. General Welfare Exclusion" will be added to the Code of Laws. This Law shall be codified under Title 10, as well as any future laws regarding approved programs for assistance for Tribal members.
  - *Conclusion*: The Legislative Operating Committee should be aware that Title 10. General Welfare Exclusion is being created so it may be used for future legislation.
- C. Oneida Higher Education Pandemic Relief Fund Law. The Legislative Operating Committee is also working on the development of an Oneida Higher Education Pandemic Relief Fund law to be considered by the Oneida Business Committee on an emergency basis. The Oneida Higher Education Pandemic Relief Fund law will create the Oneida Higher Education Pandemic Relief Fund to assist

- eligible Tribal members enrolled as students in higher education institutions for the 2020 Fall Term.
- Conclusion. This Law sets the framework for approved programs, like the Oneida Higher
   Education Pandemic Relief Fund law, to be developed and operated to provide assistance to Tribal
   members.
- **D.** *Fiscal Impact*. A fiscal impact statement is not required for emergency legislation.
  - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

#### Title 10. General Welfare Exclusion - Chapter 1001 ONEIDA GENERAL WELFARE

1001.1. Purpose and Policy	1001.6. Non-Recourse Designation
1001.2. Adoption, Amendment, Repeal	1001.7. Governing Law; Sovereignty
1001.3. Definitions	1001.8. Federal Trust Obligations
1001.4. Ratification of Prior Acts	1001.9. Approved Program Guidelines
	1001.3. Approved Hogram Guidennes
1001.5. General Welfare Doctrine and IRS Revenue Procedure	

#### 1001.1. Purpose and Policy

2014-53/ Tribal General Welfare Exclusion of 2014

- 2 1001.1-1. *Purpose*. The purpose of this law is to provide assistance to eligible Tribal members.
- 3 The Nation affirms hereby its sovereign right to do so on a non-taxable basis, pursuant to the
- 4 principles of the General Welfare Exclusion to Indian Tribal governmental programs that provide
- 5 benefits to Tribal members.

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- 6 1001.1-2. The federal government through the Tribal General Welfare Exclusion Act of 2014,
- 7 codified at 26 U.S.C §139E and the Internal Revenue Service, through its traditional application
- 8 of the general welfare doctrine and subsequent guidance, has recognized the sovereign right of
- 9 Indian tribal governments to provide financial assistance to its Tribal members under certain
- 10 circumstances on a non-taxable basis.
- 11 1001.1-3. *Policy*. It is the policy of the Nation to provide assistance to Tribal members through
- 12 approved programs that promote the general welfare of the Nation. This law provides a framework
- for approved programs to follow to ensure compliance with the General Welfare Exclusion, 26
- 14 U.S.C. §139E, and applicable Internal Revenue Service regulations or revenue procedures
- including I.R.S. Rev. Proc. 2014-35. Further, it is the intent of the Oneida Business Committee
- that all assistance provided under this law:
  - (a) is available to any recipients who satisfy the program policies, subject to budgetary restraints:
  - (b) is made under an approved program that does not discriminate in favor of members of the Nation's governing body;
  - (c) is not provided as compensation for goods and/or services; and
  - (d) is not lavish or extravagant under the facts and circumstances, as determined by the Oneida Business Committee.

# 25 **1001.2. Adoption, Amendment, Repeal** 1001.2-1. This law was adopted by the O

- 1001.2-1. This law was adopted by the Oneida Business Committee on an emergency basis by resolution - - .
- 1001.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 30 1001.2-3. Should a provision of this law or the application thereof to any person or circumstances
- 31 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
- 32 to have legal force without the invalid portions.
- 33 1001.2-4. In the event of a conflict between a provision of this law and a provision of another law,
- 34 the provisions of this law shall control.
- 35 1001.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### **37 1001.3. Definitions**

- 38 1001.3-1. 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.

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- (a) "Approved program" means any program(s) to provide general welfare assistance that is intended to qualify as non-taxable as a General Welfare Exclusion, administered under specific guidelines, and is adopted as a law by resolution of the Oneida Business Committee.
- (b) "Assistance" means benefits or payments under an approved program, which are paid to or on behalf of a recipient pursuant to this law, provided, that such assistance shall be owed back to the Nation from the Tribal member recipient in the event the Tribal member misappropriates the assistance...
- (c) "Benefits" means any approved program assistance, including payments, which is provided pursuant to this law.
- (d) "General Test" means the criteria used to determine if any assistance or benefits provided through an approved program to a recipient shall be treated as a General Welfare Exclusion. The criteria of the General Test include the following:
  - (1) Paid on behalf of the Nation:
  - (2) Pursuant to an approved program;
  - (3) Does not discriminate in favor of members of the governing body of the Nation;
  - (4) Are available to any Tribal member who meets the guidelines of the approved
  - (5) Are for the promotion of general welfare;
  - (6) Are not lavish or extravagant;
  - (7) Are not compensation for services; and
  - (8) Are not per capita payments.
- (e) "General Welfare Exclusion" means any benefits shall be treated as non-taxable under federal law so long as it satisfies the requirements for exclusion under 26 U.S.C. §139E, is provided under a Safe Harbor Program listed and detailed in I.R.S. Rev. Proc. 2014-35 or subsequent Internal Revenue Service procedures or regulations, or it meets the General
- (f) "General welfare need" means a need, in the sole discretion of the Oneida Business Committee, which shall be met to ensure the Nation's longevity as a self-governing Indian nation, and includes needs in the areas of health, education, self-sufficiency, selfdetermination, the maintenance of culture and tradition, entrepreneurship, and
- (g) "Lavish" or "Extravagant" shall have the meaning determined by the Oneida Business Committee in its discretion and based on the circumstances, taking into account needs unique to the Nation as well as the social purpose being served by the particular assistance at hand, except as otherwise may be required for compliance with final guidance issued under 26 U.S.C. §139E following consultation between the Nation and the federal government.
- (h) "Nation" means the Oneida Nation.
- (i) "Recipient" means any Tribal member entitled to receive assistance in accordance with approved program requirements.
- (j) "Tribal member" means an individual who is an enrolled member of the Nation.

#### 83 **1001.4. Ratification of Prior Acts**

- 1001.4-1. This law is not to be construed as creating new general welfare assistance rights which are an inherent right of Nation. Rather, this law is intended to codify existing procedures used by the Nation to administer its general welfare assistance.
- 87 1001.4-2. Assistance provided prior to the enactment of this law is hereby ratified and confirmed 88 as general welfare assistance provided pursuant to the exercise by the Nation of its inherent tribal 89 sovereignty.

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# 1001.5. General Welfare Doctrine and IRS Revenue Procedure 2014-53/ Tribal General Welfare Exclusion of 2014

- 93 1001.5-1. The federal government recognizes that benefits to recipients under an approved 94 program for the promotion of the general welfare of the Nation is excludable from the gross income 95 of those recipients.
- 96 1001.5-2. The Internal Revenue Service, through I.R.S. Revenue Procedure 2014-35, listed and detailed examples of Safe Harbor programs under which, if approved and in writing, need would be presumed, and benefits would be excluded from gross income.
- 99 1001.5-3. Benefits authorized by this law are intended to qualify non-taxable under the principles of the General Welfare Exclusion to the fullest extent permitted at law.
- 101 1001.5-4. Assistance authorized by this law shall be limited to funds appropriated, at the discretion of the Oneida Business Committee and no matter the source of the funds. All amounts budgeted by the Nation for assistance shall remain general assets of the Nation until payments are disbursed.
- 104 1001.5-5. Benefits are not subject to information reporting by the Nation to the Internal Revenue Service.
- 106 1001.5-6. Without limitation, the following benefits shall be treated as non-taxable hereunder:
  - (a) Benefits that satisfy the requirements for the exemption under 26 U.S.C. §139E;
  - (b) Benefits that are provided under an IRS Safe Harbor Program listed and described in I.R.S. Rev. Proc. 2014-35; or
  - (c) Benefits that qualify for exclusion under the I.R.S. General Criteria of General Welfare exclusion listed in I.R.S. Rev. Proc. 2014-35, section 5.02(1).

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#### **1001.6.** Non-Recourse Designation

1001.6-1. The Nation does not guarantee benefits under this law. Benefits shall not be treated as a resource or asset of a recipient for any purpose; and no recipient shall have an interest in or right to any funds budgeted for, or set aside for, approved programs until paid. Oneida Business Committee reserves the right to cancel, adjust, modify or revoke any benefit. The approved programs shall be administered at all times to avoid triggering of the doctrines of "constructive receipt" and/or "economic benefit."

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#### 1001.7. Governing Law; Sovereignty

- 122 1001.7-1. All the rights and liabilities associated with the enactment of this law, or the assistance
- made hereunder, shall be construed and enforced according to the Nation's laws and applicable federal law. Nothing in this law or the related laws, policies, or procedures adopted for its
- implementation, if any, shall be construed to make applicable to the Nation any laws or regulations
- which are otherwise inapplicable to the Nation, or from which the Nation is entitled to exemption

# Draft 1 for Emergency OBC Consideration 2020 08 05

because of its sovereign status.

#### 1001.8. Federal Trust Obligations

1001.8-1. The Nation reserves the right to provide assistance in circumstances where federal funding is insufficient to operate federal programs designed to benefit applicants and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations. The Nation's adoption of its approved programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Nation's right to seek funding shortfalls or to enforce the trust rights of the Nation and its citizens. The Nation shall be entitled to government-to-government consultation and coordination with the federal government in regard to these obligations.

#### **1001.9.** Approved Program Guidelines

- 1001.9-1. *Nation Approved Programs*. The Oneida Business Committee shall designate approved programs for which funds shall be budgeted each fiscal year, consistent with the purposes of this law. Each approved program shall be consistent with the principles of the General Welfare Exclusion as to purpose, eligibility, and funding.
- 1001.9-2. *Purpose of Approved Programs*. Each approved program shall be limited to purposes consistent with treatment under the General Welfare Exclusion. An approved program shall be established and operated to promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment.
- 1001.9-3. *Eligibility*. Assistance intended to qualify under the General Welfare Exclusion shall be limited to Tribal members. Each approved program shall set forth the specific eligibility rules and limitations applied to that program. Programs comprising descriptions, including eligibility rules and limitations, may be presented to the Oneida Business Committee for approval in accordance with this law. Programs shall be approved by the Oneida Business Committee to be considered in force and effect and in accordance with this law.
  - 1001.9-4. *Limited Use of Assistance Payments*. All assistance shall be used for the purpose stated in the approved program description. If assistance is used or pledged for a purpose inconsistent with the purpose set forth in an approved program the payment shall be deemed forfeited. The Nation may secure repayment from the recipient. The Nation may seek to garnish remuneration from other payments made to recipient to secure repayment of assistance under this law.
- 160 1001.9-5. *Anti-Alienation*. A Tribal member's benefit is not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the Tribal member.

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*End.* 

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Emergency Adopted - BC-\_\_-\_-



# Oneida Nation Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.gov



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson

DATE: August 6, 2020

RE: Emergency Adoption of the Oneida Higher Education Pandemic Relief Fund Law

Please find the following attached backup documentation for your consideration of the emergency adoption of the Oneida Higher Education Pandemic Relief Fund law:

- 1. Resolution: Emergency Adoption of the Oneida Higher Education Pandemic Relief Fund Law
- 2. Statement of Effect: Emergency Adoption of the Oneida Higher Education Pandemic Relief Fund Law
- 3. Oneida Higher Education Pandemic Relief Fund Law Legislative Analysis
- 4. Oneida Higher Education Pandemic Relief Fund Law

#### Overview

Emergency adoption of the Oneida Higher Education Pandemic Relief Fund law (the "Law") is being sought to create the Oneida Higher Education Pandemic Relief Fund to assist eligible Tribal members enrolled as students in higher education institutions for the 2020 Fall Term. [10 O.C. 1003.1-1]. The Oneida Higher Education Pandemic Relief Fund law shall:

- Provide the guidelines and requirements for use of the Oneida Higher Education Pandemic Relief Fund [10 O.C. 1003.4];
- Describe the presumption of need and the General Test to be used to determine General Welfare Exclusion [10 O.C. 1003.5];
- Provide that the Nation allocate funds to the Oneida Higher Education Pandemic Relief Fund only from monies it received pursuant to the Coronavirus Relief Funds (CRF), and that this program is dependent on availability of funding from the CRF. [10 O.C. 1003.6].

In response to the outbreak of the COVID-19 pandemic, on March 12, 2020, in accordance with the Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and provided the necessary authority should action need to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. [3 O.C. 302.8-1]. This declaration of a Public Health State of Emergency was extended by the Oneida Business Committee until August 11, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, and BC-07-08-20-A.

On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which prohibited all public gatherings of any number of people and ordered all

individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. On April 21, 2020, the COVID-19 Core Decision Making Team issued an "Updated Safer at Home" declaration which allowed for gaming and golf operations to resume. Then on May 19, 2020, a "Safer at Home Declaration, Amendment, Open for Business" declaration was issued which directed that individuals within the Oneida Reservation should continue to stay at home, businesses could re-open under certain safer business practices, and social distancing should be practiced by all persons. The COVID-19 Core Decision Making Team most recently issued a "Stay Safer at Home" declaration on June 10, 2020, which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.

On April 8, 2020, the Oneida Business Committee adopted resolution BC-04-08-20-C titled, "*Tier V Budget Contingency Declared for Remainder of Fiscal Year 2020*." This resolution adopted Tier V budget reductions from the Budget Contingency Plan in accordance with the Budget Management and Control law, which included five percent (5%) mandatory budget cuts across the Nation and reduction of all funding to essential services only. The Oneida Business Committee also adopted resolution BC-04-08-20-G titled, "*Reducing the General Tribal Council Higher Education Scholarship Payments for FY2020 and FY2021*." This resolution provided that the General Tribal Council Higher Education Scholarship shall be reduced to five thousand dollars (\$5,000) per year.

The Oneida Business Committee is delegated the authority to temporarily enact emergency legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the adoption of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency adoption of the Law is necessary for the preservation of the general welfare of the Reservation population. Due to the COVID-19 pandemic many grants, scholarships, and loans were forsaken by the granting institutions or banks, and personal and family funds redirected to other needs during the ongoing Public Health State of Emergency, such as medical expenses and losses due to unemployment within the family. Emergency adoption of the Law creates an Oneida Higher Education Pandemic Relief Fund to assist eligible Tribal members enrolled as students in higher education institutions with funding from the Coronavirus Aid, Relief, and Economic Security (CARES) Act Coronavirus Relief Funds (CRF) in order to meet the higher education needs of its students during the COVID-19 Public Health Emergency.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this Law would be contrary to public interest. The 2020 Fall Term for many higher education institutions begins in a couple weeks and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Oneida Higher Education Pandemic Relief Fund can be created for use by eligible students during the 2020 Fall Term.



The Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months. There will be one (1) opportunity to extend the emergency adoption of this Law for an additional six (6) month period. [1 O.C. 109.9-5(b)].

#### **Requested Action**

Approve the Resolution: Emergency Adoption of the Oneida Higher Education Pandemic Relief Fund Law



### **Oneida Nation**

Post Office Box 365

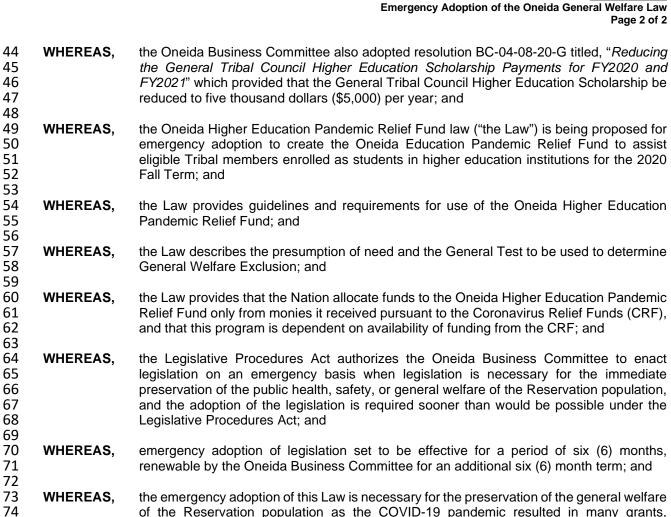
Phone: (920)869-2214



Oneida, WI 54155

#### **BC** Resolution # **Emergency Adoption of the Oneida Higher Education Pandemic Relief Fund Law**

1 2 3	WHEREAS,	the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
4 5	WHEREAS,	the Oneida General Tribal Council is the governing body of the Oneida Nation; and
6 7 8	WHEREAS,	the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
9 10 11 12 13	WHEREAS,	the federal government has proclaimed a public health emergency related to the spread of the COVID-19 virus and has identified that the spread of the virus has resulted in large numbers of individuals becoming ill and high mortality rates, impacts to the stock markets, and businesses; and
14 15 16 17	WHEREAS,	state governors, including the State of Wisconsin, declared public health emergencies and state public health officers issued orders, for example, closing public schools, limiting public gatherings, and closing restaurants and bars except for take-out orders; and
18 19 20 21 22	WHEREAS,	on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses; and
23 24 25 26 27	WHEREAS,	the Nation's Public Health State of Emergency has since been extended by the Oneida Business Committee until August 11, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A; and
28 29 30 31 32	WHEREAS,	on March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which prohibited all public gatherings of any number of people and ordered all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed; and
33 34 35 36 37	WHEREAS,	the COVID-19 Core Decision Making Team has issued subsequent declarations modifying the "Safer at Home" declaration including the April 21, 2020 "Updated Safer at Home" declaration, the May 19, 2020, "Safer at Home Declaration, Amendment, Open for Business" declaration, and the June 10, 2020, "Stay Safer at Home" declaration; and
38 39 40 41 42	WHEREAS,	on April 8, 2020, the Oneida Business Committee adopted resolution BC-04-08-20-C titled, "Tier V Budget Contingency Declared for Remainder of Fiscal Year 2020" which adopted Tier V budget reductions from the Budget Contingency Plan in accordance with the Budget Management and Control law, and included five percent (5%) mandatory budget cuts across the Nation and reduction of all funding to essential services only; and



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of the Reservation population as the COVID-19 pandemic resulted in many grants, scholarships, and loans being forsaken by the granting institutions or banks, as well as personal and family funds being redirected to other needs during the ongoing Public Health State of Emergency, such as medical expenses and losses due to unemployment within the family, therefore, emergency adoption of the Law creating an Oneida Higher Education Pandemic Relief Fund shall assist eligible Tribal members enrolled as students in higher education institutions with funding from the Coronavirus Aid, Relief, and Economic Security (CARES) Act CRF in order to meet the higher education needs of its students during the COVID-19 Public Health Emergency; and

WHEREAS, observance of the requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest since the 2020 Fall Term for many higher education institutions begins in a couple weeks and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Oneida Higher Education Pandemic Relief Fund can be created for use by eligible students during the 2020 Fall Term; and

WHEREAS. the Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation; and

NOW THEREFORE BE IT RESOLVED, the Oneida Business Committee hereby adopts, on an emergency basis, the Oneida Higher Education Pandemic Relief Fund law effective immediately.



### Oneida Nation

**Oneida Business Committee** Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365



#### **Statement of Effect**

Emergency Adoption of the Oneida Higher Education Pandemic Relief Fund Law

#### Summary

This resolution adopts the Oneida Higher Education Pandemic Relief Fund law on an emergency basis in order to create the Oneida Higher Education Pandemic Relief Fund to assist eligible Tribal members enrolled as students in higher education institutions for the 2020 Fall Term. [10 O.C. 1003.1-1].

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

Date: August 5, 2020

#### Analysis by the Legislative Reference Office

This resolution adopts the Oneida Higher Education Pandemic Relief Fund law ("the Law") on an emergency basis. The purpose of the Law is to create the Oneida Higher Education Pandemic Relief Fund to assist eligible Tribal members enrolled as students in higher education institutions for the 2020 Fall Term. [10 O.C. 1003.1-1]. The Oneida Higher Education Pandemic Relief Fund law shall:

- Provide the guidelines and requirements for use of the Oneida Higher Education Pandemic Relief Fund [10 O.C. 1003.4];
- Describe the presumption of need and the General Test to be used to determine General Welfare Exclusion [10 O.C. 1003.5];
- Provide that the Nation allocate funds to the Oneida Higher Education Pandemic Relief Fund only from monies it received pursuant to the Coronavirus Relief Funds (CRF), and that this program is dependent on availability of funding from the CRF. [10 O.C. 1003.6].

The Legislative Procedures Act ("the LPA") was adopted by the General Tribal Council for the purpose of providing a process for the adoption or amendment of laws of the Nation. [1 O.C. 109.1-1]. The LPA allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety or general welfare of the reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [1 O.C. 109.9-5]. A public meeting and fiscal impact statement are not required for emergency legislation. [1 O.C. 109.8-1(b) and 109.9-5(a)].

In response to the COVID-19 pandemic, on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a Public Health State of Emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. This declaration of a Public Health State of Emergency was extended by the Oneida Business Committee until August 11, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, and BC-07-08-20-A.

On March 17, 2020, the Oneida Business Committee adopted emergency amendments to the Emergency Management and Homeland Security law to create and delegate authority to a COVID-19 Core Decision Making Team ("COVID-19 Team"). [3 O.C. 302.10]. When a public health emergency has been declared, the COVID-19 Team has the authority to declare exceptions to the Nation's laws, policies, procedures, regulations, or standard operating procedures during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees. [3 O.C. 302.10-2]. These declarations remain in effect for the duration of the Public Health State of Emergency. [3 O.C. 302.10-3].

On March 24, 2020, the Nation's COVID-19 Team issued a "Safer at Home" declaration which prohibited all public gatherings of any number of people and ordered all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. On April 21, 2020, the COVID-19 Team issued an "Updated Safer at Home" declaration which allowed for gaming and golf operations to resume. Then on May 19, 2020, a "Safer at Home Declaration, Amendment, Open for Business" declaration was issued which directed that individuals within the Oneida Reservation should continue to stay at home, businesses could reopen under certain safer business practices, and social distancing should be practiced by all persons. The COVID-19 Team most recently issued a "Stay Safer at Home" declaration on June 10, 2020, which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.

On April 8, 2020, the Oneida Business Committee adopted resolution BC-04-08-20-C titled, "*Tier V Budget Contingency Declared for Remainder of Fiscal Year 2020.*" This resolution adopted Tier V budget reductions from the Budget Contingency Plan in accordance with the Budget Management and Control law, which included five percent (5%) mandatory budget cuts across the Nation and reduction of all funding to essential services only. The Oneida Business Committee also adopted resolution BC-04-08-20-G titled, "*Reducing the General Tribal Council Higher Education Scholarship Payments for FY2020 and FY2021.*" This resolution provided that the General Tribal Council Higher Education Scholarship be reduced to five thousand dollars (\$5,000) per year.

The resolution provides that the emergency adoption of this Law is necessary for the preservation of the general welfare of the Reservation population. Due to the COVID-19 pandemic many grants, scholarships, and loans were forsaken by the granting institutions or banks, and personal and family funds redirected to other needs during the ongoing Public Health State of Emergency, such as medical expenses and losses due to unemployment within the family. Emergency adoption of the Law creates an Oneida Higher Education Pandemic Relief Fund to assist eligible Tribal members enrolled as students in higher education institutions with funding from the Coronavirus Aid, Relief, and Economic Security (CARES) Act Coronavirus Relief Funds (CRF) in order to meet the higher education needs of its students during the COVID-19 Public Health Emergency.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this amendment would be contrary to public interest. The 2020 Fall Term for many higher education institutions begins in a couple weeks and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Oneida Higher



Education Pandemic Relief Fund can be created for use by eligible students during the 2020 Fall Term.

The emergency adoption of this the Law will take effect immediately upon adoption by the Oneida Business Committee. The emergency adoption of the Law will remain effective for six (6) months. The LPA provides the possibility to extend the emergency amendments for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

#### Conclusion

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





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# EMERGENCY ADOPTION OF THE ONEIDA HIGHER EDUCATION PANDEMIC RELIEF FUND LAW LEGISLATIVE ANALYSIS

#### **SECTION 1. EXECUTIVE SUMMARY**

	Analysis by the Legislative Reference Office
Intent of the Proposed Law	<ul> <li>Provide the guidelines and requirements for use of the Oneida Higher Education Pandemic Relief Fund [10 O.C. 1003.4];</li> <li>Describe the presumption of need and the General Test to be used to determine General Welfare Exclusion [10 O.C. 1003.5];</li> <li>Provide that the Nation allocate funds to the Oneida Higher Education Pandemic Relief Fund only from monies it received pursuant to the Coronavirus Relief Funds (CRF), and that this program is dependent on availability of funding from the CRF. [10 O.C. 1003.6].</li> </ul>
Purpose	Create the Oneida Higher Education Pandemic Relief Fund to assist eligible Tribal members enrolled as students in higher education institutions for the 2020 Fall Term. [10 O.C. 1003.1-1].
Affected Entities	Oneida Business Committee, Oneida Higher Education Department, Oneida Accounting Department, Oneida Economic Services
Public Meeting	A public meeting is not required for emergency legislation [1 O.C. 109.8-1(b) and 109.9-5(a)].
Fiscal Impact	A fiscal impact statement is not required for emergency legislation [1 O.C. 109.9-5(a)].
Expiration of Emergency Legislation	Emergency legislation expires six (6) months after adoption and may be renewed for an additional six (6) month period.

#### SECTION 2. LEGISLATIVE DEVELOPMENT

- **A.** *Background*. The Oneida Higher Education Pandemic Relief Fund law ("the Law") will be a new law adopted by the Nation on an emergency basis for the purpose of creating the Oneida Higher Education Pandemic Relief Fund to assist eligible Tribal members enrolled as students in higher education institutions for the 2020 Fall Term. [10 O.C. 1003.1-1].
  - On August 1, 2020, the Oneida Law Office called a meeting with the Legislative Reference Office, Finance Administration, and the Parks and Recreation Department to discuss the potential adoption of the Law on an emergency basis.
  - The Legislative Operating Committee added the Law to its Active Files List on August 5,2020.
  - Emergency adoption of Law is being pursued to create an Oneida Higher Education Pandemic Relief Fund to assist eligible Tribal members enrolled as students in higher education institutions with funding from the Coronavirus Aid, Relief, and Economic Security (CARES) Act Coronavirus Relief Funds (CRF) in order to meet the higher education needs of its students during the COVID-19 Public Health Emergency.
- **B.** *COVID-19 Pandemic*. The world is currently facing a pandemic of the coronavirus disease 2019 (COVID-19). The COVID-19 outbreak originated in Wuhan, China and has spread to many other countries throughout the world, including the United States. The COVID-19 pandemic has resulted in

high rates of infection and mortality, as well as vast economic impacts including effects on the stock market and the closing of all non-essential businesses.

• Declaration of a Public Health State of Emergency.

- On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared the Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority should action need to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
- The Public Health State of Emergency has since been extended until August 11, 2020, by the Oneida Business Committee through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, and BC-07-08-20-A.
- Additional Action taken by the Nation in Response to COVID-19.
  - On March 17, 2020, the Oneida Business Committee adopted emergency amendments to the Emergency Management and Homeland Security law to create and delegate authority to a COVID-19 Core Decision Making Team ("COVID-19 Team"). [3 O.C. 302.10].
    - When a public health emergency has been declared, the COVID-19 Team has the authority to declare exceptions to the Nation's laws, policies, procedures, regulations, or standard operating procedures during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees. [3 O.C. 302.10-2].
    - These declarations remain in effect for the duration of the Public Health State of Emergency. [3 O.C. 302.10-3].
  - On April 8, 2020, the Oneida Business Committee adopted resolution BC-04-08-20-C titled, "*Tier V Budget Contingency Declared for Remainder of Fiscal Year 2020*," which required a great reduction in expenses as a result of zero gaming revenues supporting governmental functions and included initial and on-going layoffs.
  - The Oneida Business Committee also adopted resolution BC-04-08-20-G titled, "*Reducing the General Tribal Council Higher Education Scholarship Payments for FY2020 and FY2021*." This resolution provided that the General Tribal Council Higher Education Scholarship be reduced to five thousand dollars (\$5,000) per year.
- COVID-19 Team Declarations: Safer at Home.
  - On March 24, 2020, the Nation's COVID-19 Team issued a "Safer at Home" declaration which prohibited all public gatherings of any number of people and ordered all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed.
  - On April 21, 2020, the COVID-19 Team issued an "*Updated Safer at Home*" declaration which allowed for gaming and golf operations to resume.
  - On May 19, 2020, the COVID-19 Team issued a "Safer at Home Declaration, Amendment, Open for Business" which directed that individuals within the Oneida Reservation should continue to stay at home, businesses could re-open under certain safer business practices, and social distancing should be practiced by all persons.

On June 10, 2020, the COVID-19 Team issued a "Stay Safer at Home" declaration which
lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for
Business" while still providing guidance and some restrictions.

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

- **A.** Representatives from the following departments or entities participated in the development of this Law and legislative analysis:
  - Oneida Law Office;
  - Finance Administration; and
  - Governmental Services Division.

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

- **B.** The adoption of this Law is being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency law where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the Reservation population and enactment or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].
  - Emergency adoption of this Law is being pursued for the preservation of the general welfare of the Reservation population. Due to the COVID-19 pandemic many grants, scholarships, and loans were forsaken by the granting institutions or banks, and personal and family funds redirected to other needs during the ongoing Public Health State of Emergency, such as medical expenses and losses due to unemployment within the family. Emergency adoption of the Law creates an Oneida Higher Education Pandemic Relief Fund to assist eligible Tribal members enrolled as students in higher education institutions with funding from the CARES Act CRF in order to meet the higher education needs of its students during the COVID-19 Public Health Emergency.
  - Observance of the requirements under the Legislative Procedures Act for the adoption of this Law would be contrary to public interest. The 2020 Fall Term for many higher education institutions begins in a couple weeks and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Oneida Higher Education Pandemic Relief Fund can be created for use by eligible students during the 2020 Fall Term.
- **C.** Emergency legislation typically expires six (6) months after adoption, with one (1) opportunity for a six (6) month extension of the emergency legislation. [1 O.C. 109.9-5(b)].
- **D.** The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact statement will eventually be required when considering permanent adoption of this Law.
- **D.** The following work meetings were held regarding the development of this law and legislative analysis:
  - August 3, 2020: Work meeting with Oneida Law Office, Finance Administration, and Parks and Recreation Department; and
  - August 4, 2020. LOC work meeting.

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

**A.** Guidelines and Requirements. The Oneida Higher Education Pandemic Relief Fund is being established to meet the higher education needs of its students during the COVID-19 Public Health Emergency. [10 O.C. 1003.4-1]. The proposed Law provides various guidelines and requirements for

use of the Oneida Higher Education Pandemic Relief Fund. [10 O.C. 1003.4]. An enrolled member of the Nation who is enrolled at a higher education institution is eligible to receive up to twenty thousand dollars (\$20,000) towards tuition, room and board, technology requirements, and classroom requirements assistance. [10 O.C. 1003.4-2(a)]. Tuition shall be paid directly to the higher education institution upon submission of an invoice for tuition created by the higher education institution., while room and board, and classroom requirements shall be paid directly to the student, who is then responsible for maintaining and submitting receipts or other proof of expenditures by December 15, 2020. [10 O.C. 1003.4-2(b)-(c)]. All funds are required to be requested in accordance with the Oneida Higher Education Pandemic Relief Fund standard operating procedure. [10 O.C. 1003.4-2(d)]. The Oneida Higher Education Department is delegated the responsibility to oversee the distribution of the Oneida Higher Education Pandemic Relief Fund, as well as maintain records along with the Oneida Accounting Department. [10 O.C. 1003.4-3]. The Oneida Higher Education Department shall hire a Higher Education Pandemic Relief Counselor whom shall be assigned to work in the office of Oneida Economic Support Services. Id. Oneida Higher Education shall be responsible for the maintenance of records along with the Oneida Accounting Department. Id. Students are also required to maintain accurate records for review by the Internal Revenue Service upon request. [10 O.C. 1003.4-4].

- *Effect.* The proposed guidelines and requirements for use of the Oneida Higher Education Pandemic Relief Fund provided by the Law, and the standard operating procedure for requesting funds, will ensure that the Oneida Higher Education Pandemic Relief Fund is used in a consistent and organized manner.
- **B.** Presumption of Need/General Test for General Welfare Exclusion. The proposed Law provides that Internal Revenue Service Procedures lists education programs that assist tribal members with tuition, housing, room and board, technology requirements and laptop computers as a Safe Harbor program for which need is presumed. [10 O.C. 1003.5-1]. The Law also provides that the Oneida Education Pandemic Relief Fund meets the requirements of the General Test as defined in the Oneida General Welfare law, as well as criteria of the Internal Revenue Service Procedures, and the General Welfare Exclusion Act of 2014.
  - Effect. Meeting the criteria of the Safe Harbor Program, and General Test of the Oneida General Welfare law means that the assistance provided through the Oneida Higher Education Pandemic Relief Fund to a recipient shall be treated as a General Welfare Exclusion, and shall be non-taxable.
- **C.** *Budget*. The proposed Law provides that the Nation shall allocate funds to the Oneida Higher Education Pandemic Relief Fund only from monies it received pursuant to the CRF, and that this program is dependent on availability of funding from the CRF.
  - Effect. The Oneida Higher Education Pandemic Relief Fund was created to assist eligible Tribal members enrolled as students in higher education institutions with funding from the CARES Act Coronavirus Relief Funds CRF in order to meet the higher education needs of its students during the COVID-19 Public Health Emergency. The Oneida Higher Education Pandemic Relief Fund was not created to necessarily be utilized on an annual basis, such as other Funds like the Oneida Trust Scholarship Fund.

#### **SECTION 6. EXISTING LEGISLATION**

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- **A.** *Related Legislation*. The following laws of the Nation are related to this Law:
  - Trust Scholarship Fund Policy. The Trust Scholarship Fund Policy was adopted by the Oneida Business Committee for the purpose of establishing a trust resource for providing financial aid

147	scholarships to assist eligible enrolled Oneida Tribal members in securing higher educational
148	opportunities based on established criteria. [9 O.C. 901.1-1].

- This Law provides that the Oneida Higher Education Pandemic Relief Fund is a unique program not associated with the Oneida Trust Scholarship Fund and this law does not amend or override the Trust Scholarship Fund Policy. [10 O.C. 1003.1-5].
- Legislative Procedures Act. The Legislative Procedures Act was adopted by the General Tribal Council for the purpose of providing a standard process for the adoption of laws of the Nation which includes taking into account comments from members of the Nation and input from agencies of the Nation. [1 O.C. 109.1-1, 109.1-2].
  - The Legislative Procedures Act provides a process for the adoption of emergency legislation when the legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population and the enactment or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].
    - The Legislative Operating Committee is responsible for first reviewing the emergency legislation and for forwarding the legislation to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
    - The proposed emergency legislation is required to have a legislative analysis completed and attached prior to being sent to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
      - a. A legislative analysis is a plain language analysis describing the important features of the legislation being considered and factual information to enable the Legislative Operating Committee to make informed decisions regarding legislation. A legislative analysis includes a statement of the legislation's terms and substance; intent of the legislation; a description of the subject(s) involved, including any conflicts with Oneida or other law, key issues, potential impacts of the legislation and policy considerations. [1 O.C. 109.3-1(g)].
    - Emergency legislation does not require a fiscal impact statement to be completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
    - Upon the determination that an emergency exists the Oneida Business Committee can adopt emergency legislation. The emergency legislation becomes effective immediately upon its approval by the Oneida Business Committee. [1 O.C. 109.9-5(b)].
    - Emergency legislation remains in effect for a period of up to six (6) months, with an opportunity for a one-time emergency law extension of up to six (6) months. [1 O.C. 109.9-5(b)].
  - Emergency adoption of this Law would conform with the requirements of the Legislative Procedures Act.

#### **SECTION 7. OTHER CONSIDERATIONS**

**A.** *Deadline for Permanent Adoption of Legislation.* The emergency adoption of this Law will expire six (6) months after adoption. The emergency legislation may be renewed for an additional six (6) month period.

- Conclusion: The Legislative Operating Committee will need to consider the development and adoption of this Law on a permanent basis within the next six (6) to twelve (12) months.
  - **B.** *Oneida General Welfare Law.* The Oneida Business Committee will be considering the emergency adoption of an Oneida General Welfare law. Emergency adoption of an Oneida General Welfare law is being sought create a law that provides a mechanism to address the economic needs of members of the Nation during the COVID-19 pandemic. The purpose of the Oneida General Welfare law is to provide assistance, on a non-taxable basis, to eligible Tribal members through approved programs that promote the general welfare of the Nation. [10 O.C. 1001.1-1, 1001.1-3]. The Oneida General Welfare law sets a framework and provides guidelines for the Nation to establish and operate approved programs which provide assistance to eligible Tribal members to promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment. [10 O.C. 1001.9-2].
    - Conclusion: The Legislative Operating Committee is preparing both the Oneida General Welfare law and the Oneida Higher Education Pandemic Relief Fund law to be presented for consideration on an emergency basis by the Oneida Business. The Oneida General Welfare law sets forth the framework and guidelines for the Oneida Higher Education Pandemic Relief Fund to be created and operated under.
  - C. Fiscal Impact. A fiscal impact statement is not required for emergency legislation.
    - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

#### Title 10. General Welfare Exclusion - Chapter 1003 ONEIDA HIGHER EDUCATION PANDEMIC RELIEF FUND

1003.1. Purpose and Policy

1003.2. Adoption, Amendment, Repeal

1003.3. Definitions

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1003.4. Guidelines and Requirements

 $1003.5. \ Presumption of Need;$  General Test for General Welfare Exclusion

1003.6. Budget

#### 1003.1. Purpose and Policy

- 2 1003.1-1. *Purpose*. The purpose of this law is to create the Oneida Higher Education Pandemic
- 3 Relief Fund to assist eligible Tribal members enrolled as students in higher education institutions
- 4 for the 2020 Fall Term.
- 5 1003.1-2. The Oneida Higher Education Pandemic Relief Fund shall assist students to meet the
- 6 needs created by the Public Health Emergency which caused grants, scholarships, and loans to be
- 7 forsaken by the granting institutions or banks during the novel coronavirus pandemic, and personal
- 8 and family funds redirected to other needs during the ongoing Public Health Emergency, including
- 9 medical expenses and losses due to unemployment within the family.
- 10 1003.1-3. *Policy*. It is the policy of the Nation to prioritize the education of its members young
- and old. The Nation provides a path and a platform for its Tribal members to excel in their
- education from Head Start through college and post-graduate studies. The Nation's future business
- and government leaders, caregivers, nourishers, managers, thought leaders, and teachers shall be
- better prepared to lead and navigate the local challenges in a global economy when they participate
- in the academics and accreditation that permits access to areas our Nation requires to remain viable
- and vital over the next seven generations.
- 17 1003.1-4. The Oneida Higher Education Pandemic Relief Fund shall be funded only through
- monies allocated to the Nation pursuant to the Coronavirus Aid, Relief, and Economic Security
- 19 (CARES) Act Coronavirus Relief Funds (CRF), codified at Section 601(d) of the Social Security
- 20 Act, for the purpose of addressing their higher education needs created by the Public Health
- 21 Emergency in the wake of the COVID-19 pandemic.
- 22 1003.1-5. The Oneida Higher Education Pandemic Relief Fund is a unique program not associated
- 23 with the Oneida Trust Scholarship Fund and this law does not amend or override the Trust
- 24 Scholarship Fund Policy at 9 O.C. 901 et seq.
- 25 1003.1-6. The Oneida Business Committee intends the Oneida Higher Education Pandemic Relief
- Fund to adhere to the mandates of the Oneida General Welfare law, 10 O.C. 1001, the Tribal
- General Welfare Exclusion Act codified at 26 U.S.C. §139E, I.R.S Rev. Proc. 2014-35, the general
- 28 criterial defined therein at 5.01(1), and the Safe Harbor Education Programs listed and defined
- 29 therein at 5.01(2)(b), and CRF.

#### 1003.2. Adoption, Amendment, Repeal

- 32 1003.2-1. This law was adopted by the Oneida Business Committee on an emergency basis by
- 33 resolution - .

- 34 1003.2-2. This law may be amended or repealed by the Oneida Business Committee or the General
- 35 Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 36 1003.2-3. Should a provision of this law or the application thereof to any person or circumstances
- 37 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
- 38 to have legal force without the invalid portions.
- 39 1003.2-4. In the event of a conflict between a provision of this law and a provision of another law,

1003.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### 

#### 1003.3. Definitions

- 1003.3-1. 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) "Benefits" means any approved program assistance, including payments, which is provided pursuant to this law.
  - (b) "Classroom requirement" means books, subscriptions, access to internet-based programs, or any items required by the higher education institution, professor, or teacher of the course in which the student is enrolled.
  - (c) "General Test" means the criteria used to determine if any assistance or benefits provided through an approved program to a recipient shall be treated as a General Welfare Exclusion. The criteria of the General Test include the following:
    - (1) Paid on behalf of the Nation;
    - (2) Pursuant to an approved program;
    - (3) Does not discriminate in favor of members of the governing body of the Nation;
    - (4) Are available to any Tribal member who meets the guidelines of the approved program;
    - (5) Are for the promotion of general welfare;
    - (6) Are not lavish or extravagant;
    - (7) Are not compensation for services; and
    - (8) Are not per capita payments.
  - (d) "Higher education institution" means universities, colleges, vocational colleges, community colleges, liberal arts colleges, postgraduate schools, institutes of technology and other collegiate level institutions, such as vocational schools, trade schools and career colleges, that award academic degrees or professional certifications.
  - (e) "Higher Education Pandemic Relief Counselor" means the person hired and assigned by the Oneida Higher Education Division to assist Oneida Economic Support Services in the review and processing of the Oneida Higher Education Pandemic Relief Fund.
  - (f) "Nation" means the Oneida Nation.
  - (g) "Public Health Emergency" means the economic, governmental, and medical crises caused by COVID-19 and the novel coronavirus pandemic.
  - (h) "Room and board" means on or off campus housing and food requirements adjusted to meet the unique lodging and food provision requirements or governmental mandates during the Public Health Emergency.
  - (i) "Student" means a Tribal member, age eighteen (18) and older, enrolled in a higher education institution during the operative period of this law.
  - (j) "Technology requirements" means computers, internet access fees, VPN subscriptions, computer-based or cloud-based subscriptions required to function within a contemporary academic setting such as Office 365, Adobe-based programs, other required licenses, and electric or telecommunications costs.
  - (k) "Tuition" means the price or payment for instruction at a higher education institution.
  - (1) "Tribal member" means an individual who is an enrolled member of the Nation.

# 1003.4. Guidelines and Requirements

- 1003.4-1. The Oneida Higher Education Pandemic Relief Fund is established to meet the higher education needs of its students during the COVID-19 Public Health Emergency.
- 1003.4-2. The Oneida Higher Education Pandemic Relief Fund shall provide students:
  - (a) Up to twenty thousand dollars (\$20,000) towards tuition, room and board, technology requirements, and classroom requirements assistance.
  - (b) Tuition shall be paid directly to the higher education institution upon submission of an invoice for tuition created by the higher education institution.
  - (c) Room and board and classroom requirements shall be paid directly to the student, whom shall be responsible for maintaining and submitting receipts or other proof of expenditures by December 15, 2020.
  - (d) All funds shall be requested pursuant to the Oneida Higher Education Pandemic Relief Fund standard operating procedure.
  - (e) Laptop computers may be supplied to the student upon a written request by the student to the Nation's Higher Education Pandemic Relief Counselor and in accordance with the Nation's interpretation of CRF and any applicable standard operating procedure.
- 1003.4-3. Oneida Higher Education Department shall oversee distribution of the Oneida Higher Education Pandemic Relief Fund in accordance with this law, CRF, and the Nation's interpretation thereof. The Oneida Higher Education Department shall hire the Higher Education Pandemic Relief Counselor whom shall be assigned to work in the office of Oneida Economic Support Services. Oneida Higher Education shall be responsible for the maintenance of records along with the Oneida Accounting Department.
- 1003.4-4. Maintenance of Records.
  - (a) *Nation*. The Nation requires students to submit tuition invoices, leases, room and board expenses, and any other proof of expenses or receipts to substantiate the request for payments from the Oneida Higher Education Pandemic Relief Fund by December 15, 2020. The Nation shall maintain these records for the required period of time by the CARES Act, CRF, and Internal Revenue Service mandates.
  - (b) *Student*. The student shall maintain accurate records of the above listed items for review by the Internal Revenue Service upon request.

#### 1003.5. Presumption of Need; General Test for General Welfare Exclusion

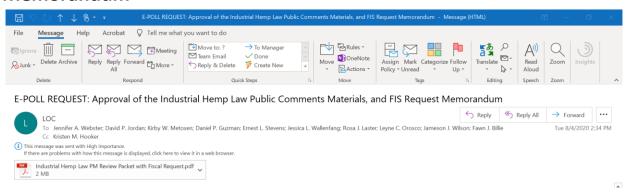
- 1003.5-1. I.R.S. Rev. Proc. 2014-35, section 5.02(2)(B) lists education programs that assist tribal members with tuition, housing, room and board, technology requirements and laptop computers as a Safe Harbor program for which need is presumed.
- 1003.5-2. The Oneida Higher Education Pandemic Relief Fund meets the requirements of the General Test as defined in the Oneida General Welfare law, 10 O.C. 1001; General Criteria as defined in I.R.S. Rev. Proc. 2014-35, section 5.01(1); and the requirements of the Tribal General Welfare Exclusion Act of 2014, 26 U.S.C. §139E(b).
  - (a) The benefits are provided to the students pursuant to this law, as approved by the Oneida Business Committee, and in accordance with Oneida General Welfare law.
  - (b) The Oneida Higher Education Pandemic Relief Fund has guidelines specifying how Students qualify for the benefit in section 1003.4 of this law.

# Draft 1 for Emergency OBC Consideration 2020 08 05

128	(c) The program is available to any student as defined in Section 1003.3-1(1) of this law.
129	(d) The distribution of benefits does not discriminate in favor of members of the governing
130	body of the Nation, are not compensation, and are not lavish or extravagant under the facts
131	and circumstances of the Public Health Emergency.
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133	1003.6. Budget
134	1003.6-1. The Nation shall allocate funds to the Oneida Higher Education Pandemic Relief Fund
135	only from monies it received pursuant to the CRF. This program is dependent on availability of
136	funding from the CRF.
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138	End.
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# August 4, 2020 Legislative Operating Committee E-Poll Approval of the Industrial Hemp Law Public Comments Materials and FIS Request Memorandum



# **Good Afternoon Legislative Operating Committee,**

This e-mail serves as the e-poll for the approval of the Industrial Hemp law public comment materials, and fiscal impact statement request memorandum. Please note that you will have to respond to this e-poll by typing approve, deny or abstain due to limited remote capabilities that do no allow for access to the voting button.

#### **EXECUTIVE SUMMARY**

The Legislative Operating Committee has been developing an Industrial Hemp law. A public comment period on the proposed law was held open until July 9, 2020, in accordance with the Legislative Procedures Act and the Nation's COVID-19 Core Decision Making Team's "Suspension of Public Meetings Under the Legislative Procedures Act" declaration. The "Suspension of Public Meetings under the Legislative Procedures Act" declaration was issued on March 27, 2020, and suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

Five (5) individuals submitted written comments during the public comment period, for a total of twenty-four (24) comments received on the proposed Industrial Hemp law. The Legislative Operating Committee reviewed and considered every written comment that was received. A public comment review memorandum was drafted to demonstrate the Legislative Operating Committee's consideration, and revisions to the Industrial Hemp law were made based on the comments that were received.

The proposed Industrial Hemp law is now ready to continue through the legislative process. The next step in the legislative process is to request a fiscal impact statement. 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 can 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)].

Attached to this e-poll please find the follow documentation for the proposed Industrial Hemp law:

- Public comment period review memorandum;
  - A copy of the public meeting draft and all written comments that were received is attached to this memorandum;
- Industrial Hemp law Draft 2 (Redline to Draft 1);
  - This draft demonstrates the changes that were made to the Law after the public meeting;
- Industrial Hemp law Draft 2 (Clean);
- Updated Industrial Hemp law legislative analysis; and
- Fiscal Impact statement request memorandum.

The Legislative Operating is now being asked to approve by e-poll the public comment period review memorandum, draft, legislative analysis, and fiscal impact statement request memorandum, and to forward the fiscal impact statement request memorandum to the Finance Department directing that a fiscal impact statement of the proposed Industrial Hemp law by August 18, 2020.

An e-poll is necessary for this matter because Legislative Operating Committee meetings have been canceled due to the COVID-19 pandemic, and immediate action is required by the Legislative Operating Committee to approve these materials so a fiscal impact statement from the Finance Department can be requested.

#### **REQUESTED ACTION**

- Accept the public comments for the proposed Industrial Hemp law;
- Approve the public comment review memorandum, updated draft and legislative analysis, and fiscal impact statement request memorandum;
- Forward the fiscal impact statement request memorandum to the Finance Department directing that a fiscal impact statement of the proposed Industrial Hemp law be prepared and submitted to the Legislative Operating Committee by August 18, 2020.

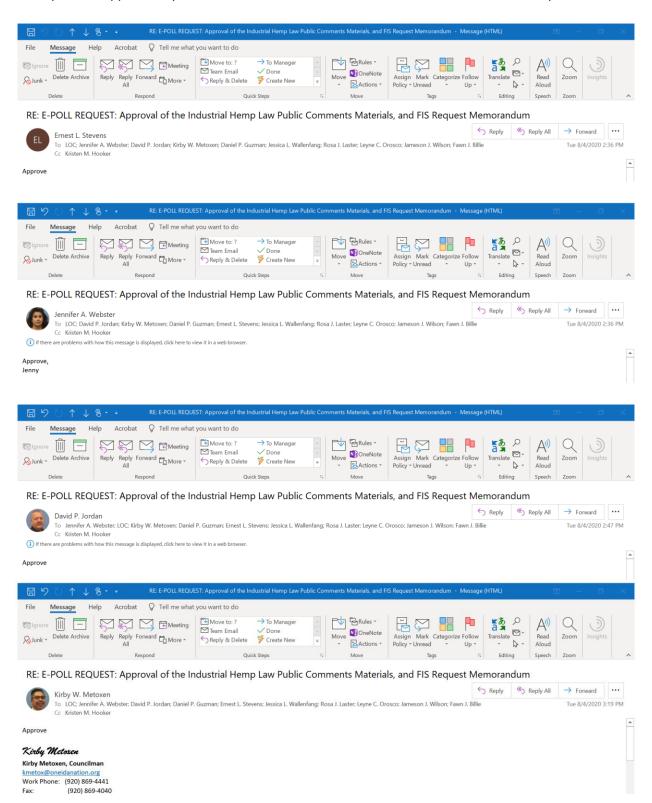
#### **DEADLINE FOR RESPONSE**

#### August 4, 2020 at 4:00 p.m.

All supporting documentation has been attached to this email for your convenience.

#### **E-POLL RESULTS:**

The e-poll was approved by Ernest Stevens III, Jennifer Webster, David P. Jordan, and Kirby Metoxen.





#### Oneida Nation **Oneida Business Committee** Legislative Operating Committee

PO Box 365 • Oneida, WI 54115-0365



TO: Legislative Operating Committee (LOC)

Kristen M. Hooker, Legislative Reference Office Staff Attorney FROM:

DATE: August 4, 2020

RE: Industrial Hemp Law: Public Comment Review

A public comment period for the proposed Industrial law ("Law") was held open until July 9, 2020. As further explained below, a public meeting for the proposed Law was not held due to the COVID-19 pandemic.

On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. The Public Health State of Emergency was extended to July 12, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, and BC-06-10-20-A.

On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. The "Safer at Home" declaration was modified to allow for gaming and golf operations to resume on April 21, 2020, through the "Updated Safer at Home" declaration and then modified again on May 19, 2020, through the "Safer at Home Declaration, Amendment, Open for Business" to allow businesses to re-open under certain safer business practices with social distancing practiced by all persons, but still directs that individuals continue to stay at home. On June 10, 2020, the COVID-19 Core Decision Making Team issued a "Stay Safer at Home" declaration which lessened the restrictions of the "Safer at Home Declaration, Amendment, Open for Business" while still providing guidance and some restrictions.

On March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

Although the Nation's COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration suspended public meetings and therefore no public meeting was scheduled for the proposed Law, a public comment period was still held open until July 9, 2020, to allow members of the community to provide written submissions of comments or questions to the Legislative Operating Committee through e-mail.

This memorandum is submitted as a review of the written comments received within the public meeting and public comment period. The public meeting draft and written comments received are attached to this memorandum for review.

# **Comments 1 through 3 - Hemp Production/Legislative Purpose:**

# **508.1. Purpose and Policy**

- 508.1-1. *Purpose*. The purpose of this law is to:
  - (a) Authorize the production of hemp within Reservation of the Oneida Nation;
  - (b) Grant the Oneida Nation primary regulatory authority over the production of Hemp within the jurisdiction of the Nation;
  - (c) Assert the Nation's inherent sovereign authority by creating a hemp production plan that regulates hemp as an agricultural commodity consistent with the Nation's, as well as the federal, laws; and
  - (d) Promote the Nation's hemp industry to the maximum extent permitted by law.

**Richard Baird (written):** I don't have a problem with the Nation getting into the hemp growing business. My biggest concern are we going to process the hemp into usable products or are we going to look for a processor and then what is it going to cost to ship it? This is the same argument I encountered when I asked why we have all those acres under cultivation growing corn and we don't ship any to processors to make a other products. The answer was because it's too expensive to ship and there would be no profit left after deducting shipping costs.

**Nancy Barten** (written): First of all this law's intention is to duplicate processes that currently exist at all levels of government including Hobart, county, state and federal.

**Nancy Barten (written):** As far as the law itself:

1. Licensing processes currently exist at all levels. This is a duplication.

# Response

The first commenter conveys that although he is not necessarily opposed to the Nation "getting into the hemp growing business," he is concerned with the plan post-harvest. Specifically, he wants to know whether hemp crops will be processed into usable products and what it would cost the Nation to process, as well as ship. The second commenter expresses concern that the proposed legislation is just a duplication of processes that already exist at various governmental levels.

The purpose of this legislation is to authorize persons within the jurisdiction of the Nation to produce hemp and to allow the Nation, as opposed to the state or federal government, to regulate such production so long as it does so in accordance with the Agricultural Improvement Act of 2018 ("2018 Farm Bill"). Per the 2018 Farm Bill, if tribes or states want to exercise their sovereignty over the production of hemp within their boundaries, the legislation is necessary regardless of duplication.

The proposed Industrial Hemp law ("Law") sets forth the parameters within which hemp may be produced within the boundaries of the Reservation and appoints the Nation as the entity in charge of ensuring that persons are producing hemp in accordance therewith. Thus, the focus of the Law



is on the production of hemp, not necessarily the post-harvest use of the crop, and the role of the Nation is that of a regulator, not a producer.

If the Nation did decide to engage in the production of hemp, it would have to undergo the same process within the Law that applies to any other person or entity under the jurisdiction of the Nation who is interested in producing hemp. Thus, among other steps, the Nation would have to apply for a license through the Environmental, Health, Safety and Land Division ("Division"), which includes as part of the application process, that applicants disclose where they intend to cultivate, handle, process or store the crop, as well as the intended output (e.g. raw hemp or some other hemp product). [5 O.C. 508.6-2].

While the first commenter raises legitimate questions regarding how the Nation would process and/or use hemp products if it ever decided to engage in the production of hemp under the proposed Law, the questions are not directly related to the legislation at issue. It is worth noting that section 508.4-4 of the proposed legislation does provide that "nothing in this law limits, modifies or waives the need for a person to obtain any other license or permit required by any other applicable law of the Nation to operate a business or other entity within the Reservation or to comply with any other applicable law of the Nation, including, but not limited to, the Nation's environmental and land use laws." [5 O.C. 508.4-4]. The LOC may want to keep these questions in mind when the time comes to evaluate some of the Nation's existing laws or develop additional laws relating to commerce.

There are no revisions recommended to the Law in response to these comments.

#### LOC Consideration

The Legislative Operating Committee determined there was no revision to the Law needed based on these comments. The Legislative Operating Committee did indicate, however, that it would keep in mind the questions raised regarding post-production when developing new laws or amending current laws of the Nation that govern commerce.

# **Comment 4 - Administration of the Law**

508.5. Authority

508.5-2. Authority of the Division. The Division is hereby delegated the authority to regulate and oversee hemp production under the Nation's plan and shall have all powers necessary to fulfill the requirements of this law. At a minimum, the Division shall have the authority and responsibility to:

- (a) Provide prospective producers with information necessary to participate in the Nation's plan, to include, but not be limited to:
  - (1) How to determine prospective geospatial locations;
  - (2) How to obtain and properly submit a criminal history report; and
  - (3) How to share requisite information with the Farm Service Agency.
- (b) Issue licenses to produce hemp and make all decisions relating thereto;
- (c) Conduct inspections and investigate complaints;
- (d) Develop standard operating procedures, protocols and forms necessary to administer this law;



(e) Enforce this law through appropriate means, including, but not limited to, ensuring that producers licensed through the Nation are operating in compliance with the Farm Bill.

Environmental, Health, Safety, Land & Agriculture Division (written): The Environmental, Health, Safety, Land and Agricultural Division has reviewed the proposed Industrial Hemp Law. We did participate in formulating this proposed law. After our review of this law, we still have a few questions and comments.

As noted in <u>508.5-2. Authority of the Environmental, Health, Safety, Land & Agriculture Division</u> (<u>Division</u>): The Division is hereby delegated the authority to regulate and oversee hemp production under the Nation's plan and shall have all powers necessary to fulfill the requirements of this law. Pre-Covid 19 pandemic, our Division provide for a lot more services and activities with a staff about 50% stronger than what we are today. It also does not look like much will change for Fiscal Year 2020. We will assume this will have high priority as this new law moves through the process for adoption. We will include our financial analysis within this document to administer this proposed law.

# **Questions & Comments:**

- We will work with the GM Office to analyze fully on how the Division will implement the follow section:
  - "508.5-2. Authority of the Division. The Division is hereby delegated the authority to regulate and 183 oversee hemp production under the Nation's plan and shall have all powers necessary to fulfill the 184 requirements of this law. At a minimum, the Division shall have the authority and responsibility to:"
- There is much work that still is required to do for the Division from creating an application forms to developing a SOP to include fee schedules. Will there be a specific timeline to complete once the law is passed and approved by USDA?

# Response

The commenter questions whether there will be a specific timeline in which the Division will have to prepare for its administration of the proposed Law. The Law itself does not specify when it would go into effect if adopted by the Oneida Business Committee. Per the Nation's Legislative Procedures Act, "[u]nless specified otherwise in the adopting resolution or the law, the effective date of a law, amendment or repeal shall be ten (10) business days after the date of adoption of the resolution." [1 O.C. 109.9-3].

In response to this comment, the Legislative Operating Committee could:

- 1. Leave the Law as drafted without revision and default to the ten (10) business days set forth in the Legislative Procedures Act; or
- 2. Revise the Law to include an alternate date of effectiveness.



#### LOC Consideration

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment. It did indicate, however, that it would be open to considering an extended date of effectiveness when the Law is presented for adoption, which would then be included in the adopting resolution.

# **Comments 5 through 8 – Licensing and Reporting**

#### 508.3. Definitions

- 508.3-1. 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.
- (l) "Division" means the Oneida Environmental, Health, Safety and Land Division. 508.5. Authority
- 508.5-2. Authority of the Division. The Division is hereby delegated the authority to regulate and oversee hemp production under the Nation's plan and shall have all powers necessary to fulfill the requirements of this law. At a minimum, the Division shall have the authority and responsibility to:
  - (a) Provide prospective producers with information necessary to participate in the Nation's plan, to include, but not be limited to:
    - (4) How to determine prospective geospatial locations;
    - (5) How to obtain and properly submit a criminal history report; and
    - (6) How to share requisite information with the Farm Service Agency.
  - (b) Issue licenses to produce hemp and make all decisions relating thereto;
  - (c) Conduct inspections and investigate complaints;
  - (d) Develop standard operating procedures, protocols and forms necessary to administer this law;
  - (e) Enforce this law through appropriate means, including, but not limited to, ensuring that producers licensed through the Nation are operating in compliance with the Farm Bill.

#### **508.6.** Licensing Requirements

- 508.6-2. Application Process. Any person under the jurisdiction of the Nation who wishes to engage in the production of hemp shall apply to the Division in accordance with this section.
  - (a) Applicants must submit a complete application to the Division pursuant to the process set forth in the standard operating procedure adopted by the Division before the application will be accepted or considered. The application process shall require, at a minimum, that the applicant provide/submit the following:
    - (7) The licensing fee set pursuant to the fee schedule created by the Division and approved by the Oneida Business Committee through resolution;
- 508.6-4. *License Issuance*. Applications for licensure and license renewal, transfer/assignment or modification shall be reviewed by the Division for completeness and to determine an applicant's eligibility.
  - (a) The Division shall set the process for issuing licenses hereunder in a standard operating procedure that includes, at a minimum:
    - (4) That for each license it issues, the Division, in cooperation with the Division of Land Management, shall record the type of land designation for each parcel of land listed in the licensee's application as an intended hemp production site



and maintain such information within the Division's files for a minimum of seven (7) years.

# 508.7. Required Recordkeeping and Reporting

# 508.7-1. Division Reporting.

- (a) *Hemp Grower Report*. By the first of each month, the Division shall submit to the USDA a report providing the contact information and the status of the license issued for each producer under the Nation's plan. The report shall contain:
  - (1) For each new producer who is a natural person, the producer's:
    - (A) Full name:
    - (B) License identification number;
    - (C) Business address;
    - (D) Telephone number;
    - (E) Email address (if available); and
    - (F) A legal description of the land on which the producer is producing or intends to produce, including, to the extent practicable, its geospatial location.

#### 508.7-3. Recordkeeping.

- (a) The Division shall retain for a minimum of (7) years all information required to be collected in section 508.6 of this law for every license it issues, renews, transfers/assigns and modifies in accordance with the Nation's plan.
- (b) The Division and producers shall retain all documentation referenced within sections 508.7 and 508.8 of the law for a period of at least seven (7) years.
  - (1) Producers shall retain the documentation in a manner that it can be readily provided to the Division upon request.

[Public Meeting Notice stated "The Industrial Hemp law will set forth criteria that all persons and business entities under the jurisdiction of the Nation who wish to participate in the production of hemp must follow, including, but not limited to: 1. Mandatory licensing and the process for licensure."]

**Mike Debraska (written):** 1. In your recent Kalihwisaks article dated June 17, 2020, on page 10, numbers 1-6, (a) What area/department in this tribe will oversee the licensing and the processing of licensures and where will the fees go that are collected? When and how will those fees collected be reported to GTC? Annually, semi-annually, in the budget?

**Mike Debraska (written):** 5. What are the reporting requirements for the Nation to notify GTC of these actions.

#### Response

The commenter questions which area within the Nation will be delegated the responsibility for the processing of licenses to produce hemp and the oversight of such licensure. Per section 508.5-2 of the proposed Law, the Division has been delegated this responsibility. Section 508.3-1 of the Law defines Division as the Oneida Environmental, Health, Safety and Land Division. Since the Law already assigns this administrative duty to an entity within the Nation, there is no recommended revision based on this portion of the comment.



The commenter further expresses concern over the collection of fees for licenses to produce hemp. Specifically, he wants to know where the fees will go and how it will be reported to the General Tribal Council. In addition, he inquires generally into the notification requirements to the GTC regarding the activities set forth in the proposed Law.

Section 508.6-2 of the proposed Law provides that, as part of the application process, applicants must submit to the Division the licensing fee set by the Division in a fee schedule that is approved by the Oneida Business Committee through resolution. And, section 508.7-3 of the Law requires the Division to maintain all information, which would include the payment of licensing fees, that is provided/submitted during the application process for a period of not less than seven (7) years.

The proposed Law does not specifically dictate how the Division shall apply the licensing fees it collects or whether and to what extent information collected pursuant to the Law shall be reported to the GTC. The Budget Management and Control law, however, sets forth standards for programs and services requiring Tribal contribution that desire to charge fees for their services, including what those fees shall cover. [1 O.C. 121.11-2]. Additionally, the Budget Management and Control law governs how financial information is compiled, as well as reported, and further provides that the "Nation's Treasurer shall [s]ubmit expenditure reports and other financial reports as deemed necessary by the Oneida Business Committee and/or the General Tribal Council...." [1 O.C. 121.8-3(b)]. Likewise, the Open Records and Open Meetings law provides a process for any Tribal member to request certain records that are produced in the course of governmental business. [1 O.C. 107.7].

In response to these comments, the Legislative Operating Committee could:

- 1. Simply rely on the above laws of the Nation to govern the application and reporting of licensing fees collected under the Industrial Hemp law;
- 2. Address the application and reporting of licensing fees in the schedule that is required by Law to be approved by the Oneida Business Committee through resolution; or
- 3. Revise the Law to specifically address how licensing fees shall be applied and how such information, as well as other information collected pursuant to the Law, shall be reported to, among other entities, the General Tribal Council.

#### LOC Consideration

The Legislative Operating Committee believes that the Budget Management and Control law, as well as the Open Records and Open Meetings law, provide sufficient avenues for information gathering related to the proposed legislation. Thus, it determined there was no revision to the Law needed based on this comment.

Environmental, Health, Safety, Land & Agriculture Division (written): The Environmental, Health, Safety, Land and Agricultural Division has reviewed the proposed Industrial Hemp Law. We did participate in formulating this proposed law. After our review of this law, we still have a few questions and comments.



As noted in <u>508.5-2. Authority of the Environmental, Health, Safety, Land & Agriculture Division</u> (<u>Division</u>): The Division is hereby delegated the authority to regulate and oversee hemp production under the Nation's plan and shall have all powers necessary to fulfill the requirements of this law. Pre-Covid 19 pandemic, our Division provide for a lot more services and activities with a staff about 50% stronger than what we are today. It also does not look like much will change for Fiscal Year 2020. We will assume this will have high priority as this new law moves through the process for adoption. We will include our financial analysis within this document to administer this proposed law.

# **Questions & Comments:**

- Under the 508.7. Required Recordkeeping and Reporting -508.7-1. Division Reporting. This section is requiring the Division "by the first of each month, the Division shall submit to the 298 USDA a report providing the contact information and the status of the license issued for 299 each producer under the Nation's plan."
  - o Seems to frequent, there are many months that will not have any activities. Maybe quarterly. if allowed under USDA approval.
  - o What is the Nation Industrial Hemp Plan?
- Under section 508.6-4. License Issuance. Please change from Division to Area.
  - (4) That for each license it issues, the Division, in cooperation with the Division Area of Land Management, shall record the type of land designation for each parcel of land listed in the licensee's application as an intended hemp production site and maintain such information within the Division's files for a minimum of seven (7) years.

# Response

The commenter expresses a desire to lessen the frequency of reporting under section 508.7 of the proposed Law. Section 508.7-1 of the Law provides that the Division must submit monthly reports to the USDA on, among other things, the status of the license issued to each producer under the Nation's plan. The Law defines the "Nation's plan" as the criteria and regulations set forth in the Law to govern the production of hemp within the jurisdiction of Nation and serves as the "plan" as required by the Farm Bill to be submitted to and approval by the USDA for the Nation to assume primary regulatory authority over the production of hemp within its jurisdiction. [5 O.C. 508.3-1(dd)].

Section 508.7-1 was added to the Law pursuant to the requirements of the USDA's Interim Final Rule that it promulgated in accordance with the 2018 Farm Bill. The frequency of the report was set by the USDA, as opposed to the Legislative Operating Committee. Thus, it is not subject to revision absent amendment to the Interim Final Rule by the USDA.

There is no revision recommended to the Law in response to this comment.

The commenter further requests that the term "Division of Land Management" as set forth in section 508.6-4(a)(4) of the proposed Law be changed to "Area of Land Management". The requested change would more accurately denote the agency being referenced within this section,



and thus, it is recommended that the Law be revised to use the term "Area of Land Management" in place of "Division of Land Management."

#### LOC Consideration

The Legislative Operating Committee directed the following revision to the proposed Law in response to the above comments:

- 508.6-4. *License Issuance*. Applications for licensure and license renewal, transfer/assignment or modification shall be reviewed by the Division for completeness and to determine an applicant's eligibility.
  - (b) The Division shall set the process for issuing licenses hereunder in a standard operating procedure that includes, at a minimum:
    - (4) That for each license it issues, the Division, in cooperation with the DivisionArea of Land Management, shall record the type of land designation for each parcel of land listed in the licensee's application as an intended hemp production site and maintain such information within the Division's files for a minimum of seven (7) years.

# **Comments 8 through 10 – Definition of Acceptable Hemp THC Level**

508.3. Definitions

- 508.3-1. 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) "Acceptable hemp THC level" means when the application of the measurement of uncertainty ("MU") to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range of not more than 0.3 percent.

[Public Meeting Notice stated "The Industrial Hemp law will set forth criteria that all persons and business entities under the jurisdiction of the Nation who wish to participate in the production of hemp must follow, including, but not limited to: 2. A definition of what constitutes an acceptable hemp THC level for the processing and distribution of hemp plants"]

**Marcus Grignon (written):** I appreciate your due diligence in the draft of the Oneida Hemp Regulations during this time of uncertainty for our Nation. I am writing to highlight different components of the hemp regulations that I wish to see changed in the final draft. Below are the changes I want to see in the final draft of the Oneida Hemp Regulations:

1) Oneida's Definition of Acceptable Hemp THC Level. Pursuant to the 84 FR 58522-United States Department of Agriculture's (USDA) Interim Final Rule (IFR) for the Domestic Hemp Program, the USDA states an "Acceptable Hemp THC Level" refers to the interpretation of laboratory test results for delta-9 tetrahydrocannabinol content concentration level applying measurements for uncertainty as provided for in the IFR. When a laboratory tests a sample pursuant to this Hemp regulation, it must report the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis if it produces a distribution or range that includes



0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% or the measurement of uncertainty is +/-0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the Acceptable Hemp THC Level for the purpose of plan compliance with these Hemp Regulations and applicable federal law.

a. I request this definition be added to Oneida's final draft of the hemp regulations.

# Response

The commenter expresses a desire to expound upon the proposed Law's definition of "Acceptable hemp THC level" to include an explanation for interpreting laboratory tests results that closely mirrors the explanation that the USDA used to define "Acceptable hemp THC level" within its Interim Final Rule. The specific definition used by the USDA is as follows:

Acceptable hemp THC level. When a laboratory tests a sample, it must report the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty. The acceptable hemp THC level for the purpose of compliance with the requirements of State, Tribal, or USDA hemp plans is when the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/-0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of "acceptable hemp THC level" affects neither the statutory definition of hemp, 7 U.S.C. 1639o(1), in the 2018 Farm Bill nor the definition of "marihuana," 21 U.S.C. 802(16), in the CSA.

The definition included within the proposed Law does not include as much detail as provided within the Interim Final Rule, but it allows for such an interpretation and complies with the 2018 Farm Bill. There is nothing inherently wrong with including the more detailed Interim Final Rule's definition within the proposed Law. Indeed, it could provide additional guidance, which may be of benefit to both the producer and the Division. The only drawback would be if the definition as included within the Interim Final Rule would ultimately be modified in a manner that renders the Law's definition ineffective or more restrictive than that which is required under the 2018 Farm Bill. Such a modification would require a subsequent amendment to the Law.

The Legislative Reference Office could respond to the above comment by either:

- 1. Leaving the definition set forth within the proposed Law as is currently drafted without further explanation or by providing the suggested explanation within a standard operating procedure which could more easily and efficiently be amended in accordance with any changes to the Interim Final Rule or 2018 Farm Bill; or
- 2. Revising the definition of acceptable hemp THC level to mirror the definition set forth within the current definition used by the USDA in its Interim Final Rule. Although the



commentator's suggested language is close to the language used by the USDA, there are some differences that could be material in its application. Thus, to err on the side of caution, the recommendation would be to use the USDA's definition without alteration.

#### LOC Consideration

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment. It did indicate, however, that it would be proposing that the interpretive guidance suggested by the commenter be included within the Law's adopting resolution as a more efficient way to ensure proper administration of the Law.

**Mike Debraska (written):** 2. Whose guideline is the tribe using to define what is and is not an acceptable THC level? Is it the state's or federal government guidelines the tribe is using/following?

# Nancy Barten (written): As far as the law itself:

1. As far as constituting what is an acceptable THC level. Those levels are set by all the regulatory bodies. Levels not compliant can and will be destroyed by the proper authorities.

# Response

Both commenters question where the definition of acceptable hemp THC level came from. In order to produce hemp and regulate the production of hemp under the 2018 Farm Bill, both tribes and states are required to adopt a definition of acceptable hemp THC level that aligns with the 2018 Farm Bill, as well as the USDA's Interim Final Rule that was promulgated in accordance therewith.

The Legislative Operating Committee is proposing a definition of acceptable hemp THC level that complies with both the 2018 Farm Bill and the USDA's Interim Final Rule. Therefore, there is no recommended revision based on these comments.

#### LOC Consideration

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

# **Comments 11 through 12 – Sampling and Testing for THC Levels**

**508.8.** Sampling and Testing

- 508.8-1. General. Samples of all hemp produced under the Nation's plan must be collected and tested in accordance with this section of the law to determine whether it exceeds the acceptable hemp THC level.
  - (a) Subject to section 508.8-1(a)(1), the Division shall be responsible for the collection and testing of samples of all hemp produced under the Nation's plan.
    - (1) The Division may, in its discretion, appoint an outside agent or agency, other than a producer, to carry out the collection and testing of samples



hereunder.

- (b) Producers shall be responsible to pay any fees associated with the sampling and testing of their hemp production.
- (c) Alternative sampling and testing protocols may be used in place of the protocols set forth herein if approved by the USDA as being comparable and similarly reliable to the baseline mandated by the Farm Bill.
- 508.8-2. *Sampling*. The method used for sampling must:
  - (a) Require that the sample is taken from the flower material of the cannabis plant;
  - (b) Be sufficient at a confidence level of 95% that no more than 1% of the plants in the lot would exceed the acceptable hemp THC level;
  - (c) Ensure that a representative sample is collected that represents a homogeneous composition of the lot; and
  - (d) Ensure that samples of hemp plant material from one lot are not commingled with hemp plant material from other lots.
- 508.8-3. Protocol for the Collection of Samples. The hemp to be selected for sampling shall be determined by a representative of the Division or the agent/agency appointed by the Division and, subject to section 508.8-1(c), shall be collected as follows:
  - (a) Producers shall be required to report in writing to the Division at least fifteen (15) days before an expected harvest date that a crop is about to be harvested.
    - (1) The Division's receipt of a harvest notification triggers a site inspection and sample collection by the Division, or the agent/agency appointed by the Division.
    - (2) Producers shall not harvest any crop prior to samples being collected.
  - (b) The Division shall contact the producer to confirm the field's location and schedule a time for inspection and sample collection prior to harvest.
    - (1) During a scheduled sample collection, the producer or authorized representative of the producer shall be present at the growing site.
    - (2) The Division, or agent/agency appointed by the Division, shall be provided with complete and unrestricted access to all hemp, and other cannabis plants, if any, whether growing or harvested, and all land, buildings, and other structures used for the production of hemp and other cannabis plants, if any, and all locations listed in the producer's application.
  - (c) A separate sample shall be taken for each variety and from each lot of a given variety.
  - (d) Cuttings shall be collected to make one representative sample as follows:
    - (1) The top twenty (20) cm of the hemp plant's flower, including female floral material, shall be clipped;
    - (2) Cuttings from at least five (5) hemp plants within the lot shall be taken and the complete sample shall be placed in a paper bag;
    - (3) The bag shall be sealed by folding over the top once and stapling shut;
    - (4) The bag shall be labeled with a sample identification that includes, at a minimum, the last four (4) numerical digits of the producer's license identification number, the date (MM/DD/YY) of collection, and a two (2) digit sequential sample number assigned by the Division, or agent/agency appointed by the Division.



- (e) The sample shall be transported to the Division for storage in a secure area until it is sent to the testing lab for analysis.
- (f) Producers shall be required to harvest their crop not more than fifteen (15) days following the date of the sample collection.
  - (1) If the producer fails to complete the harvest within fifteen (15) days of the sample collection, a secondary sample of the lot shall be required to be submitted for testing.
  - (2) Harvested lots of hemp plants shall not be commingled with other harvested lots or other material without prior written permission from the Division.
  - (3) Floral materials harvested for phytocannabinoid extraction shall not be moved beyond the processor, or commingled, or extracted, until the Division releases the material.
  - (4) Producers shall be notified within thirty (30) days of sampling of the status of the testing.
  - (5) Any producer may request additional testing at its cost if it is believed that the original delta-9 THC concentration level test results were in error.
- 508.8-4. *Testing*. Subject to section 508.8-1(c), sample testing shall be completed by one of the DEA-registered laboratories designated by the Division for meeting the requirements of the Nation's plan and the Farm Bill.
  - (a) Laboratories designated by the Division hereunder shall be approved by the Oneida Business Committee through resolution.

# 508.8-5. Testing Protocol.

- (a) *Methodology*. The testing process shall be able to accurately identify whether a sample contains a delta-9 THC content concentration level that exceeds the acceptable hemp THC level by including, at a minimum, a validated testing methodology that uses:
  - (1) Postdecarboxylation or other similarly reliable method;
  - (2) Considers the potential conversion of THC-A in hemp into THC; and
  - (3) A test result that measures total available THC derived from the sum of the THC and THC-A content.
    - (A) Testing methodologies meeting the requirements of this section include gas or liquid chromatography with detection.
- (b) The total THC concentration level shall be determined and reported on a dry weight basis.
  - (1) Analytical testing for purposes of detecting the concentration levels of THC shall meet the following standards:
    - (A) Laboratory quality assurance must ensure the validity and reliability of test results;
    - (B) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing;
    - (C) The demonstration of testing validity must ensure consistent, accurate and analytical performance;



- (D) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of the Nation's plan; and
- (E) An effective disposal procedure for hemp plants that are produced that do not meet the requirements of the Nation's plan.

[Public Meeting Notice stated "The Industrial Hemp law will set forth criteria that all persons and business entities under the jurisdiction of the Nation who wish to participate in the production of hemp must follow, including, but not limited to: 3. Sampling and testing requirements to accurately determine whether a hemp crop exceeds the acceptable hemp THC level]

**Mike Debraska (written):** 3. What is the name of the company utilized for testing THC levels? Has that company been selected by GTC? Are they located in-state or out-of-state?

(a) Where are the seeds coming from that are utilized to plant and grow hemp on the reservation?

# Nancy Barten (written): As far as the law itself:

1. Who will be responsible for sampling and testing is very concerning to me because if nobody knew what they were doing with the nation's 2019 hemp crop, what measures are in place to prevent it from happening again.

#### Response

Both commenters question the process being utilized to test, as well as compile a sample for testing, the acceptable hemp THC levels. Per section 508.8 of the proposed Law, the Division is delegated the responsibility to either conduct the sampling or facilitate the sampling through a representative of its choosing. Although the Division is given some discretion in who compiles the sample for testing, sections 508.8-2 and 508.8-3 of the proposed Law provides a detailed and specific method for the compiling of samples that must be adhered to in order to ultimately test a crop in accordance with governing law.

Likewise, the process that must be utilized for the testing of the samples is expressly provided for in section 508.8-4 of the proposed Law and, absent an alternative process approved by the USDA, is not subject to deviations. In addition, the proposed Law requires that the testing itself be conducted by one of the DEA-registered laboratories designated by the Division and approved by the Oneida Business Committee through resolution.

Although the proposed Law could more specifically indicate which DEA-registered laboratories must be utilized (e.g. in-state/out-of-state or GTC selected laboratories), the LOC believes that the Division, as the agency tasked with the administration of the program, is in the best position to designate the DEA-registered laboratories. The Law does include an element of oversight, however, by requiring that such designation be approved by the Oneida Business Committee through resolution.

The Legislative Operating Committee has set forth a specific and detailed process that must be followed for the sampling and testing of industrial hemp crops, which includes certain checks and



balances to ensure adherence thereto. Therefore, there are no recommendation revisions based on these comments.

#### LOC Consideration

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

# **Comments 13 through 15 – GTC Motion Regarding Economic Development:**

**508.1. Purpose and Policy** 

508.1-1. *Purpose*. The purpose of this law is to:

- (a) Authorize the production of hemp within Reservation of the Oneida Nation;
- (b) Grant the Oneida Nation primary regulatory authority over the production of hemp

within the jurisdiction of the Nation;

- (c) Assert the Nation's inherent sovereign authority by creating a hemp production plan that regulates hemp as an agricultural commodity consistent with the Nation's, as well as the federal, laws; and
- (d) Promote the Nation's hemp industry to the maximum extent permitted by law. 508.1-2. *Policy*. The Agricultural Improvement Act of 2018, commonly referred to as the 2018 Farm Bill, provides an opportunity for Indian Nations to engage in hemp production through the submission of a hemp production plan for approval to the United States Department of Agriculture. The Farm Bill recognizes that Indian Nations, not the federal government, can and should assume primary regulatory authority over hemp production within their jurisdictions. It is the policy of the Nation to exercise its inherent sovereign authority through self-governance. It is further the policy of the Nation to protect the health, security and general welfare of the community. The Nation finds that hemp is a valuable agricultural crop and commodity and that through proper regulation, hemp can be put to its highest and best use, thereby providing jobs and revenue for essential governmental programs and services that will benefit the Nation and its members.

**Mike Debraska** (written): At the last GTC meeting, a motion was made by a GTC member which is as follows:

"Any economic development has to have a financial strategy and that it can be viewed and vetted by an independent third party with appropriate due diligence strategy to include any and/or all pertinent assumptions and that the strategy be presented to GTC for review and approval and that the third party be present for the review."

Based on that motion, which passed overwhelmingly by GTC at that meeting, the following amounts were previously allocated on this project to-date:

HEMP: \$ 53,615 EQUIPMENT: \$ 19,300

**CANNERY** 

to make butter \$35,000



While the total is broken down and was put out for GTC, at no point has GTC authorized this project to proceed, regardless of whether or not it is tribal funds being utilized or COVID-19 money from the federal government is being utilized. The GTC motion cannot be ignored or side-stepped in any way or any BC member or member of management who authorizes more funds to be utilized may be held criminally liable and forced to pay the improperly allocated funds back from their own personal accounts. Since we have not had any GTC meetings since January of this year, any movement going forward will only violate the GTC directed motion for which any current seated OBC member or member of management can and will be held liable to GTC.

**Nancy Barten (written):** Secondly, the most recent report to General Tribal Council included the financial impact that was a complete and total waste of manpower, and loss of hundreds of thousands of dollars with nothing to show for it. This was a result of the inexperience, incompetence, and overall lack of project management. The current agricultural strategy that exists needs to be reviewed and modified, and updated. I included in this an agricultural manager, director should be overseeing all our agricultural endeavors. Especially with the recent issues that are continued be allowed with the grass-fed beef at Tsyhehkwa.

Along with the financial impacts, there was a lengthy conversation regarding the hemp disaster that happened in 2019. The amount of money wasted on this project including travel, summits, could have provided an elder with a home. Subsequently, a Tribal member made a motion that all Ec. Development ventures be received and vetted by an independent 3<sup>rd</sup> party. This motion included the strategy be presented to General Tribal Council for approval. Motion was approved. This law as presented has the appearance of superseding or ignoring a GTC directive once again.

**Nancy Barten (written):** My perception upon learning who the author of the proposed Industrial Hemp Law is that is being used as a political campaign tool in order to drive votes in favor the production of hemp. I've said it before and now again. They can't even grow corn. I'll be looking forward to the presentation to GTC regarding any and all endeavors regarding Industrial Hemp.

#### Response

The commenters question whether the proposed legislation was developed in contradiction of the GTC motion regarding economic development. As a basis for this concern, the commenters refer to the results of the 2019 Industrial Hemp Pilot Program that the Nation participated in under the 2014 Farm Bill.

In response to the GTC's motion regarding economic development that the first commenter quotes in the above comment, the Oneida Business Committee adopted resolution BC-03-11-20-C, titled "Interpretation of General Tribal Council January 20, 2020 Economic Development and Fiscal Strategy Motion and Setting Implementation Procedures." This resolution defines "economic development" as "any new business development or expansion, merger and/or acquisition which results in a new profit revenue source for the Nation."

As stated in section 508.1 of the proposed Law, the purpose of this legislation is to authorize the production of hemp within the boundaries of the Reservation and to assign the Nation as the entity responsible for regulating such production in accordance with the 2018 Farm Bill. Although the



production of hemp in accordance with this Law could indeed result in economic development as defined in resolution BC-03-11-20-C, the Law itself does not constitute a "new business development or expansion, merger and/or acquisition which results in a new profit revenue source for the Nation."

With respect to the 2019 Industrial Hemp Pilot Program raised by the commenters as a concern over the success of the plan set forth within the proposed legislation, it is a misguided indicator of success. The 2019 Industrial Hemp Pilot Program that the Nation participated was authorized under the 2014 Farm Bill as a program for research purposes only, meaning the results were for educational purposes and to be used as a learning tool for future programs and legislation relating to Industrial Hemp. Unlike the 2014 Farm Bill, the 2018 Farm Bill removed Industrial Hemp from the Federal Controlled Substances list, and thus, allowed tribes and states to begin regulating the production of hemp for commercial purposes.

There are no revisions to the Law recommended in response to these comments.

#### LOC Consideration

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment. It would like to emphasize, however, that the pilot program referenced within the above comments was approved by resolution BC-04-25-18-J and information was provided, as well as reported, in accordance with the process in place at the time of said resolution's adoption.

# **Comment 16 – Definition of Marijuana:**

#### **508.3.** Definitions

508.3-1. 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.

(aa) "Marijuana" means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.

Marcus Grignon (written): I appreciate your due diligence in the draft of the Oneida Hemp Regulations during this time of uncertainty for our Nation. I am writing to highlight different components of the hemp regulations that I wish to see changed in the final draft. Below are the changes I want to see in the final draft of the Oneida Hemp Regulations:

- 2) **Oneida's Definition of Marijuana.** With respect to the definition change above for "Acceptable Hemp THC Level" the definition for "Marijuana" needs to reflect the measurement of uncertainty for hemp plants.
  - a. I request this definition to be changed to recognize the USDA's measurement of uncertainty for testing hemp; For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% or the measurement of uncertainty is +/- 0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the Acceptable Hemp THC Level for the purpose of plan compliance with these Hemp Regulations and applicable federal law.



#### Response

The commenter requests that the proposed Law's definition of "marijuana" includes the example that the USDA includes within its Interim Final Rule's definition of "acceptable hemp THC level" for interpreting the measurement of uncertainty when testing hemp plants. The specific example included within the Interim Final Rule's definition of "acceptable hemp THC level" is as follows:

[I]f the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/-0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of "acceptable hemp THC level" affects neither the statutory definition of hemp, 7 U.S.C. 1639o(1), in the 2018 Farm Bill nor the definition of "marihuana," 21 U.S.C. 802 (16), in the CSA. [84 FR 58525].

With respect to "marijuana", the USDA defines it as follows within its Interim Final Rule:

As defined in the CSA, "marihuana" (or "marijuana") means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. The term 'marihuana' does not include hemp, as defined in section 297A of the Agricultural Marketing Act of 1946, and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of termination (7 U.S.C. 1639o(1)). "Marihuana" also means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent. [84 FR 58533].

The definition for "marijuana" included within the proposed Law does not incorporate the example included within the Interim Final Rule's definition for "acceptable hemp THC level". Rather the proposed Law uses the simplified verbiage provided by the USDA within its Interim Final Rule to define "marijuana" in compliance with the 2018 Farm Bill. There is nothing inherently wrong with including the example for interpreting the measurement of uncertainty within the proposed Law's definition of "marijuana". Indeed, it could provide additional guidance, which may be of benefit to both the producer and the Division. The only drawback would be if the USDA or Congress, through amendment to the Federal Farm Bill, ultimately modifies or provides additional flexibility for interpreting the measurement of uncertainty or for measuring uncertainty altogether as the Nation would be required to adhere to the method used within its own Industrial Hemp law, absent further amendment.

The Legislative Reference Office could respond to the above comment by either:

- 1. Leaving the definition of marijuana set forth within the proposed Law as is currently drafted without revision.
  - a. If the LOC chooses this option, it could require that the example requested by the commenter be added to the adopting resolution or included within the standard operating procedure developed by the Division for administration of this Law,



- which would allow for the Nation to more efficiently adjust its methods if and when changes to the Interim Final Rule or 2018 Farm Bill occur; or
- 2. Revising the definition of "marijuana" to include the example used by the USDA to define "acceptable hemp THC level" within its Interim Final Rule. Although the commenter's suggested language is close to the language used by the USDA, there are some differences that could be material in its application. Thus, to err on the side of caution, the recommendation would be to use the USDA's example without alteration.

#### LOC Consideration

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment. It did indicate, however, that it would be proposing that the interpretive guidance suggested by the commenter be included within the Law's adopting resolution as a more efficient way to ensure proper administration of the Law.

# **Comments 17 through 18 - Definition of Reverse Distributor/Destruction Responsibilities:**

**508.3.** Definitions

- 508.3-1. 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.
  - (II) "Reverse distributor" means a person who is registered with the DEA to dispose of marijuana under the Controlled Substances Act.
- 508.9. Disposal of Noncompliant Plants

508.9-2. Destruction

- (a) Subject to section 508.9-2(a)(1), the Division shall be responsible to dispose of all hemp that exceeds the acceptable hemp THC level in accordance with the Controlled Substances Act and DEA regulations.
  - (1) The Division may, in its discretion, appoint an outside agent or agency, other than a producer, to carry out the destruction of noncompliant hemp hereunder.
- (b) So long as in compliance with the Controlled Substances Act and DEA regulations, hemp may be destroyed by burning or by composting where it is made unusable and rendered indistinguishable from any other plant material.
- (c) The Division shall promptly notify the USDA by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the definition of hemp in the Nation's plan and attach the records demonstrating the appropriate disposal of all those plants and materials in the lot from which the representative samples were taken.
  - (1) The notification shall include the test results from the representative samples.

**Marcus Grignon (written):** I appreciate your due diligence in the draft of the Oneida Hemp Regulations during this time of uncertainty for our Nation. I am writing to highlight different components of the hemp regulations that I wish to see changed in the final draft. Below are the changes I want to see in the final draft of the Oneida Hemp Regulations:

3) **Oneida's Definition of Reverse Distributor.** The United States Department of Agriculture ruled on February 27, 2020 that DEA-registered Labs and Reverse Distributors



are temporary stricken from the IFR due to limited capacity to handle the new hemp industry. Until the USDA issues the final rule for the Domestic Hemp Program, the use of DEA-registered labs and Reverse Distributors are not required for compliance of hemp regulations.

a. I request LOC to strike the definition of Reverse Distributor until the USDA makes a decision.

# Response

This commenter requests that the definition of Reverse Distributor be stricken from the proposed Law until the USDA makes a decision on whether it will definitely require that noncompliant hemp plants be destroyed by a Reverse Distributor.

Per the USDA's Interim Final Rule, tribal and state plans are required to include procedures for ensuring effective disposal of plants produced in violation this Law, as well as the 2018 Farm Bill. If a producer has produced cannabis exceeding the acceptable hemp THC level, the material must be disposed of in accordance with the CSA and DEA regulations because such material constitutes marijuana, a schedule I controlled substance under the CSA. Consequently, the material must be collected for destruction by a person authorized under the CSA to handle marijuana, such as a DEA-registered reverse distributor, or a duly authorized Federal, State, or local law enforcement officer.

The proposed Law designates the Division as the agency responsible to dispose of all hemp that exceeds the acceptable hemp THC level. [5 O.C. 508.9-2]. And, although the Law allows the Division, in its discretion, to appoint an outside agent or agency, other than a producer, to carry out the destruction of such noncompliant hemp, destruction must occur in accordance with the CSA and other applicable DEA regulations. [5 O.C. 508.9-2(a)(1)]. Currently, this requires that noncompliant plants be collected for destruction "by a person authorized under the CSA to handle marijuana, such as a DEA-registered reverse distributor, or a duly authorized Federal, State or local law enforcement officer." As previously confirmed by the USDA, the latter includes tribal law enforcement officers as will be reflected in the pending Final Rule, which will replace the Interim Final Rule.

During a recent teleconference with representatives of the USDA, it was further confirmed that the Final Rule will require: (1) that testing will have to occur at a DEA registered laboratory; and (2) that destruction of non-compliant plants will have to occur pursuant to the CSA and DEA regulations (i.e. using a Reverse Distributor or a duly authorized tribal, federal, state or local law enforcement officer). As currently drafted, the proposed Law provides that destruction of noncompliant hemp must be in accordance with the CSA and DEA regulations. Thus, it complies with the Interim Final Rule, the 2018 Farm Bill and the pending Final Rule. For purpose of clarity, however, it may be of benefit to emphasize in section 508.9 of the Law that the Division must ensure destruction occurs through a DEA-registered reverse distributor, or duly authorized tribal, federal, state or local law enforcement officer. To account for any future modifications to this list of authorized individuals, the Law could include a provision that allows for destruction to be accomplished by any other agent or agency so long as authorized by the 2018 Farm Bill, USDA regulations promulgated in accordance therewith and any amendments thereto.



The Legislative Reference Office could respond to the above comment by:

- 1. Removing the definition of Reverse Distributor from the proposed Law;
- 2. Leaving the definition of Reverse Distributor within the proposed Law without any further revision; or
- 3. Leaving the definition of Reverse Distributor within the proposed Law and adding the clarification referenced above.
  - a. If the LOC chooses the third option, the following revision to the Law is recommended:

508.9-2. Destruction

- (a) Subject to section 508.9-2(a)(1), the Division shall be responsible to dispose facilitate the disposal of all hemp that exceeds the acceptable hemp THC level in accordance with the Controlled Substances Act and DEA regulations.
  - (1) The Division may, in its discretion, appoint an outside agent or agency, other than a producer, to carry out the destruction of noncompliant hemp hereunder. The destruction of hemp that exceeds the acceptable hemp THC level shall be carried out by a reverse distributer, a USDA approved law enforcement officer or other agent/agency so long as authorized under the Farm Bill and/or any regulation promulgated in accordance therewith.

#### LOC Consideration

In response to the comment, the Legislative Operating Committee directive that the revision proposed as option 3 within this memo be included within the proposed legislation.

**Mike Debraska (written):** 4. Who/what entity/department within the tribe will destroy the hemp that exceeds THC levels? Will those test results be made available to GTC? If so, when?

# Response

This commenter questions who/what entity within the Nation will be responsible for destroying hemp plants that exceed the acceptable hemp THC level and whether/when tests results will be made available to the GTC.

Section 508.9-2 of the proposed Law assigns the Division (i.e. the Nation's Environmental, Health, Safety and Land Division) the responsibility to facilitate the disposal of all hemp plants that test above the acceptable hemp THC level. [5 O.C. 508.9-2]. Further, section 508.7-3 of the proposed Law provides that the Division, as well as all licensed producers, must retain all documentation referenced within sections 508.7 and 508.8 of the Law for a period of at least seven (7) years. [5 O.C. 508.7-3(b)]. This includes all records relating to testing, including the test results.

Although the proposed legislation does not specifically provide how information that is collected pursuant to the Law shall be shared with the GTC, it does require that it be maintained for no less than seven (7) years. Both the Nation's Budget Management and Control law and Open Records



and Open Meetings law provide a process for the GTC, as well as Tribal members, to request certain records that are produced in the course of governmental business. [1 O.C. 107.7]. Absent an alternate directive in the proposed Law, the GTC could request the information pursuant to either of the above referenced laws.

There are no revisions to the Law that are recommended in response to this comment

#### LOC Consideration

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

# **Comment 18 – Destruction of Noncompliant Plants:**

- **508.9.** Disposal of Noncompliant Plants
- 508.9-1. If the test results conclude that the THC levels exceed the acceptable hemp THC level, the lot represented by the sample shall be destroyed in accordance with this section.
  - (a) In the event test results exceed the acceptable hemp THC level, that harvest must be segregated from other harvested lots and remain segregated.
    - (1) Leaf and floral material from the harvest of that lot must then be destroyed.
  - (b) If a variety is designated as a prohibited variety, the Division shall require the producer to surrender without compensation the entire harvest and any unharvested crop, any live plants, and all germplasm of this variety to the Division for destruction by composting or burning.

# 508.9-2. Destruction

- (a) Subject to section 508.9-2(a)(1), the Division shall be responsible to dispose of all hemp that exceeds the acceptable hemp THC level in accordance with the Controlled Substances Act and DEA regulations.
  - (1) The Division may, in its discretion, appoint an outside agent or agency, other than a producer, to carry out the destruction of noncompliant hemp hereunder.
- (b) So long as in compliance with the Controlled Substances Act and DEA regulations, hemp may be destroyed by burning or by composting where it is made unusable and rendered indistinguishable from any other plant material.
- (c) The Division shall promptly notify the USDA by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the definition of hemp in the Nation's plan and attach the records demonstrating the appropriate disposal of all those plants and materials in the lot from which the representative samples were taken.
  - (1) The notification shall include the test results from the representative samples.

**Marcus Grignon (written):** I appreciate your due diligence in the draft of the Oneida Hemp Regulations during this time of uncertainty for our Nation. I am writing to highlight different components of the hemp regulations that I wish to see changed in the final draft. Below are the changes I want to see in the final draft of the Oneida Hemp Regulations:



- 4) **Destruction of Non-Compliant Hemp Plants.** Page 12, section 508.9-2, subsection (b) of the Oneida Hemp Regulations covers destruction of non-compliant hemp plants states, "So long as in compliance with the Controlled Substances Act and DEA regulations, hemp may be destroyed by burning or by composting where it is made unusable and rendered indistinguishable from any other plant material."
  - a. I request LOC to add a sentence that states the Controlled Substance Act excludes stalks and roots of hemp plants from being considered Marijuana. If a grower registered under the Oneida Hemp Regulations has hemp plants that test over the amount considered Acceptable Hemp THC level, the grower must destroy the floral material of the plant, but can keep the stalks and roots of the hemp plant to make a value-added product.

#### Response

The commenter requests that the LOC add a clarifying sentence to the proposed Law which provides that stalks and roots of hemp plants are excluded from the definition of marijuana, and thus, do not need to be destroyed when a hemp lot exceeds the acceptable hemp THC level.

Congress classifies marijuana as a schedule I controlled substance under the federal Controlled Substances Act. [21 U.S.C. § 812]. As suggested by the commenter, the CSA's definition of "marihuana" (also spelled "marijuana") contains certain exemptions. Specifically, the CSA defines marijuana as follows:

Subject to subparagraph (B), the term "marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.

- (B) The term "marihuana" does not include—
- (i) hemp, as defined in section 16390 of title 7; or
- (ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. [21 U.S.C. § 802].

With respect to the destruction of controlled substances, the CSA, through the federal regulations promulgated in accordance therewith, provides that: "[a]ll controlled substances to be destroyed by a registrant, or caused to be destroyed by a registrant pursuant to §1317.95(c), shall be destroyed in compliance with applicable Federal, State, tribal, and local laws and regulations *and shall be rendered non-retrievable*." [21 CFR § 1317.90(a) (emphasis added)]. For purposes of destruction, "non-retrievable" is defined as "the condition or state to which a controlled substance shall be rendered following a process that permanently alters that controlled substance's physical or chemical condition or state through irreversible means and thereby renders the controlled substance unavailable and unusable for all practical purposes." [21 CFR § 1300.05].



During a recent communication with a representative of the USDA to discuss the possible grey area regarding the destruction of hemp plants that exceed the acceptable hemp THC level (i.e. whether the entire plant must be rendered non-retrievable), the representative stated that the crop must be disposed of. As currently drafted, the proposed Law requires, generally, that disposal or destruction occur in accordance with the CSA and DEA regulations. This complies with the 2018 Farm Bill, while allowing flexibility in the event the CSA and DEA regulations are interpreted to allow preservation of certain parts of the hemp plant or are modified to change the method in which destruction is considered non-retrievable. By leaving the verbiage as written without further revision, the Nation remains compliant, but capable of adjustment without amendment to its own Law.

There are no revisions to the Law recommended in response to this comment.

#### LOC Consideration

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

# **Comments 19 through 20 – Research Opportunities/Licenses:**

**508.6.** Licensing Requirements

508.6-1. *License Required*. Any person engaging in or intending to engage in hemp production within the jurisdiction of the Nation shall only do so pursuant to a valid license issued by the Division in accordance with this law.

508.4. Application

508.4-4. Nothing in this law limits, modifies or waives the need for a person to obtain any other license or permit required by any other applicable law of the Nation to operate a business or other entity within the Reservation or to comply with any other applicable law of the Nation, including, but not limited to, the Nation's environmental and land use laws.

**Marcus Grignon (written):** I appreciate your due diligence in the draft of the Oneida Hemp Regulations during this time of uncertainty for our Nation. I am writing to highlight different components of the hemp regulations that I wish to see changed in the final draft. Below are the changes I want to see in the final draft of the Oneida Hemp Regulations:

- 5) Research Opportunities/Licenses. The Oneida Hemp Regulations do not cover opportunities or options to have a research license for members. The Oglala Lakota and Red Lake Band of Chippewa Indians have in their USDA-approved Hemp Plans the opportunity for their members to have research licenses. The research opportunities/ licenses could allow for the production of a hemp variety suitable for the Great Lakes Region or a partnership with an institution of higher education.
  - a. I request LOC to add a section in the Oneida Hemp Regulations that allows for research licenses and opportunities to partner with institutions of higher education.

**Mike Debraska** (written): GTC has not seen the plans of whether or not organic hemp will be grown or not? If yes, which company and/or lab will certify the hemp as organic? Who will be the insurance carrier on the hemp if the crop is bad but grown by an outside entity on the reservation?



Who will pay those insurance premiums, the tribe or the individual respective outside company/ organization pay for it?

#### Response

The first commenter requests that the proposed Law include a provision that allows for research licenses and opportunities related to the production of hemp. He points out that is could allow for the production of a hemp variety suitable for the Great Lakes Region or a partnership with an institution of higher education. The second commenter questions whether organic hemp will be allowed and, if so, who will be responsible for certifying it, as well as insuring it.

The purpose of the proposed Law is to authorize the *production* of hemp within the boundaries of the Reservation. The Law is a necessary step to not only allow for such production, but to assign the Nation as the entity in charge of its regulation. As provided in section 508.4 of the proposed legislation, nothing in the Law "limits, modifies or waives the need for a person to obtain any other license or permit required by any other applicable law of the Nation to operate a business or other entity within the Reservation or to comply with any other applicable law of the Nation. . . ." [5 O.C. 508.4-4].

The proposed Law is an enabling statute. Simply put, it allows for hemp to be produced by persons within the jurisdiction of the Nation through licensure from the Nation's Environmental, Health, Safety and Land Division – something that would be otherwise prohibited under the 2018 Farm Bill. The Law does not prohibit activities related to the production of hemp, such as partnerships with institutions of higher education or organic certification. And, if the Nation decided at some point to regulate those activities, it could do so through enactment of additional legislation. The proposed Law would provide the framework for the development of these other pieces of legislation, as well as the infrastructure for administering them, without overburdening the Nation by requiring that everything be put in place at once.

There are no revisions to the Law recommended in response to these comments.

#### LOC Consideration

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

# **Comments 21 through 22 – Enforcement Procedures:**

# 508.10. Compliance

508.10-1. *Inspections*. The Division shall conduct scheduled inspections of all producers and production sites at least once per growing season to verify that hemp is not being produced in violation of this law.

- (a) In addition to scheduled inspections, the Division shall have authority to conduct random inspections of all producers and production sites at any time.
- (b) Whether a scheduled or random inspection, the Division shall be granted unrestricted access to the production sites.

#### 508.11. Enforcement



- 508.11-1. *General*. Violations with this law shall be subject to enforcement solely in accordance with this section.
- 508.11-2. *Negligent Violations*. A producer that negligently violates the Nation's plan and/or this law shall not, as a result of that violation, be subject to any criminal enforcement action by the Tribal, federal, state or local government.
  - (a) Negligent violations shall include, but not be limited to:
    - (1) A failure to provide a legal description of land on which the producer produces hemp;
    - (2) A failure to obtain a license from the Division to produce hemp;
    - (3) The production of cannabis with a delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level.
      - (A) Cannabis produced with a delta-9 tetrahydrocannabinol concentration of not more than 0.5 percent on a dry weight basis shall not be considered a negligent violation if the producer made reasonable efforts to grow hemp.
        - (i) The cannabis plants and plant materials from such representative samples must still be disposed of in accordance with section 508.9 of this law.
  - (b) If the Division finds that a negligent violation occurred, it shall establish a corrective action plan that includes, at a minimum:
    - (1) A plan to correct the violation;
    - (2) A reasonable date by which producers shall correct the negligent violation; and
      - (A) The Division shall be responsible to monitor producers under corrective action plans for implementation and adherence thereto.
    - (3) A requirement that producers periodically report to the Division on their compliance with the Nation's plan for a period of not less than the next two (2) years from the date of the negligent violation.
  - (c) Producers found to have negligently violated this law three (3) times within a five (5) year period shall be ineligible to produce hemp for a period of at least five (5) years from the date of the third violation.
- 508.11-3. Violations Made with a Culpable Mental State Greater Than Negligence.
  - (a) If it determines that a producer violation was committed with a culpable mental state greater than negligence, the Division shall immediately report the producer to the U.S. Attorney General, USDA and the Nation's chief law enforcement officer or chief law enforcement officer of the state charged with receiving such information.

#### 508.11-4. Enforcement.

- (a) Suspensions.
  - (1) The Division may suspend a license if it determines that the producer has:
    - (A) Engaged in conduct considered a violation of this law; or
    - (B) Failed to comply with a corrective plan or other written order of the Division relating to a negligent violation of this law.
  - (2) Producers whose licenses have been suspended shall be prohibited from:
    - (A) Absent written permission from the Division, handling or removing hemp or cannabis from the location where hemp or other cannabis was located at the time when the Division issued its notice of suspension;



and

- (B) Producing hemp during the period of suspension.
- (3) A suspended license may be restored after a minimum waiting period of one (1) year.
  - (A) Producers whose license have been suspended may be required to comply with a corrective action plan before having their licenses restored.
- (b) *Immediate Revocation*. The Division shall immediately revoke a license if it finds that the producer:
  - (1) Plead guilty to, or is convicted of, any felony related to a controlled substance or a violent/sex crime;
  - (2) Made materially false statements during the application process or to Division representatives while in the process of monitoring or enforcing this law with a culpable mental state greater than negligence;
  - (3) Was found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence; or
  - (4) Was found to have negligently violated this law three (3) times in a five (5) year period.

**Mike Debraska (written):** 6. What enforcement mechanisms are there within the nation to detect and respond to noncompliance since the tribe has no corporate laws?

# Nancy Barten (written): As far as the law itself:

2. Enforcement mechanisms to detect and respond to non-compliance. Once again what mechanisms? Who will track and monitor all of the issues that will exist with this future endeavor. This is an attempt to regulate something that already exists and to once again ultimately punish instead of holding yourselves accountable for the waste and total disregard for the money invested in the hemp project and also the LPGA.

# Response

The commenters questions what enforcement mechanisms exist within the proposed Law and who will be responsible to carry them out in the event of noncompliance. The Division is delegated the responsibility to not only administer, but to enforce, the provisions of the Law. [5 O.C. 508.5-2]. Section 508.10 of the Law gives the Division the authority to conduct inspections, both scheduled and random, to monitor whether licensees are producing hemp in accordance with the Law. And, section 508.11 of the Law provides various options, depending upon the licensee's state of culpability, to enforce the provisions of the Law in the event noncompliance is discovered. These options include corrective action plans and suspensions, as well as revocations, of one's license. [5 O.C. 508.11-2 through 508.11-4].

There are no revisions to the Law recommended in response to these comments.

#### LOC Consideration



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

# **Comment 23 – Criminal History Report**

#### **508.3.** Definitions

- 508.3-1. 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.
  - (g) "Criminal History Report" means the U.S. Federal Bureau of Investigation's Identity History Summary.
- 508.6-2. Application Process. Any person under the jurisdiction of the Nation who wishes to engage in the production of hemp shall apply to the Division in accordance with this section.
  - (b) Applicants must submit a complete application to the Division pursuant to the process set forth in the standard operating procedure adopted by the Division before the application will be accepted or considered. The application process shall require, at a minimum, that the applicant provide/submit the following:
    - (6) A criminal history report that was completed no greater than sixty (60) days before the application submission date;
      - (A) For businesses/entities, a criminal history report shall be completed for each of the key participants.

**Environmental, Health, Safety, Land & Agriculture Division (written):** The Environmental, Health, Safety, Land and Agricultural Division has reviewed the proposed Industrial Hemp Law. We did participate in formulating this proposed law. After our review of this law, we still have a few questions and comments.

As noted in <u>508.5-2</u>. Authority of the Environmental, Health, Safety, Land & Agriculture Division (Division): The Division is hereby delegated the authority to regulate and oversee hemp production under the Nation's plan and shall have all powers necessary to fulfill the requirements of this law. Pre-Covid 19 pandemic, our Division provide for a lot more services and activities with a staff about 50% stronger than what we are today. It also does not look like much will change for Fiscal Year 2020. We will assume this will have high priority as this new law moves through the process for adoption. We will include our financial analysis within this document to administer this proposed law.

#### **Questions & Comments:**

- It is unclear on where the Criminal History Report comes from under the 508.6-2. Application Process..... (6) A criminal history report that was completed no greater than sixty (60) days before the application submission date;
  - o Will it be a self-disclosure report?
- From what we understand, the Division will need to create a process to do background checks. Is the only determining criteria for the backgrounds within section? 508.6-3. License Eligibility... (b) Applicants with a state or felony conviction relating to a controlled substance shall be deemed ineligible to receive a license for a period of ten (10) years from the date of their conviction.

Response



The commenter questions the method in which the criminal history report that is required to be submitted during the application process is derived. Per section 508.3-1 of the proposed Law, criminal history report means the U.S. Federal Bureau of Investigation's Identity History Summary. And, per section 508.6-2 of the Law, it is the applicant's responsibility to obtain, as well as pay for, this report for purposes of submitting to the Division during the application process. The report is all that the Law requires the Division to consider in determining eligibility for licensure as it relates to an applicant's criminal history.

There is no revision to the Law recommend in response to this comment.

#### LOC Consideration

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

# **Comment 24 – Financial Impact of the Proposed Law**

**Environmental, Health, Safety, Land & Agriculture Division (written):** The Environmental, Health, Safety, Land and Agricultural Division has reviewed the proposed Industrial Hemp Law. We did participate in formulating this proposed law. After our review of this law, we still have a few questions and comments.

As noted in <u>508.5-2. Authority of the Environmental, Health, Safety, Land & Agriculture Division</u> (<u>Division</u>): The Division is hereby delegated the authority to regulate and oversee hemp production under the Nation's plan and shall have all powers necessary to fulfill the requirements of this law. Pre-Covid 19 pandemic, our Division provide for a lot more services and activities with a staff about 50% stronger than what we are today. It also does not look like much will change for Fiscal Year 2020. We will assume this will have high priority as this new law moves through the process for adoption. We will include our financial analysis within this document to administer this proposed law.

#### **Questions & Comments:**

#### **Financial Review:**

Depending on volume of work – unknown at this point – the financial projections are at a workflow that needs one fulltime person to administer this Law:

- Total Personnel Costs with Tribal Contribution Funds because will not fall under any of our existing grants: \$86,000
- Other cost depending on volume for contractors:
  - o Sampling for THC Testing this can be passed on to producers
  - o Testing with DEA approved Lab this can be passed on to producers TBD
  - Contractor for destruction under DEA requirements of noncompliant hemp this can be passed on to producers - TBD

#### **Conclusion:**



Environmental, Health, Safety, Land and Agricultural Division is very supportive of developing Industrial Hemp within the boundaries of the Oneida Reservation and the law that is needed to regulate the producers. We are a little apprehensive of us regulated now because of our limited resources due to our present limited resources with the pandemic and if this becomes as important crop as corn and /or soybean.

# Response

The commenter has provided a financial projection of what it may cost to administer the proposed Law. And, although supportive of the Law, the commenter further expresses apprehension over the Division's ability to carry out all responsibilities set forth in the Law due to the limitation of resources caused by the COVID-19 pandemic.

Per the Nation's Legislative Procedures Act, a fiscal impact statement is required for all legislation, except as exempted in 109.9-5(a). [1 O.C. 109.9-5]. The Legislative Procedures Act defines fiscal impact statement as an estimate of the total 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 individual or agency to comply with the law after implementation. [1 O.C. 109.3-1(c)].

There is no revision to the Law recommended in response to this comment.

#### LOC Consideration

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment. However, it will forward the information on to the Finance Department to review in developing its fiscal impact statement.



#### Title 5. Business - Chapter 508

[Oneida Language]
[Oneida Translation]
INDUSTRIAL HEMP

508.1.	Purpose and Policy	508.7.	Required Recordkeeping and Reporting
508.2.	Adoption, Amendment, Repeal	508.8.	Sampling and Testing
508.3.	Definitions	508.9.	Destruction of Noncompliant Plants
508.4.	Application	508.10.	Compliance
508.5.	Authority	508.11.	Enforcement
508.6.	Licensing Requirements	508.12.	Appeals

#### **508.1. Purpose and Policy**

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508.1-1. *Purpose*. The purpose of this law is to:

- (a) Authorize the production of hemp within Reservation of the Oneida Nation;
- (b) Grant the Oneida Nation primary regulatory authority over the production of hemp within the jurisdiction of the Nation;
- (c) Assert the Nation's inherent sovereign authority by creating a hemp production plan that regulates hemp as an agricultural commodity consistent with the Nation's, as well as the federal, laws; and
- (d) Promote the Nation's hemp industry to the maximum extent permitted by law.

508.1-2. *Policy*. The Agricultural Improvement Act of 2018, commonly referred to as the 2018 Farm Bill, provides an opportunity for Indian Nations to engage in hemp production through the submission of a hemp production plan for approval to the United States Department of Agriculture. The Farm Bill recognizes that Indian Nations, not the federal government, can and should assume primary regulatory authority over hemp production within their jurisdictions. It is the policy of the Nation to exercise its inherent sovereign authority through self-governance. It is further the policy of the Nation to protect the health, security and general welfare of the community. The Nation finds that hemp is a valuable agricultural crop and commodity and that through proper regulation, hemp can be put to its highest and best use, thereby providing jobs and revenue for essential governmental programs and services that will benefit the Nation and its members.

#### 508.2. Adoption, Amendment, Repeal

- 22 508.2-1. This law was adopted by Oneida Business Committee by resolution BC-\_\_-\_\_.
- 23 508.2-2. This law may be amended or repealed by the Oneida Business Committee and/or
- 24 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 25 508.2-3. 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
- 27 to have legal force without the invalid portions.
- 508.2-4. 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.
- 30 508.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

#### 508.3. Definitions

- 508.3-1. 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) "Acceptable hemp THC level" means when the application of the measurement of uncertainty ("MU") to the reported delta-9 tetrahydrocannabinol content concentration

level on a dry weight basis produces a distribution or range of not more than 0.3 percent.

- 38 (b) "Applicant" means a person who applies to the Nation for a license to participate in the Nation's hemp production plan established by this law.
  - (c) "Cannabis" means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species and refers to any form of the plant whereby the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.
  - (d) "Controlled Substances Act" means the act, codified in 21 U.S.C. 801, *et seq.*, establishing the U.S. federal drug policy for regulating the manufacture, importation, exportation, possession, use and distribution of certain substances.
  - (e) "Conviction" means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned or expunged.
  - (f) "Corrective action plan" means a plan established by the Division for a producer to correct a negligent violation or other form of non-compliance with the Nation's hemp production plan and/or this law.
  - (g) "Criminal History Report" means the U.S. Federal Bureau of Investigation's Identity History Summary.
  - (h) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully or recklessly.
  - (i) "Decarboxylated" means the completion of the chemical reaction that converts THC-acid ("THC-A") into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-A.
  - (j) "Decarboxylation" means the removal or elimination of carboxyl group from a molecule or organic compound.
  - (k) "Delta-9 tetrahydrocannabinol, delta-9-THC or THC" means the primary psychoactive component of cannabis. For purposes of the Nation's plan, delta-9-THC and THC are interchangeable.
  - (1) "Division" means the Oneida Environmental, Health, Safety and Land Division.
  - (m) "Drug Enforcement Administration or DEA" means the federal law enforcement agency under the U.S. Department of Justice that is the lead agency for domestic enforcement of the Controlled Substances Act.
  - (n) "Dry weight basis" means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract or other derivative) after excluding moisture from the item.
  - (o) "Expunged" means when a conviction is removed from an individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions.
  - (p) "Farm Bill" means the Agricultural Improvement Act of 2018, Pub. L. 115-334, December 20, 2018, 132 Stat. 4490, as may be amended from time-to-time hereafter, along

- with the Interim Final Rule for the establishment of a domestic hemp production program issued by the U.S. Department of Agriculture on October 29, 2019 and as may be finalized and further amended from time-to-time hereafter.
- (q) "Farm Service Agency or FSA" means the USDA agency charged with assisting in information collection on land being used for hemp production.
- (r) "Gas chromatography or GC" means a type of chromatography in analytical chemistry used to separate, identify and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.
- (s) "Geospatial location" means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.
- (t) "Handle" means to harvest or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing and, where cannabis plants exceed the acceptable hemp THC level, shall also mean to dispose of those plants.
- (u) "Hemp" means the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.
- (v) "High-performance liquid chromatography or HPLC" means a type of chromatography technique in analytical chemistry used to separate, identify and quantify each component in a mixture.
- (w) "Information sharing system" means the database mandated under the Farm Bill which allows USDA to share information collected under tribal, state and USDA plans with tribal, federal, state, and local law enforcement.
- (x) "Key participant" means a sole proprietor, partner in a partnership, or person with executive managerial control in a corporation such as a chief executive officer, chief operating officer and chief financial officer, but not non-executive managers such as farm, field or shift managers.
- (y) "Law enforcement agency" means any tribal, federal, state or local law enforcement agency.
- (z) "Lot" means a contiguous area in a field, greenhouse or indoor growing structure containing the same variety or strain of cannabis throughout the area.
- (aa) "Marijuana" means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.
- (bb) "Measurement of uncertainty or MU" means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.
- (cc) "Nation" means the Oneida Nation.
- (dd) "Nation's plan" means the criteria and regulations set forth in this law to govern the production of hemp within the jurisdiction of Nation and serves as the "plan" as required by the Farm Bill to be submitted to and approval by the USDA for the Nation to assume primary regulatory authority over the production of hemp within its jurisdiction.
- 121 (ee) "Negligence" means a failure to exercise the level of care that a reasonably prudent 122 person would exercise in complying with the regulations set forth in this law.

- (ff) "Person" means a natural person, corporation, cooperative, consortium, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust partnership, limited liability partnership, association or other form of legal business entity, including another governmental entity.

  (gg) "Phytocannabinoid" means cannabinoid chemical compounds found in the cannabis
  - (gg) "Phytocannabinoid" means cannabinoid chemical compounds found in the cannabis plant, two of which are delta-9-THC and cannabidiol ("CBD").
  - (hh) "Postdecarboxylation" means in the context of testing methodologies for THC concentration levels in hemp a value determined after the process of decarboxylation that determines the total potential delta-9-THC content derived from the sum of the THC and THC-A content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, gas chromatography, through which THC-A is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The postdecarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THC-A intact, and requires a conversion calculation of that THC-A to calculate total potential THC in any given sample.
  - (ii) "Produce or production" means to cultivate, process, handle or store hemp plants for market in the United States.
  - (jj) "Producer" means a person licensed by the Division to produce hemp under the Nation's plan.
  - (kk) "Reservation" means all land within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
  - (II) "Reverse distributor" means a person who is registered with the DEA to dispose of marijuana under the Controlled Substances Act.
  - (mm) "USDA" means the United States Department of Agriculture.

## 508.4. Application

- 508.4-1. This law regulates the production of hemp within the jurisdiction of the Nation and shall be effective upon approval from the USDA as the Nation's plan under the Farm Bill.
  - (a) In furtherance of the Nation's inherent authority and the regulatory objectives set forth in the Farm Bill, the Nation finds that persons doing business with the Nation or persons engaged in commercial dealings, leases, licenses, easements or other transactions related to hemp production within the exterior boundaries of the Reservation have voluntarily and explicitly consented to the jurisdiction of the Nation and are subject to regulation by the Nation.
  - (b) Consistent with sections 508.1-1 and 508.1-2, this law shall be liberally construed to the greatest extent authorized under the Farm Bill to fulfill the purpose and policy for which it was adopted.
- 508.4-2. All hemp production within the jurisdiction of the Nation must meet the requirements of this law and any applicable portions of the Farm Bill.
  - (a) The regulations and penalties imposed by this law extend to any person engaged in activities related in any way, directly or indirectly, to hemp production, whether licensed

or not.

- 508.4-3. Nothing in this law shall be construed to prohibit hemp or hemp products, produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113), from being transported or shipped through the Reservation.
- 508.4-4. Nothing in this law limits, modifies or waives the need for a person to obtain any other license or permit required by any other applicable law of the Nation to operate a business or other entity within the Reservation or to comply with any other applicable law of the Nation, including, but not limited to, the Nation's environmental and land use laws.

# 508.5. Authority

- 508.5-1. *General*. This law is enacted under the inherent sovereign authority of the Oneida Nation to regulate hemp as an agricultural commodity in compliance with the Farm Bill.
  - (a) By enacting this law, the Nation does not waive its sovereign immunity or consent to suit in any court, whether the court is tribal, federal, or state, and the enactment of this law shall not be construed to be a waiver of the sovereign immunity of the Nation, its offices, departments, agents, subsidiaries, corporations or enterprises nor a consent to suit against the Nation in any court.
- 508.5-2. *Authority of the Division*. The Division is hereby delegated the authority to regulate and oversee hemp production under the Nation's plan and shall have all powers necessary to fulfill the requirements of this law. At a minimum, the Division shall have the authority and responsibility to:
  - (a) Provide prospective producers with information necessary to participate in the Nation's plan, to include, but not be limited to:
    - (1) How to determine prospective geospatial locations;
    - (2) How to obtain and properly submit a criminal history report; and
    - (3) How to share requisite information with the Farm Service Agency.
  - (b) Issue licenses to produce hemp and make all decisions relating thereto;
  - (c) Conduct inspections and investigate complaints;
  - (d) Develop standard operating procedures, protocols and forms necessary to administer this law;
  - (e) Enforce this law through appropriate means, including, but not limited to, ensuring that producers licensed through the Nation are operating in compliance with the Farm Bill.

## **508.6.** Licensing Requirements

- 508.6-1. *License Required*. Any person engaging in or intending to engage in hemp production within the jurisdiction of the Nation shall only do so pursuant to a valid license issued by the Division in accordance with this law.
  - (a) *Valid License*. For purposes of this law, a valid license means the license is unexpired, unsuspended and unrevoked.
    - (1) A license may not be transferred or assigned absent prior approval from the Division, which, at a minimum, shall be contingent upon:
      - (A) The license not being subject to a pending revocation or suspension under section 508.11 of this law; and

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209	(B) The transferee or assignee undergoing and being approved for licensure
210	pursuant to the application process set forth in section 508.6-2 of this law.
211	(b) License Period. All licenses shall be valid for a period of three (3) year from the date
212	of issuance unless otherwise revoked at an earlier date pursuant to this law or any other
213	applicable law of the Nation.
214	508.6-2. Application Process. Any person under the jurisdiction of the Nation who wishes to
215	engage in the production of hemp shall apply to the Division in accordance with this section.
216	(a) Applicants must submit a complete application to the Division pursuant to the process
217	set forth in the standard operating procedure adopted by the Division before the application
218	will be accepted or considered. The application process shall require, at a minimum, that
219	the applicant provide/submit the following:
220	(1) The applicant's full name, address, telephone number and, if available, email
221	address;
222	(A) If the applicant represents a business or other entity where the business/
223	entity will be the producer, the applicant shall be required to provide the
224	business/entity's:
225	(i) Full business/entity name;
226	(ii) Principal business/entity location address;
227	(iii) Key participants' full name and title;
228	(iv) EIN number or, if no EIN number, Social Security Number; and
229	(v) Email address, if available.
230	(2) The street address (if possible), legal description and geospatial location for
231	each field, greenhouse, building or site where hemp will be cultivated, handled,
232	processed or stored;
233	(3) Proof of ownership of the land and/or property where hemp will be produced;
234	or proof of permission from the land/property owner to utilize the land and/or
235	property where hemp will be produced for hemp production;
236	(4) A description of the intended output (e.g. raw hemp or some other hemp
237	product), method of cultivation (e.g. organic, natural or genetically modified) and
238	any pesticides, herbicides or other potentially hazardous materials the applicant
239	intends to use;
240	(5) An acknowledgment that by signing the application, the applicant is agreeing
241	to abide by all rules and regulations governing the Nation's plan and is further
242	certifying that the information provided in and submitted with the application is
243	accurate and truthful;
244	(6) A criminal history report that was completed no greater than sixty (60) days
245	before the application submission date;
246	(A) For businesses/entities, a criminal history report shall be completed for
247	each of the key participants.
248	(7) The licensing fee set pursuant to the fee schedule created by the Division and
249	approved by the Oneida Business Committee through resolution; and
250	(8) Any further information, disclosure or consent required under the Division's
251	governing standard operating procedure.

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- (b) Applications for renewal, transfer and assignment shall be subject to the same terms and approved under the same criteria as initial applications unless there has been an intervening change as defined in the Division's governing standard operating procedure.

(1) The initial fee for license transfers and assignments shall be prorated for that term as set forth in the licensing fee schedule created by the Division and approved by the Oneida Business Committee through resolution.

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(c) A license modification shall be requested pursuant to the process set forth within the Division's governing standard operating procedure if there is any change to the information submitted in the initial or renewal application including, but not limited to, the sale of a business/entity, the production of hemp in a new location, or a change in any key participants who are producing under the license.

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(1) Applicants shall notify the Division immediately shall there be any change in the information provided during the application process.

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(d) The application and all materials submitted during the application process, whether pursuant to a request for an initial, renewed, transferred/assigned or modified license, shall become the property of the Nation and shall be maintained by the Division for a minimum of seven (7) years.

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508.6-3. License Eligibility.

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(a) Applicants who materially falsify any information provided in or along with their application shall be deemed ineligible for licensure.

273 274 (b) Applicants with a state or felony conviction relating to a controlled substance shall be deemed ineligible to receive a license for a period of ten (10) years from the date of their conviction.

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(1) *Exception*. Persons lawfully growing hemp under the 2014 Farm Bill before December 20, 2018 and whose conviction also occurred before that date shall not be considered ineligible hereunder.

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508.6-4. *License Issuance*. Applications for licensure and license renewal, transfer/assignment or modification shall be reviewed by the Division for completeness and to determine an applicant's eligibility.

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(a) The Division shall set the process for issuing licenses hereunder in a standard operating procedure that includes, at a minimum:

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(1) That the applicant be notified of his or her eligibility within thirty (30) days following the Division's receipt of a complete application;

285 286 287 (2) That denial of an application for licensure, license renewal, license transfer/assignment or license modification be provided to the applicant in writing and include the basis for denial, as well as information on how to appeal the Division's decision:

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(3) That each applicant deemed eligible for licensure shall be assigned a license identification number; and

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(4) That for each license it issues, the Division, in cooperation with the Division of Land Management, shall record the type of land designation for each parcel of land listed in the licensee's application as an intended hemp production site and maintain such information within the Division's files for a minimum of seven (7)

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295 years. 508.7. Required Recordkeeping and Reporting 296 297 508.7-1. Division Reporting. 298 (a) Hemp Grower Report. By the first of each month, the Division shall submit to the 299 USDA a report providing the contact information and the status of the license issued for each producer under the Nation's plan. The report shall contain: 300 301 (1) For each new producer who is a natural person, the producer's: 302 (A) Full name; 303 (B) License identification number; 304 (C) Business address: 305 (D) Telephone number; (E) Email address (if available); and 306 307 (F) A legal description of the land on which the producer is producing or intends to produce, including, to the extent practicable, its geospatial 308 309 location. (2) For each new producer that is a business/entity, the business/entity's: 310 311 (A) Full business/entity name; (B) License identification number; 312 (C) Principal business/entity location address; 313 314 (D) Full name, title and email address (if available) of each key participant; (E) A legal description of the land on which the producer is producing or 315 intends to produce, including, to the extent practicable, its geospatial 316 317 318 (3) For each producer that was included in a previous report and whose reported information has changes, the report shall include the previously reported 319 320 information and the new information. 321 (b) Hemp Disposal Report. By the first of each month, the Division shall submit a report 322 to the USDA of any occurrence of non-conforming plants or plant materials and provide a 323 disposal record for those plants and plant materials that contains: 324 (1) The producer's name and address; (2) The producer's license identification number; 325 (3) Location information, such as lot number, location type and geospatial location 326 327 or other location descriptor for the production area subject to disposal; 328 (4) Information on the agent handling the disposal; and 329 (5) The total acreage. 330 (c) Annual Report. By December 15 of each year, the Division shall submit an annual report to the USDA that contains the following information: 331 332 (1) Total planted acreage; 333 (2) Total harvested acreage; and 334 (3) Total disposed of acreage. 335 Producer Reporting. 508.7-2. 336 (a) Planting and Harvesting. The Division shall create a standard operating procedure 337 which sets forth a process for producers to report planting, pre-harvest and post-harvest

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on to carry out its reporting duties

information to the Division that will allow for the Division to carry out its reporting duties under section 508.7-1 of this law in a timely manner.

- (b) *Test Results*. Producers shall share any test results obtained under section 508.8 of this law with the Division and, as required, to the USDA pursuant to the process set forth in the Division's standard operating procedure for producer reporting.
- (c) FSA Reporting. Upon the issuance of a license, producers shall report their hemp crop acreage to the FSA using form FSA-578 or any alternative form approved by the FSA for purposes hereof.
  - (1) The report shall include, at a minimum:
    - (A) The producer's contact information and license number;
    - (B) The crop acreage; and
    - (C) The specific location where hemp is being produced.
      - (i) The specific location where hemp is being produced must be identified, to the extent practicable, by the geospatial location for each lot, greenhouse, building or site where hemp will be produced.
  - (2) Producers are responsible for filling out and filing the FSA-578 or alternative form consistent with the process set by the FSA.
  - (3) Producers shall be responsible for forwarding a copy of the FSA-578 or alternative form to the Division at the same time they file it with the FSA.
- (d) *Convictions*. Within five (5) business days of conviction, the producer must notify the Division of any felony convictions that would subject the producer to immediate revocation under section 508.11-4 of this law.
- 508.7-3. Recordkeeping.

- (a) The Division shall retain for a minimum of (7) years all information required to be collected in section 508.6 of this law for every license it issues, renews, transfers/assigns and modifies in accordance with the Nation's plan.
- (b) The Division and producers shall retain all documentation referenced within sections 508.7 and 508.8 of the law for a period of at least seven (7) years.
  - (1) Producers shall retain the documentation in a manner that it can be readily provided to the Division upon request.

#### 508.8. Sampling and Testing

- 508.8-1. *General*. Samples of all hemp produced under the Nation's plan must be collected and tested in accordance with this section of the law to determine whether it exceeds the acceptable hemp THC level.
  - (a) Subject to section 508.8-1(a)(1), the Division shall be responsible for the collection and testing of samples of all hemp produced under the Nation's plan.
    - (1) The Division may, in its discretion, appoint an outside agent or agency, other than a producer, to carry out the collection and testing of samples hereunder.
  - (b) Producers shall be responsible to pay any fees associated with the sampling and testing of their hemp production.
  - (c) Alternative sampling and testing protocols may be used in place of the protocols set forth herein if approved by the USDA as being comparable and similarly reliable to the

381 baseline mandated by the Farm Bill.

- Sampling. The method used for sampling must: 508.8-2.
  - (a) Require that the sample is taken from the flower material of the cannabis plant;
  - (b) Be sufficient at a confidence level of 95% that no more than 1% of the plants in the lot would exceed the acceptable hemp THC level;
  - (c) Ensure that a representative sample is collected that represents a homogeneous composition of the lot; and
  - (d) Ensure that samples of hemp plant material from one lot are not commingled with hemp plant material from other lots.
- Protocol for the Collection of Samples. The hemp to be selected for sampling shall be determined by a representative of the Division or the agent/agency appointed by the Division and, subject to section 508.8-1(c), shall be collected as follows:
  - (a) Producers shall be required to report in writing to the Division at least fifteen (15) days before an expected harvest date that a crop is about to be harvested.
    - (1) The Division's receipt of a harvest notification triggers a site inspection and sample collection by the Division, or the agent/agency appointed by the Division.
    - (2) Producers shall not harvest any crop prior to samples being collected.
  - (b) The Division shall contact the producer to confirm the field's location and schedule a time for inspection and sample collection prior to harvest.
    - (1) During a scheduled sample collection, the producer or authorized representative of the producer shall be present at the growing site.
    - (2) The Division, or agent/agency appointed by the Division, shall be provided with complete and unrestricted access to all hemp, and other cannabis plants, if any, whether growing or harvested, and all land, buildings, and other structures used for the production of hemp and other cannabis plants, if any, and all locations listed in the producer's application.
  - (c) A separate sample shall be taken for each variety and from each lot of a given variety.
  - (d) Cuttings shall be collected to make one representative sample as follows:
    - (1) The top twenty (20) cm of the hemp plant's flower, including female floral material, shall be clipped;
    - (2) Cuttings from at least five (5) hemp plants within the lot shall be taken and the complete sample shall be placed in a paper bag;
    - (3) The bag shall be sealed by folding over the top once and stapling shut;
    - (4) The bag shall be labeled with a sample identification that includes, at a minimum, the last four (4) numerical digits of the producer's license identification number, the date (MM/DD/YY) of collection, and a two (2) digit sequential sample number assigned by the Division, or agent/agency appointed by the Division.
  - (e) The sample shall be transported to the Division for storage in a secure area until it is sent to the testing lab for analysis.
  - (f) Producers shall be required to harvest their crop not more than fifteen (15) days following the date of the sample collection.
    - (1) If the producer fails to complete the harvest within fifteen (15) days of the sample collection, a secondary sample of the lot shall be required to be submitted

5 O.C. 508 – Page 10

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424	for testing.
425	(2) Harvested lots of hemp plants shall not be commingled with other harvested
426	lots or other material without prior written permission from the Division.
427	(3) Floral materials harvested for phytocannabinoid extraction shall not be moved
428	beyond the processor, or commingled, or extracted, until the Division releases the
429	material.
430	(4) Producers shall be notified within thirty (30) days of sampling of the status of
431	the testing.
432	(5) Any producer may request additional testing at its cost if it is believed that the
433	original delta-9 THC concentration level test results were in error.
434	508.8-4. Testing. Subject to section 508.8-1(c), sample testing shall be completed by one of the
435	DEA-registered laboratories designated by the Division for meeting the requirements of the
436	Nation's plan and the Farm Bill.
437	(a) Laboratories designated by the Division hereunder shall be approved by the Oneida
438	Business Committee through resolution.
439	508.8-5. Testing Protocol.
440	(a) <i>Methodology</i> . The testing process shall be able to accurately identify whether a sample
441	contains a delta-9 THC content concentration level that exceeds the acceptable hemp THC
442	level by including, at a minimum, a validated testing methodology that uses:
443	(1) Postdecarboxylation or other similarly reliable method;
444	(2) Considers the potential conversion of THC-A in hemp into THC; and
445	(3) A test result that measures total available THC derived from the sum of the
446	THC and THC-A content.
447	(A) Testing methodologies meeting the requirements of this section include
448	gas or liquid chromatography with detection.
449	(b) The total THC concentration level shall be determined and reported on a dry weight
450	basis.
451	(1) Analytical testing for purposes of detecting the concentration levels of THC
452	shall meet the following standards:
453	(A) Laboratory quality assurance must ensure the validity and reliability of
454	test results;
455	(B) Analytical method selection, validation, and verification must ensure
456	that the testing method used is appropriate (fit for purpose), and that the
457	laboratory can successfully perform the testing;
458	(C) The demonstration of testing validity must ensure consistent, accurate
459	and analytical performance;
460	(D) Method performance specifications must ensure analytical tests are
461	sufficiently sensitive for the purposes of the detectability requirements of
462	the Nation's plan; and
463	(E) An effective disposal procedure for hemp plants that are produced that
464	do not meet the requirements of the Nation's plan.
465	(c) Any test of a representative sample resulting in higher than the acceptable hemp THC
466	level shall be conclusive evidence that the lot represented by the sample is not in

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compliance with the Nation's plan.

 (1) Lots that do not test at or below the acceptable hemp THC level may not be further handled, processed, or enter the stream of commerce.

 (2) The Division shall ensure the lot is disposed of in accordance with the Nation's plan, the Controlled Substances Act and the DEA regulations.

(3) The Division shall notify the USDA of its intent to dispose of non-conforming plants and verify disposal by submitting required documentation.

(d) Measurement of uncertainty must be estimated and reported with test results.

 (1) Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

# 508.9. Disposal of Noncompliant Plants

508.9-1. If the test results conclude that the THC levels exceed the acceptable hemp THC level, the lot represented by the sample shall be destroyed in accordance with this section.

 (a) In the event test results exceed the acceptable hemp THC level, that harvest must be segregated from other harvested lots and remain segregated.

 (1) Leaf and floral material from the harvest of that lot must then be destroyed.

(b) If a variety is designated as a prohibited variety, the Division shall require the producer to surrender without compensation the entire harvest and any unharvested crop, any live plants, and all germplasm of this variety to the Division for destruction by composting or burning.

508.9-2. *Destruction* 

 (a) Subject to section 508.9-2(a)(1), the Division shall be responsible to dispose of all hemp that exceeds the acceptable hemp THC level in accordance with the Controlled Substances Act and DEA regulations.

(1) The Division may, in its discretion, appoint an outside agent or agency, other than a producer, to carry out the destruction of noncompliant hemp hereunder.

(b) So long as in compliance with the Controlled Substances Act and DEA regulations, hemp may be destroyed by burning or by composting where it is made unusable and rendered indistinguishable from any other plant material.

 (c) The Division shall promptly notify the USDA by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the definition of hemp in the Nation's plan and attach the records demonstrating the appropriate disposal of all those plants and materials in the lot from which the representative samples were taken.

(1) The notification shall include the test results from the representative samples.

# 508.10. Compliance

 508.10-1. *Inspections*. The Division shall conduct scheduled inspections of all producers and production sites at least once per growing season to verify that hemp is not being produced in violation of this law.

(a) In addition to scheduled inspections, the Division shall have authority to conduct random inspections of all producers and production sites at any time.

(b) Whether a scheduled or random inspection, the Division shall be granted unrestricted

510 access to the production sites. 511 508.10-2. Producers must maintain copies of all records and reports necessary to demonstrate compliance with the Nation's plan for a minimum of seven (7) years. 512 513 514 508.11. Enforcement 515 508.11-1. General. Violations with this law shall be subject to enforcement solely in accordance 516 with this section. 517 508.11-2. Negligent Violations. A producer that negligently violates the Nation's plan and/or this law shall not, as a result of that violation, be subject to any criminal enforcement action by the 518 519 Tribal, federal, state or local government. 520 (a) Negligent violations shall include, but not be limited to: (1) A failure to provide a legal description of land on which the producer produces 521 522 hemp: 523 (2) A failure to obtain a license from the Division to produce hemp; (3) The production of cannabis with a delta-9 tetrahydrocannabinol concentration 524 525 exceeding the acceptable hemp THC level. 526 (A) Cannabis produced with a delta-9 tetrahydrocannabinol concentration 527 of not more than 0.5 percent on a dry weight basis shall not be considered a 528 negligent violation if the producer made reasonable efforts to grow hemp. 529 (i) The cannabis plants and plant materials from such representative 530 samples must still be disposed of in accordance with section 508.9 531 of this law. 532 (b) If the Division finds that a negligent violation occurred, it shall establish a corrective action plan that includes, at a minimum: 533 (1) A plan to correct the violation; 534 535 (2) A reasonable date by which producers shall correct the negligent violation; and 536 (A) The Division shall be responsible to monitor producers under corrective 537 action plans for implementation and adherence thereto. 538 (3) A requirement that producers periodically report to the Division on their 539 compliance with the Nation's plan for a period of not less than the next two (2) years from the date of the negligent violation. 540 541 (c) Producers found to have negligently violated this law three (3) times within a five (5) 542 year period shall be ineligible to produce hemp for a period of at least five (5) years from 543 the date of the third violation. 544 508.11-3. Violations Made with a Culpable Mental State Greater Than Negligence. 545 (a) If it determines that a producer violation was committed with a culpable mental state 546 greater than negligence, the Division shall immediately report the producer to the U.S. 547 Attorney General, USDA and the Nation's chief law enforcement officer or chief law 548 enforcement officer of the state charged with receiving such information. 549 508.11-4. Enforcement. 550 (a) Suspensions. 551 (1) The Division may suspend a license if it determines that the producer has: 552 (A) Engaged in conduct considered a violation of this law; or

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53	(B) Failed to comply with a corrective plan or other written order of the
54	Division relating to a negligent violation of this law.
55	(2) Producers whose licenses have been suspended shall be prohibited from:
556	(A) Absent written permission from the Division, handling or removing
57	hemp or cannabis from the location where hemp or other cannabis was
58	located at the time when the Division issued its notice of suspension; and
59	(B) Producing hemp during the period of suspension.
60	(3) A suspended license may be restored after a minimum waiting period of one
61	(1) year.
62	(A) Producers whose license have been suspended may be required to
663	comply with a corrective action plan before having their licenses restored.
64	(b) Immediate Revocation. The Division shall immediately revoke a license if it finds that
65	the producer:
666	(1) Plead guilty to, or is convicted of, any felony related to a controlled substance
67	or a violent/sex crime;
68	(2) Made materially false statements during the application process or to Division
69	representatives while in the process of monitoring or enforcing this law with a
70	culpable mental state greater than negligence;
71	(3) Was found to be growing cannabis exceeding the acceptable hemp THC level
72	with a culpable mental state greater than negligence; or
73	(4) Was found to have negligently violated this law three (3) times in a five (5)
74	year period.
75	
76	508.12. Appeals
577	508.12-1. Any person aggrieved by an action of the Division may appeal to the Judiciary in
78	accordance with governing laws of the Nation.
79	
80 21	End.
82	
579 580 581 582 583 584	Adopted - BC
85	14toptou BC

#### Kristen M. Hooker

From: LOC

**Sent:** Wednesday, July 8, 2020 11:00 AM

**To:** Kristen M. Hooker

Subject: FW: COMMENTS and QUESTIONS ON THE INDUSTRIAL HEMP LAW - July 8, 2020

From: Mike Debraska < mike.debraska@yahoo.com >

**Sent:** Wednesday, July 8, 2020 10:18 AM

To: LOC < LOC@oneidanation.org>

Subject: COMMENTS and QUESTIONS ON THE INDUSTRIAL HEMP LAW - July 8, 2020

Dear LOC: -

My comments and questions on the Industrial Hemp Law are as follows:

- 1. In your recent Kalihwisaks article dated June 17, 2020, on page 10, numbers 1-6,
- (a) What area/department in this tribe will oversee the licensing and the processing of licensures and wh ere will the fees go that are collected?
  - When and how will those fees collected be reported to GTC? Annually, semi-annually, in the budget?
- 2. Whose guideline is the tribe using to define what is and is not an acceptable THC level? Is it the state's or federal government guidelines the tribe is using/following?
- 3. What is the name of the company utilized for testing THC levels? Has that company been selected by GTC? Are they located in-state or out-of-state?
  - (a) Where are the seeds coming from that are utilized to plant and grow hemp on the reservation?
- 4. Who/what entity/department within the tribe will destroy the hemp that exceeds THC levels? Will those test results be made available to GTC? If so, when?
- 5. What are the reporting requirements for the Nation to notify GTC of these actions.
- 6. What enforcement mechanisms are there within the nation to detect and respond to noncompliance since the tribe has no corporate laws?

At the last GTC meeting, a motion was made by a GTC member which is as follows:

" Any economic development has to have a financial strategy and that it be viewed and vetted by an independent third party with appropriate due diligence strategy to

include any and/or all pertinent assumptions and that the strategy be presented to GTC for review and approval and that the third party be present for the review".

Based on that motion, which passed overwhelmingly by GTC at that meeting, the following amounts were previously allocated on this project to-date:

HEMP: \$53,615 EQUIPMENT: \$19,300

CANNERY

to make butter \$35,000

While this total is broken down and was put out for GTC, at no point has GTC authorized this project to proceed, regardless of whether or not it is tribal funds being utilized or COVID-19 money from the federal government is being utilized. The GTC motion cannot be ignored or side-stepped in any way or any BC member or member of management who authorizes more funds to be utilized may be held criminally liable and forced to pay the improperly allocated funds back from their own personal accounts. Since we have not had any GTC meetings since January of this year, any

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movement going forward will only violate the GTC directed motion for which any current seated OBC member or member of management can and will be held liable to GTC.

GTC has not seen the plans of whether or not organic hemp will be grown or not? If yes, which company and/or lab will certify the hemp as organic? Who will be the insurance carrier on the hemp if the crop is bad but grown by an outside entity on the reservation? Who will pay those insurance premiums, the tribe or the individual respective outside company/organization pay for it?

There are many more questions and comments that I could ask but for now, these will suffice until I get all the answers back from the above stated questions. Thank you for your time and attention in this matter.

Mike Debraska

Advocate - Roll #10738

I am submitting written comments regarding the industrial hemp law. First of all this laws intention is to duplicals processes that currently flist at all levels ? government including hobout, county, state and federal. Secondly the most recent report to General Tribal Council included the financial impact that was a complete and total waste of man power, and loss of hundreds of thousands of dollars with nothing to show for it. This was a resulf o) the inexperience, incompotance, and orerall lack of project management. The current agricultural strategy that exists needs to be revenued and modified, and updated. Included in this an agricultural Manager, Director should be Especially will the recent somes that are continued be allowed with the grass-fed heef at TSyhehKwa.

along with the financial impacts there

throwas a lengthy conversation regarding the hemp

disaster that happened in 2019. The animit

of money wasted on this project criclialing

travel, summits, could have provided an elder with a home, Subsiquently a Tribal member made a

VA CEVISOES 1313 of 1370 Anotion that all Ec Sevelopment rentures let werned and retted by an independent 3 rd part. This motion included the strategy be presented to General Cubal Coencil for approval. Motion was approved. This law as presented has the appearance once again. My perception report learning who the author of the proposed Industrial Henry Saw is that is being resed as a political Campaign tool in order to drive votes in favor the production of hemp. I've said it before and now again. they Card even grow com. VII be looking forward to the presentation to GTC regarding any and all endeavous regarding Ondustrial Hemp. 1). Tuensing processes currently exist at all levels. This is a displications! 2 as far as constituting what is an acceptable THE level. Those levels our set by all the regulatory be destroyed by the proper authorities. 3). Who will be & responsible for sampling and testing is very concerning to me because of nobody Knew what

they were doing with the nations 2019 hence crop, what measures are in place to prevent it from happening again.

"To, Enforcement mechanisms to detect and respond to non-compliance, Once again what mechanisms? I who will troack and monitor all of the issues that will exist with this future bridevor. This is an attempt to regulate something that already exists and to once again ultimately punish instead of holding yourselves accountable for the waste and total disregard for the money invested in the hemp project and also the 196A.

$(x_1, x_2, x_3, \dots, x_n, x_n, x_n, x_n, x_n, x_n, x_n, x_n$	rtillerfordur, refillet til Like det skallige men paga av till til er het skallit til til skallit til til skal Skallit forskallit til skallit til skal
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# Kristen M. Hooker

From: LOC

**Sent:** Wednesday, July 1, 2020 12:26 PM

**To:** Kristen M. Hooker **Subject:** FW: Hemp Law

Public Comment for Industrial Hemp that came through LOC email-

From: Richard Baird <rbaird@netnet.net>
Sent: Wednesday, July 1, 2020 12:22 PM
To: LOC <LOC@oneidanation.org>

Subject: Hemp Law

I don't have a problem with the Nation getting into the hemp growing business. My biggest concern are we going to process the

hemp into usable products or are we going to look for a processor and then what is it going to cost to ship it?

This is the same argument I encountered when I asked why we have all those acres under cultivation growing corn and we don't

ship any to processors to make a other products. The answer was because it's too expensive to ship and there would be no profit

left after deducting shipping costs.

## Environmental, Health, Safety and Land Division



To: LOC

From: Environmental, Health, Safety, Land & Agriculture Division

Re: Proposed Title 5. Business - Chapter 508 -INDUSTRIAL HEMP

**Date:** June 7, 2020

#### Introduction:

The Environmental, Health, Safety, Land and Agricultural Division has reviewed the proposed Industrial Hemp Law. We did participate in formulating this proposed law. After our review of this law, we still have a few questions and comments.

As noted in <u>508.5-2. Authority of the Environmental, Health, Safety, Land & Agriculture Division</u> (<u>Division</u>): The Division is hereby delegated the authority to regulate and oversee hemp production under the Nation's plan and shall have all powers necessary to fulfill the requirements of this law. Pre-Covid 19 pandemic, our Division provide for a lot more services and activities with a staff about 50% stronger than what we are today. It also does not look like much will change for Fiscal Year 2020. We will assume this will have high priority as this new law moves through the process for adoption. We will include our financial analysis within this document to administer this proposed law.

#### **Questions & Comments:**

 We will work with the GM Office to analyze fully on how the Division will implement the follow section:

"508.5-2. Authority of the Division. The Division is hereby delegated the authority to regulate and 183 oversee hemp production under the Nation's plan and shall have all powers necessary to fulfill the 184 requirements of this law. At a minimum, the Division shall have the authority and responsibility to:"

• There is much work that still is required to do for the Division from creating an application forms to developing a SOP to include fee schedules. Will there be a specific timeline to complete once the law is passed and approved by USDA?

- It is unclear on where the Criminal History Report comes from under the 508.6-2. Application Process..... (6) A criminal history report that was completed no greater than sixty (60) days before the application submission date;
  - o Will it be a self-disclosure report?
- From what we understand, the Division will need to create a process to do background checks. Is the only determining criteria for the backgrounds within section? 508.6-3. License Eligibility... (b) Applicants with a state or felony conviction relating to a controlled substance shall be deemed ineligible to receive a license for a period of ten (10) years from the date of their conviction.
- o Under section 508.6-4. License Issuance. Please change from Division to Area.
  - (4) That for each license it issues, the Division, in cooperation with the Division Area of Land Management, shall record the type of land designation for each parcel of land listed in the licensee's application as an intended hemp production site and maintain such information within the Division's files for a minimum of seven (7) years.
- Under the 508.7. Required Recordkeeping and Reporting -508.7-1. Division Reporting. This section is requiring the Division "by the first of each month, the Division shall submit to the 298 USDA a report providing the contact information and the status of the license issued for 299 each producer under the Nation's plan."
  - Seems to frequent, there are many months that will not have any activities. Maybe quarterly. if allowed under USDA approval.
  - O What is the Nation Industrial Hemp Plan?

#### **Financial Review:**

Depending on volume of work – unknown at this point – the financial projections are at a workflow that needs one fulltime person to administer this Law:

- Total Personnel Costs with Tribal Contribution Funds because will not fall under any of our existing grants: \$86,000
- Other cost depending on volume for contractors:
  - Sampling for THC Testing this can be passed on to producers
  - Testing with DEA approved Lab this can be passed on to producers TBD
  - Contractor for destruction under DEA requirements of noncompliant hemp this can be passed on to producers - TBD

#### **Conclusion:**

Environmental, Health, Safety, Land and Agricultural Division is very supportive of developing Industrial Hemp within the boundaries of the Oneida Reservation and the law that is needed to regulate the producers. We are a little apprehensive of us regulated now because of our limited resources due to our present limited resources with the pandemic and if this becomes as important crop as corn and /or soybean.

Oneida Legislative Operating Committee (OLOC) N7210 Seminary Road Oneida, WI 54155

RE: Oneida Hemp Regulations

Dear members of the OLOC,

I appreciate your due diligence in the draft of the Oneida Hemp Regulations during this time of uncertainty for our Nation. I am writing to highlight different components of the hemp regulations that I wish to see changed in the final draft. Below are the changes I want to see in the final draft of the Oneida Hemp Regulations:

- 1) Oneida's Definition of Acceptable Hemp THC Level. Pursuant to the 84 FR 58522-United States Department of Agriculture's (USDA) Interim Final Rule (IFR) for the Domestic Hemp Program, the USDA states an "Acceptable Hemp THC Level" refers to the interpretation of laboratory test results for delta-9 tetrahydrocannabinol content concentration level applying measurements for uncertainty as provided for in the IFR. When a laboratory tests a sample pursuant to this Hemp regulation, it must report the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis if it produces a distribution or range that includes 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% or the measurement of uncertainty is +/- 0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the Acceptable Hemp THC Level for the purpose of plan compliance with these Hemp Regulations and applicable federal law.
  - a. I request this definition be added to Oneida's final draft of the hemp regulations.
- 2) **Oneida's Definition of Marijuana.** With respect to the definition change above for "Acceptable Hemp THC Level" the definition for "Marijuana" needs to reflect the measurement of uncertainty for hemp plants.
  - a. I request this definition to be changed to recognize the USDA's measurement of uncertainty for testing hemp; For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% or the measurement of uncertainty is +/- 0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this

sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the Acceptable Hemp THC Level for the purpose of plan compliance with these Hemp Regulations and applicable federal law.

- 3) Oneida's Definition of Reverse Distributor. The United States Department of Agriculture ruled on February 27, 2020 that DEA-registered Labs and Reverse Distributors are temporary stricken from the IFR due to limited capacity to handle the new hemp industry. Until the USDA issues the final rule for the Domestic Hemp Program, the use of DEA-registered labs and Reverse Distributors are not required for compliance of hemp regulations.
  - a. I request LOC to strike the definition of Reverse Distributor until the USDA makes a decision.
- 4) **Destruction of Non-Compliant Hemp Plants.** Page 12, section 508.9-2, subsection (b) of the Oneida Hemp Regulations covers destruction of non-compliant hemp plants states, "So long as in compliance with the Controlled Substances Act and DEA regulations, hemp may be destroyed by burning or by composting where it is made unusable and rendered indistinguishable from any other plant material."
  - a. I request LOC to add a sentence that states the Controlled Substance Act excludes stalks and roots of hemp plants from being considered Marijuana. If a grower registered under the Oneida Hemp Regulations has hemp plants that test over the amount considered Acceptable Hemp THC level, the grower must destroy the floral material of the plant, but can keep the stalks and roots of the hemp plant to make a value-added product.
- 5) Research Opportunities/Licenses. The Oneida Hemp Regulations do not cover opportunities or options to have a research license for members. The Oglala Lakota and Red Lake Band of Chippewa Indians have in their USDA-approved Hemp Plans the opportunity for their members to have research licenses. The research opportunities/licenses could allow for the production of a hemp variety suitable for the Great Lakes Region or a partnership with an institution of higher education.
  - I request LOC to add a section in the Oneida Hemp Regulations that allows for research licenses and opportunities to partner with institutions of higher education.

I say YAW^KO for taking the time to read my recommendations and for your work in the development of the hemp regulations for our Nation.

N	ame	
D	ate	

#### Title 5. Business - Chapter 508

[Oneida Language]
[Oneida Translation]
INDUSTRIAL HEMP

508.1.	Purpose and Policy	508.7.	Required Recordkeeping and Reporting
508.2.	Adoption, Amendment, Repeal	508.8.	Sampling and Testing
508.3.	Definitions	508.9.	Destruction of Noncompliant Plants
508.4.	Application	508.10	. Compliance
508.5.	Authority	508.11	. Enforcement
508.6.	Licensing Requirements	508.12	. Appeals

#### **508.1. Purpose and Policy**

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508.1-1. *Purpose*. The purpose of this law is to:

- (a) Authorize the production of hemp within Reservation of the Oneida Nation;
- (b) Grant the Oneida Nation primary regulatory authority over the production of hemp within the jurisdiction of the Nation;
- (c) Assert the Nation's inherent sovereign authority by creating a hemp production plan that regulates hemp as an agricultural commodity consistent with the Nation's, as well as the federal, laws; and
- (d) Promote the Nation's hemp industry to the maximum extent permitted by law.
- 508.1-2. *Policy*. The Agricultural Improvement Act of 2018, commonly referred to as the 2018 Farm Bill, provides an opportunity for Indian Nations to engage in hemp production through the submission of a hemp production plan for approval to the United States Department of Agriculture. The Farm Bill recognizes that Indian Nations, not the federal government, can and should assume primary regulatory authority over hemp production within their jurisdictions. It is the policy of the Nation to exercise its inherent sovereign authority through self-governance. It is further the policy of the Nation to protect the health, security and general welfare of the community. The Nation finds that hemp is a valuable agricultural crop and commodity and that through proper regulation, hemp can be put to its highest and best use, thereby providing jobs and revenue for essential governmental programs and services that will benefit the Nation and its members.

#### 508.2. Adoption, Amendment, Repeal

- 22 508.2-1. This law was adopted by Oneida Business Committee by resolution BC-\_\_-\_\_.
- 23 508.2-2. This law may be amended or repealed by the Oneida Business Committee and/or
- 24 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 25 508.2-3. 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
- 27 to have legal force without the invalid portions.
- 508.2-4. 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.
- 30 508.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

#### 508.3. Definitions

- 508.3-1. 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) "Acceptable hemp THC level" means when the application of the measurement of uncertainty ("MU") to the reported delta-9 tetrahydrocannabinol content concentration

level on a dry weight basis produces a distribution or range of not more than 0.3 percent.

- (b) "Applicant" means a person who applies to the Nation for a license to participate in the Nation's hemp production plan established by this law.
  - (c) "Cannabis" means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species and refers to any form of the plant whereby the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.
  - (d) "Controlled Substances Act" means the act, codified in 21 U.S.C. 801, *et seq.*, establishing the U.S. federal drug policy for regulating the manufacture, importation, exportation, possession, use and distribution of certain substances.
  - (e) "Conviction" means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned or expunged.
  - (f) "Corrective action plan" means a plan established by the Division for a producer to correct a negligent violation or other form of non-compliance with the Nation's hemp production plan and/or this law.
  - (g) "Criminal History Report" means the U.S. Federal Bureau of Investigation's Identity History Summary.
  - (h) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully or recklessly.
  - (i) "Decarboxylated" means the completion of the chemical reaction that converts THC-acid ("THC-A") into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-A.
  - (j) "Decarboxylation" means the removal or elimination of carboxyl group from a molecule or organic compound.
  - (k) "Delta-9 tetrahydrocannabinol, delta-9-THC or THC" means the primary psychoactive component of cannabis. For purposes of the Nation's plan, delta-9-THC and THC are interchangeable.
  - (1) "Division" means the Oneida Environmental, Health, Safety and Land Division.
  - (m) "Drug Enforcement Administration or DEA" means the federal law enforcement agency under the U.S. Department of Justice that is the lead agency for domestic enforcement of the Controlled Substances Act.
  - (n) "Dry weight basis" means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract or other derivative) after excluding moisture from the item.
  - (o) "Expunged" means when a conviction is removed from an individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions.
  - (p) "Farm Bill" means the Agricultural Improvement Act of 2018, Pub. L. 115-334, December 20, 2018, 132 Stat. 4490, as may be amended from time-to-time hereafter, along

- with the Interim Final Rule for the establishment of a domestic hemp production program issued by the U.S. Department of Agriculture on October 29, 2019 and as may be finalized and further amended from time-to-time hereafter.
- (q) "Farm Service Agency or FSA" means the USDA agency charged with assisting in information collection on land being used for hemp production.
- (r) "Gas chromatography or GC" means a type of chromatography in analytical chemistry used to separate, identify and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.
- (s) "Geospatial location" means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.
- (t) "Handle" means to harvest or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing and, where cannabis plants exceed the acceptable hemp THC level, shall also mean to dispose of those plants.
- (u) "Hemp" means the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.
- (v) "High-performance liquid chromatography or HPLC" means a type of chromatography technique in analytical chemistry used to separate, identify and quantify each component in a mixture.
- (w) "Information sharing system" means the database mandated under the Farm Bill which allows USDA to share information collected under tribal, state and USDA plans with tribal, federal, state, and local law enforcement.
- (x) "Key participant" means a sole proprietor, partner in a partnership, or person with executive managerial control in a corporation such as a chief executive officer, chief operating officer and chief financial officer, but not non-executive managers such as farm, field or shift managers.
- (y) "Law enforcement agency" means any tribal, federal, state or local law enforcement agency.
- (z) "Lot" means a contiguous area in a field, greenhouse or indoor growing structure containing the same variety or strain of cannabis throughout the area.
- (aa) "Marijuana" means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.
- (bb) "Measurement of uncertainty or MU" means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.
- (cc) "Nation" means the Oneida Nation.

- (dd) "Nation's plan" means the criteria and regulations set forth in this law to govern the production of hemp within the jurisdiction of Nation and serves as the "plan" as required by the Farm Bill to be submitted to and approval by the USDA for the Nation to assume primary regulatory authority over the production of hemp within its jurisdiction.
- 121 (ee) "Negligence" means a failure to exercise the level of care that a reasonably prudent 122 person would exercise in complying with the regulations set forth in this law.

- (ff) "Person" means a natural person, corporation, cooperative, consortium, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust partnership, limited liability partnership, association or other form of legal business entity, including another governmental entity.
  - (gg) "Phytocannabinoid" means cannabinoid chemical compounds found in the cannabis plant, two of which are delta-9-THC and cannabidiol ("CBD").
  - (hh) "Postdecarboxylation" means in the context of testing methodologies for THC concentration levels in hemp a value determined after the process of decarboxylation that determines the total potential delta-9-THC content derived from the sum of the THC and THC-A content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, gas chromatography, through which THC-A is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The postdecarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THC-A intact, and requires a conversion calculation of that THC-A to calculate total potential THC in any given sample.
  - (ii) "Produce or production" means to cultivate, process, handle or store hemp plants for market in the United States.
  - (jj) "Producer" means a person licensed by the Division to produce hemp under the Nation's plan.
  - (kk) "Reservation" means all land within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
  - (II) "Reverse distributor" means a person who is registered with the DEA to dispose of marijuana under the Controlled Substances Act.
  - (mm) "USDA" means the United States Department of Agriculture.

## 508.4. Application

- 508.4-1. This law regulates the production of hemp within the jurisdiction of the Nation and shall be effective upon approval from the USDA as the Nation's plan under the Farm Bill.
  - (a) In furtherance of the Nation's inherent authority and the regulatory objectives set forth in the Farm Bill, the Nation finds that persons doing business with the Nation or persons engaged in commercial dealings, leases, licenses, easements or other transactions related to hemp production within the exterior boundaries of the Reservation have voluntarily and explicitly consented to the jurisdiction of the Nation and are subject to regulation by the Nation.
  - (b) Consistent with sections 508.1-1 and 508.1-2, this law shall be liberally construed to the greatest extent authorized under the Farm Bill to fulfill the purpose and policy for which it was adopted.
- 508.4-2. All hemp production within the jurisdiction of the Nation must meet the requirements of this law and any applicable portions of the Farm Bill.
  - (a) The regulations and penalties imposed by this law extend to any person engaged in activities related in any way, directly or indirectly, to hemp production, whether licensed

or not.

- 508.4-3. Nothing in this law shall be construed to prohibit hemp or hemp products, produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113), from being transported or shipped through the Reservation.
- 508.4-4. Nothing in this law limits, modifies or waives the need for a person to obtain any other license or permit required by any other applicable law of the Nation to operate a business or other entity within the Reservation or to comply with any other applicable law of the Nation, including, but not limited to, the Nation's environmental and land use laws.

# 508.5. Authority

- 508.5-1. *General*. This law is enacted under the inherent sovereign authority of the Oneida Nation to regulate hemp as an agricultural commodity in compliance with the Farm Bill.
  - (a) By enacting this law, the Nation does not waive its sovereign immunity or consent to suit in any court, whether the court is tribal, federal, or state, and the enactment of this law shall not be construed to be a waiver of the sovereign immunity of the Nation, its offices, departments, agents, subsidiaries, corporations or enterprises nor a consent to suit against the Nation in any court.
- 508.5-2. *Authority of the Division*. The Division is hereby delegated the authority to regulate and oversee hemp production under the Nation's plan and shall have all powers necessary to fulfill the requirements of this law. At a minimum, the Division shall have the authority and responsibility to:
  - (a) Provide prospective producers with information necessary to participate in the Nation's plan, to include, but not be limited to:
    - (1) How to determine prospective geospatial locations;
    - (2) How to obtain and properly submit a criminal history report; and
    - (3) How to share requisite information with the Farm Service Agency.
  - (b) Issue licenses to produce hemp and make all decisions relating thereto;
  - (c) Conduct inspections and investigate complaints;
  - (d) Develop standard operating procedures, protocols and forms necessary to administer this law;
  - (e) Enforce this law through appropriate means, including, but not limited to, ensuring that producers licensed through the Nation are operating in compliance with the Farm Bill.

## **508.6.** Licensing Requirements

- 508.6-1. *License Required*. Any person engaging in or intending to engage in hemp production within the jurisdiction of the Nation shall only do so pursuant to a valid license issued by the Division in accordance with this law.
  - (a) *Valid License*. For purposes of this law, a valid license means the license is unexpired, unsuspended and unrevoked.
    - (1) A license may not be transferred or assigned absent prior approval from the Division, which, at a minimum, shall be contingent upon:
      - (A) The license not being subject to a pending revocation or suspension under section 508.11 of this law; and

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209	(B) The transferee or assignee undergoing and being approved for licensure
210	pursuant to the application process set forth in section 508.6-2 of this law.
211	(b) License Period. All licenses shall be valid for a period of three (3) year from the date
212	of issuance unless otherwise revoked at an earlier date pursuant to this law or any other
213	applicable law of the Nation.
214	508.6-2. Application Process. Any person under the jurisdiction of the Nation who wishes to
215	engage in the production of hemp shall apply to the Division in accordance with this section.
216	(a) Applicants must submit a complete application to the Division pursuant to the process
217	set forth in the standard operating procedure adopted by the Division before the application
218	will be accepted or considered. The application process shall require, at a minimum, that
219	the applicant provide/submit the following:
220	(1) The applicant's full name, address, telephone number and, if available, email
221	address;
222	(A) If the applicant represents a business or other entity where the business/
223	entity will be the producer, the applicant shall be required to provide the
224	business/entity's:
225	(i) Full business/entity name;
226	(ii) Principal business/entity location address;
227	(iii) Key participants' full name and title;
228	(iv) EIN number or, if no EIN number, Social Security Number; and
229	(v) Email address, if available.
230	(2) The street address (if possible), legal description and geospatial location for
231	each field, greenhouse, building or site where hemp will be cultivated, handled,
232	processed or stored;
233	(3) Proof of ownership of the land and/or property where hemp will be produced;
234	or proof of permission from the land/property owner to utilize the land and/or
235	property where hemp will be produced for hemp production;
236	(4) A description of the intended output (e.g. raw hemp or some other hemp
237	product), method of cultivation (e.g. organic, natural or genetically modified) and
238	any pesticides, herbicides or other potentially hazardous materials the applicant
239	intends to use;
240	(5) An acknowledgment that by signing the application, the applicant is agreeing
241	to abide by all rules and regulations governing the Nation's plan and is further
242	certifying that the information provided in and submitted with the application is
243	accurate and truthful;
244	(6) A criminal history report that was completed no greater than sixty (60) days
245	before the application submission date;
246	(A) For businesses/entities, a criminal history report shall be completed for
247	each of the key participants.
248	(7) The licensing fee set pursuant to the fee schedule created by the Division and
249	approved by the Oneida Business Committee through resolution; and
250	(8) Any further information, disclosure or consent required under the Division's
251	governing standard operating procedure.

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- (b) Applications for renewal, transfer and assignment shall be subject to the same terms and approved under the same criteria as initial applications unless there has been an intervening change as defined in the Division's governing standard operating procedure.
  - (1) The initial fee for license transfers and assignments shall be prorated for that term as set forth in the licensing fee schedule created by the Division and approved by the Oneida Business Committee through resolution.
- (c) A license modification shall be requested pursuant to the process set forth within the Division's governing standard operating procedure if there is any change to the information submitted in the initial or renewal application including, but not limited to, the sale of a business/entity, the production of hemp in a new location, or a change in any key participants who are producing under the license.
  - (1) Applicants shall notify the Division immediately shall there be any change in the information provided during the application process.
- (d) The application and all materials submitted during the application process, whether pursuant to a request for an initial, renewed, transferred/assigned or modified license, shall become the property of the Nation and shall be maintained by the Division for a minimum of seven (7) years.
- 508.6-3. License Eligibility.
  - (a) Applicants who materially falsify any information provided in or along with their application shall be deemed ineligible for licensure.
  - (b) Applicants with a state or felony conviction relating to a controlled substance shall be deemed ineligible to receive a license for a period of ten (10) years from the date of their conviction.
    - (1) *Exception*. Persons lawfully growing hemp under the 2014 Farm Bill before December 20, 2018 and whose conviction also occurred before that date shall not be considered ineligible hereunder.
- 508.6-4. *License Issuance*. Applications for licensure and license renewal, transfer/assignment or modification shall be reviewed by the Division for completeness and to determine an applicant's eligibility.
  - (a) The Division shall set the process for issuing licenses hereunder in a standard operating procedure that includes, at a minimum:
    - (1) That the applicant be notified of his or her eligibility within thirty (30) days following the Division's receipt of a complete application;
    - (2) That denial of an application for licensure, license renewal, license transfer/assignment or license modification be provided to the applicant in writing and include the basis for denial, as well as information on how to appeal the Division's decision:
    - (3) That each applicant deemed eligible for licensure shall be assigned a license identification number; and
    - (4) That for each license it issues, the Division, in cooperation with the Area of Land Management, shall record the type of land designation for each parcel of land listed in the licensee's application as an intended hemp production site and maintain such information within the Division's files for a minimum of seven (7) years.

#### 296 508.7-1. Division Reporting. 297 (a) Hemp Grower Report. By the first of each month, the Division shall submit to the 298 USDA a report providing the contact information and the status of the license issued for 299 each producer under the Nation's plan. The report shall contain: (1) For each new producer who is a natural person, the producer's: 300 301 (A) Full name; 302 (B) License identification number; 303 (C) Business address: 304 (D) Telephone number; 305 (E) Email address (if available); and (F) A legal description of the land on which the producer is producing or 306 307 intends to produce, including, to the extent practicable, its geospatial 308 location. 309 (2) For each new producer that is a business/entity, the business/entity's: (A) Full business/entity name; 310 311 (B) License identification number; 312 (C) Principal business/entity location address; (D) Full name, title and email address (if available) of each key participant; 313 314 (E) A legal description of the land on which the producer is producing or intends to produce, including, to the extent practicable, its geospatial 315 316 location. 317 (3) For each producer that was included in a previous report and whose reported information has changes, the report shall include the previously reported 318 319 information and the new information. (b) Hemp Disposal Report. By the first of each month, the Division shall submit a report 320 321 to the USDA of any occurrence of non-conforming plants or plant materials and provide a 322 disposal record for those plants and plant materials that contains: 323 (1) The producer's name and address; 324 (2) The producer's license identification number; (3) Location information, such as lot number, location type and geospatial location 325 326 or other location descriptor for the production area subject to disposal; 327 (4) Information on the agent handling the disposal; and 328 (5) The total acreage. 329 (c) Annual Report. By December 15 of each year, the Division shall submit an annual 330 report to the USDA that contains the following information: 331 (1) Total planted acreage; 332 (2) Total harvested acreage; and 333 (3) Total disposed of acreage. 334 Producer Reporting. 508.7-2. 335 (a) Planting and Harvesting. The Division shall create a standard operating procedure 336 which sets forth a process for producers to report planting, pre-harvest and post-harvest

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508.7. Required Recordkeeping and Reporting

- information to the Division that will allow for the Division to carry out its reporting duties under section 508.7-1 of this law in a timely manner.

  (b) *Test Results*. Producers shall share any test results obtained under section 508.8 of this
  - (b) *Test Results*. Producers shall share any test results obtained under section 508.8 of this law with the Division and, as required, to the USDA pursuant to the process set forth in the Division's standard operating procedure for producer reporting.
  - (c) FSA Reporting. Upon the issuance of a license, producers shall report their hemp crop acreage to the FSA using form FSA-578 or any alternative form approved by the FSA for purposes hereof.
    - (1) The report shall include, at a minimum:
      - (A) The producer's contact information and license number;
      - (B) The crop acreage; and
      - (C) The specific location where hemp is being produced.
        - (i) The specific location where hemp is being produced must be identified, to the extent practicable, by the geospatial location for each lot, greenhouse, building or site where hemp will be produced.
    - (2) Producers are responsible for filling out and filing the FSA-578 or alternative form consistent with the process set by the FSA.
    - (3) Producers shall be responsible for forwarding a copy of the FSA-578 or alternative form to the Division at the same time they file it with the FSA.
  - (d) *Convictions*. Within five (5) business days of conviction, the producer must notify the Division of any felony convictions that would subject the producer to immediate revocation under section 508.11-4 of this law.
  - 508.7-3. Recordkeeping.

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- (a) The Division shall retain for a minimum of (7) years all information required to be collected in section 508.6 of this law for every license it issues, renews, transfers/assigns and modifies in accordance with the Nation's plan.
- (b) The Division and producers shall retain all documentation referenced within sections 508.7 and 508.8 of the law for a period of at least seven (7) years.
  - (1) Producers shall retain the documentation in a manner that it can be readily provided to the Division upon request.

## 508.8. Sampling and Testing

- 508.8-1. *General*. Samples of all hemp produced under the Nation's plan must be collected and tested in accordance with this section of the law to determine whether it exceeds the acceptable hemp THC level.
  - (a) Subject to section 508.8-1(a)(1), the Division shall be responsible for the collection and testing of samples of all hemp produced under the Nation's plan.
    - (1) The Division may, in its discretion, appoint an outside agent or agency, other than a producer, to carry out the collection and testing of samples hereunder.
  - (b) Producers shall be responsible to pay any fees associated with the sampling and testing of their hemp production.
  - (c) Alternative sampling and testing protocols may be used in place of the protocols set forth herein if approved by the USDA as being comparable and similarly reliable to the

baseline mandated by the Farm Bill.

- 508.8-2. *Sampling*. The method used for sampling must:
  - (a) Require that the sample is taken from the flower material of the cannabis plant;
  - (b) Be sufficient at a confidence level of 95% that no more than 1% of the plants in the lot would exceed the acceptable hemp THC level;
  - (c) Ensure that a representative sample is collected that represents a homogeneous composition of the lot; and
  - (d) Ensure that samples of hemp plant material from one lot are not commingled with hemp plant material from other lots.
- 508.8-3. *Protocol for the Collection of Samples*. The hemp to be selected for sampling shall be determined by a representative of the Division or the agent/agency appointed by the Division and, subject to section 508.8-1(c), shall be collected as follows:
  - (a) Producers shall be required to report in writing to the Division at least fifteen (15) days before an expected harvest date that a crop is about to be harvested.
    - (1) The Division's receipt of a harvest notification triggers a site inspection and sample collection by the Division, or the agent/agency appointed by the Division.
    - (2) Producers shall not harvest any crop prior to samples being collected.
  - (b) The Division shall contact the producer to confirm the field's location and schedule a time for inspection and sample collection prior to harvest.
    - (1) During a scheduled sample collection, the producer or authorized representative of the producer shall be present at the growing site.
    - (2) The Division, or agent/agency appointed by the Division, shall be provided with complete and unrestricted access to all hemp, and other cannabis plants, if any, whether growing or harvested, and all land, buildings, and other structures used for the production of hemp and other cannabis plants, if any, and all locations listed in the producer's application.
  - (c) A separate sample shall be taken for each variety and from each lot of a given variety.
  - (d) Cuttings shall be collected to make one representative sample as follows:
    - (1) The top twenty (20) cm of the hemp plant's flower, including female floral material, shall be clipped;
    - (2) Cuttings from at least five (5) hemp plants within the lot shall be taken and the complete sample shall be placed in a paper bag;
    - (3) The bag shall be sealed by folding over the top once and stapling shut;
    - (4) The bag shall be labeled with a sample identification that includes, at a minimum, the last four (4) numerical digits of the producer's license identification number, the date (MM/DD/YY) of collection, and a two (2) digit sequential sample number assigned by the Division, or agent/agency appointed by the Division.
  - (e) The sample shall be transported to the Division for storage in a secure area until it is sent to the testing lab for analysis.
  - (f) Producers shall be required to harvest their crop not more than fifteen (15) days following the date of the sample collection.
    - (1) If the producer fails to complete the harvest within fifteen (15) days of the sample collection, a secondary sample of the lot shall be required to be submitted

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423	for testing.
424	(2) Harvested lots of hemp plants shall not be commingled with other harvested
425	lots or other material without prior written permission from the Division.
426	(3) Floral materials harvested for phytocannabinoid extraction shall not be moved
427	beyond the processor, or commingled, or extracted, until the Division releases the
428	material.
429	(4) Producers shall be notified within thirty (30) days of sampling of the status of
430	the testing.
431	(5) Any producer may request additional testing at its cost if it is believed that the
432	original delta-9 THC concentration level test results were in error.
433	508.8-4. Testing. Subject to section 508.8-1(c), sample testing shall be completed by one of the
434	DEA-registered laboratories designated by the Division for meeting the requirements of the
435	Nation's plan and the Farm Bill.
436	(a) Laboratories designated by the Division hereunder shall be approved by the Oneida
437	Business Committee through resolution.
438	508.8-5. Testing Protocol.
439	(a) <i>Methodology</i> . The testing process shall be able to accurately identify whether a sample
440	contains a delta-9 THC content concentration level that exceeds the acceptable hemp THC
441	level by including, at a minimum, a validated testing methodology that uses:
442	(1) Postdecarboxylation or other similarly reliable method;
443	(2) Considers the potential conversion of THC-A in hemp into THC; and
444	(3) A test result that measures total available THC derived from the sum of the
445	THC and THC-A content.
446	(A) Testing methodologies meeting the requirements of this section include
447	gas or liquid chromatography with detection.
448	(b) The total THC concentration level shall be determined and reported on a dry weight
449	basis.
450	(1) Analytical testing for purposes of detecting the concentration levels of THC
451	shall meet the following standards:
452	(A) Laboratory quality assurance must ensure the validity and reliability of
453	test results;
454	(B) Analytical method selection, validation, and verification must ensure
455	that the testing method used is appropriate (fit for purpose), and that the
456	laboratory can successfully perform the testing;
457	(C) The demonstration of testing validity must ensure consistent, accurate
458	and analytical performance;
459	(D) Method performance specifications must ensure analytical tests are
460	sufficiently sensitive for the purposes of the detectability requirements of
461	the Nation's plan; and
462	(E) An effective disposal procedure for hemp plants that are produced that
463	do not meet the requirements of the Nation's plan.
464	(c) Any test of a representative sample resulting in higher than the acceptable hemp THC
465	level shall be conclusive evidence that the lot represented by the sample is not in

466	compliance with the Nation's plan
467	(1) Lots that do not test a

- (1) Lots that do not test at or below the acceptable hemp THC level may not be further handled, processed, or enter the stream of commerce.
- (2) The Division shall ensure the lot is disposed of in accordance with the Nation's plan, the Controlled Substances Act and the DEA regulations.
- (3) The Division shall notify the USDA of its intent to dispose of non-conforming plants and verify disposal by submitting required documentation.
- (d) Measurement of uncertainty must be estimated and reported with test results.
  - (1) Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

# **508.9.** Disposal of Noncompliant Plants

- 508.9-1. If the test results conclude that the THC levels exceed the acceptable hemp THC level, the lot represented by the sample shall be destroyed in accordance with this section.
  - (a) In the event test results exceed the acceptable hemp THC level, that harvest must be segregated from other harvested lots and remain segregated.
    - (1) Leaf and floral material from the harvest of that lot must then be destroyed.
  - (b) If a variety is designated as a prohibited variety, the Division shall require the producer to surrender without compensation the entire harvest and any unharvested crop, any live plants, and all germplasm of this variety to the Division for destruction by composting or burning.

#### 508.9-2. *Destruction*

- (a) Subject to section 508.9-2(a)(1), the Division shall be responsible to facilitate the disposal of all hemp that exceeds the acceptable hemp THC level in accordance with the Controlled Substances Act and DEA regulations.
  - (1) The destruction of hemp that exceeds the acceptable hemp THC level shall be carried out by a reverse distributer, a USDA approved law enforcement officer or other agent/agency so long as authorized under the Farm Bill and/or any regulation promulgated in accordance therewith.
- (b) So long as in compliance with the Controlled Substances Act and DEA regulations, hemp may be destroyed by burning or by composting where it is made unusable and rendered indistinguishable from any other plant material.
- (c) The Division shall promptly notify the USDA by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the definition of hemp in the Nation's plan and attach the records demonstrating the appropriate disposal of all those plants and materials in the lot from which the representative samples were taken.
  - (1) The notification shall include the test results from the representative samples.

#### 508.10. Compliance

- 508.10-1. *Inspections*. The Division shall conduct scheduled inspections of all producers and production sites at least once per growing season to verify that hemp is not being produced in violation of this law.
  - (a) In addition to scheduled inspections, the Division shall have authority to conduct

random inspections of all producers and production sites at any time.

- (b) Whether a scheduled or random inspection, the Division shall be granted unrestricted access to the production sites.
- 508.10-2. Producers must maintain copies of all records and reports necessary to demonstrate compliance with the Nation's plan for a minimum of seven (7) years.

#### 508.11. Enforcement

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- 508.11-1. *General*. Violations with this law shall be subject to enforcement solely in accordance with this section.
- 508.11-2. *Negligent Violations*. A producer that negligently violates the Nation's plan and/or this law shall not, as a result of that violation, be subject to any criminal enforcement action by the Tribal, federal, state or local government.
  - (a) Negligent violations shall include, but not be limited to:
    - (1) A failure to provide a legal description of land on which the producer produces hemp;
    - (2) A failure to obtain a license from the Division to produce hemp;
    - (3) The production of cannabis with a delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level.
      - (A) Cannabis produced with a delta-9 tetrahydrocannabinol concentration of not more than 0.5 percent on a dry weight basis shall not be considered a negligent violation if the producer made reasonable efforts to grow hemp.
        - (i) The cannabis plants and plant materials from such representative samples must still be disposed of in accordance with section 508.9 of this law.
  - (b) If the Division finds that a negligent violation occurred, it shall establish a corrective action plan that includes, at a minimum:
    - (1) A plan to correct the violation;
    - (2) A reasonable date by which producers shall correct the negligent violation; and (A) The Division shall be responsible to monitor producers under corrective action plans for implementation and adherence thereto.
    - (3) A requirement that producers periodically report to the Division on their compliance with the Nation's plan for a period of not less than the next two (2) years from the date of the negligent violation.
  - (c) Producers found to have negligently violated this law three (3) times within a five (5) year period shall be ineligible to produce hemp for a period of at least five (5) years from the date of the third violation.
- 508.11-3. Violations Made with a Culpable Mental State Greater Than Negligence.
  - (a) If it determines that a producer violation was committed with a culpable mental state greater than negligence, the Division shall immediately report the producer to the U.S. Attorney General, USDA and the Nation's chief law enforcement officer or chief law enforcement officer of the state charged with receiving such information.
- 550 508.11-4. *Enforcement*.
  - (a) Suspensions.

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552 (1) The Division may suspend a license if it determines that the producer has: (A) Engaged in conduct considered a violation of this law; or 553 (B) Failed to comply with a corrective plan or other written order of the 554 555 Division relating to a negligent violation of this law. (2) Producers whose licenses have been suspended shall be prohibited from: 556 (A) Absent written permission from the Division, handling or removing 557 558 hemp or cannabis from the location where hemp or other cannabis was 559 located at the time when the Division issued its notice of suspension; and 560 (B) Producing hemp during the period of suspension. (3) A suspended license may be restored after a minimum waiting period of one 561 562 (1) year. 563 (A) Producers whose license have been suspended may be required to 564 comply with a corrective action plan before having their licenses restored. (b) Immediate Revocation. The Division shall immediately revoke a license if it finds that 565 566 the producer: (1) Plead guilty to, or is convicted of, any felony related to a controlled substance 567 568 or a violent/sex crime; (2) Made materially false statements during the application process or to Division 569 570 representatives while in the process of monitoring or enforcing this law with a 571 culpable mental state greater than negligence; (3) Was found to be growing cannabis exceeding the acceptable hemp THC level 572 573 with a culpable mental state greater than negligence; or 574 (4) Was found to have negligently violated this law three (3) times in a five (5) 575 year period. 576 577 **508.12.** Appeals 578 508.12-1. Any person aggrieved by an action of the Division may appeal to the Judiciary in 579 accordance with governing laws of the Nation. 580 581 End. 582 583 584 585 Adopted - BC-\_\_-\_\_ 586

#### Title 5. Business - Chapter 508

[Oneida Language]
[Oneida Translation]
INDUSTRIAL HEMP

508.1.	Purpose and Policy	508.7.	Required Recordkeeping and Reporting
508.2.	Adoption, Amendment, Repeal	508.8.	Sampling and Testing
508.3.	Definitions	508.9.	Destruction of Noncompliant Plants
508.4.	Application	508.10.	Compliance
508.5.	Authority	508.11.	Enforcement
508.6.	Licensing Requirements	508.12.	Appeals

#### **508.1. Purpose and Policy**

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508.1-1. *Purpose*. The purpose of this law is to:

- (a) Authorize the production of hemp within Reservation of the Oneida Nation;
- (b) Grant the Oneida Nation primary regulatory authority over the production of hemp within the jurisdiction of the Nation;
- (c) Assert the Nation's inherent sovereign authority by creating a hemp production plan that regulates hemp as an agricultural commodity consistent with the Nation's, as well as the federal, laws; and
- (d) Promote the Nation's hemp industry to the maximum extent permitted by law.

508.1-2. *Policy*. The Agricultural Improvement Act of 2018, commonly referred to as the 2018 Farm Bill, provides an opportunity for Indian Nations to engage in hemp production through the submission of a hemp production plan for approval to the United States Department of Agriculture. The Farm Bill recognizes that Indian Nations, not the federal government, can and should assume primary regulatory authority over hemp production within their jurisdictions. It is the policy of the Nation to exercise its inherent sovereign authority through self-governance. It is further the policy of the Nation to protect the health, security and general welfare of the community. The Nation finds that hemp is a valuable agricultural crop and commodity and that through proper regulation, hemp can be put to its highest and best use, thereby providing jobs and revenue for essential governmental programs and services that will benefit the Nation and its members.

#### 508.2. Adoption, Amendment, Repeal

- 22 508.2-1. This law was adopted by Oneida Business Committee by resolution BC-\_\_-\_\_.
- 23 508.2-2. This law may be amended or repealed by the Oneida Business Committee and/or
- 24 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
- 25 508.2-3. 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
- 27 to have legal force without the invalid portions.
- 508.2-4. 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.
- 30 508.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

#### **508.3.** Definitions

- 508.3-1. 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) "Acceptable hemp THC level" means when the application of the measurement of uncertainty ("MU") to the reported delta-9 tetrahydrocannabinol content concentration

level on a dry weight basis produces a distribution or range of not more than 0.3 percent.

- (b) "Applicant" means a person who applies to the Nation for a license to participate in the Nation's hemp production plan established by this law.
  - (c) "Cannabis" means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species and refers to any form of the plant whereby the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.
  - (d) "Controlled Substances Act" means the act, codified in 21 U.S.C. 801, *et seq.*, establishing the U.S. federal drug policy for regulating the manufacture, importation, exportation, possession, use and distribution of certain substances.
  - (e) "Conviction" means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned or expunged.
  - (f) "Corrective action plan" means a plan established by the Division for a producer to correct a negligent violation or other form of non-compliance with the Nation's hemp production plan and/or this law.
  - (g) "Criminal History Report" means the U.S. Federal Bureau of Investigation's Identity History Summary.
  - (h) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully or recklessly.
  - (i) "Decarboxylated" means the completion of the chemical reaction that converts THC-acid ("THC-A") into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-A.
  - (j) "Decarboxylation" means the removal or elimination of carboxyl group from a molecule or organic compound.
  - (k) "Delta-9 tetrahydrocannabinol, delta-9-THC or THC" means the primary psychoactive component of cannabis. For purposes of the Nation's plan, delta-9-THC and THC are interchangeable.
  - (1) "Division" means the Oneida Environmental, Health, Safety and Land Division.
  - (m) "Drug Enforcement Administration or DEA" means the federal law enforcement agency under the U.S. Department of Justice that is the lead agency for domestic enforcement of the Controlled Substances Act.
  - (n) "Dry weight basis" means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract or other derivative) after excluding moisture from the item.
  - (o) "Expunged" means when a conviction is removed from an individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions.
  - (p) "Farm Bill" means the Agricultural Improvement Act of 2018, Pub. L. 115-334, December 20, 2018, 132 Stat. 4490, as may be amended from time-to-time hereafter, along

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with the Interim Final Rule for the establishment of a domestic hemp production program issued by the U.S. Department of Agriculture on October 29, 2019 and as may be finalized and further amended from time-to-time hereafter.

- (q) "Farm Service Agency or FSA" means the USDA agency charged with assisting in information collection on land being used for hemp production.
- (r) "Gas chromatography or GC" means a type of chromatography in analytical chemistry used to separate, identify and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.
- (s) "Geospatial location" means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.
- (t) "Handle" means to harvest or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing and, where cannabis plants exceed the acceptable hemp THC level, shall also mean to dispose of those plants.
- (u) "Hemp" means the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.
- (v) "High-performance liquid chromatography or HPLC" means a type of chromatography technique in analytical chemistry used to separate, identify and quantify each component in a mixture.
- (w) "Information sharing system" means the database mandated under the Farm Bill which allows USDA to share information collected under tribal, state and USDA plans with tribal, federal, state, and local law enforcement.
- (x) "Key participant" means a sole proprietor, partner in a partnership, or person with executive managerial control in a corporation such as a chief executive officer, chief operating officer and chief financial officer, but not non-executive managers such as farm, field or shift managers.
- (y) "Law enforcement agency" means any tribal, federal, state or local law enforcement agency.
- (z) "Lot" means a contiguous area in a field, greenhouse or indoor growing structure containing the same variety or strain of cannabis throughout the area.
- (aa) "Marijuana" means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.
- (bb) "Measurement of uncertainty or MU" means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.
- (cc) "Nation" means the Oneida Nation.

- (dd) "Nation's plan" means the criteria and regulations set forth in this law to govern the production of hemp within the jurisdiction of Nation and serves as the "plan" as required by the Farm Bill to be submitted to and approval by the USDA for the Nation to assume primary regulatory authority over the production of hemp within its jurisdiction.
- 121 (ee) "Negligence" means a failure to exercise the level of care that a reasonably prudent 122 person would exercise in complying with the regulations set forth in this law.

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- (ff) "Person" means a natural person, corporation, cooperative, consortium, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust partnership, limited liability partnership, association or other form of legal business entity, including another governmental entity.
  - (gg) "Phytocannabinoid" means cannabinoid chemical compounds found in the cannabis plant, two of which are delta-9-THC and cannabidiol ("CBD").
  - (hh) "Postdecarboxylation" means in the context of testing methodologies for THC concentration levels in hemp a value determined after the process of decarboxylation that determines the total potential delta-9-THC content derived from the sum of the THC and THC-A content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, gas chromatography, through which THC-A is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The postdecarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THC-A intact, and requires a conversion calculation of that THC-A to calculate total potential THC in any given sample.
  - (ii) "Produce or production" means to cultivate, process, handle or store hemp plants for market in the United States.
  - (jj) "Producer" means a person licensed by the Division to produce hemp under the Nation's plan.
  - (kk) "Reservation" means all land within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
  - (ll) "Reverse distributor" means a person who is registered with the DEA to dispose of marijuana under the Controlled Substances Act.
  - (mm) "USDA" means the United States Department of Agriculture.

#### 508.4. Application

- 508.4-1. This law regulates the production of hemp within the jurisdiction of the Nation and shall be effective upon approval from the USDA as the Nation's plan under the Farm Bill.
  - (a) In furtherance of the Nation's inherent authority and the regulatory objectives set forth in the Farm Bill, the Nation finds that persons doing business with the Nation or persons engaged in commercial dealings, leases, licenses, easements or other transactions related to hemp production within the exterior boundaries of the Reservation have voluntarily and explicitly consented to the jurisdiction of the Nation and are subject to regulation by the Nation.
  - (b) Consistent with sections 508.1-1 and 508.1-2, this law shall be liberally construed to the greatest extent authorized under the Farm Bill to fulfill the purpose and policy for which it was adopted.
- 508.4-2. All hemp production within the jurisdiction of the Nation must meet the requirements of this law and any applicable portions of the Farm Bill.
  - (a) The regulations and penalties imposed by this law extend to any person engaged in activities related in any way, directly or indirectly, to hemp production, whether licensed

or not.

- 508.4-3. Nothing in this law shall be construed to prohibit hemp or hemp products, produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113), from being transported or shipped through the Reservation.
- 508.4-4. Nothing in this law limits, modifies or waives the need for a person to obtain any other license or permit required by any other applicable law of the Nation to operate a business or other entity within the Reservation or to comply with any other applicable law of the Nation, including, but not limited to, the Nation's environmental and land use laws.

#### 508.5. Authority

- 508.5-1. *General*. This law is enacted under the inherent sovereign authority of the Oneida Nation to regulate hemp as an agricultural commodity in compliance with the Farm Bill.
  - (a) By enacting this law, the Nation does not waive its sovereign immunity or consent to suit in any court, whether the court is tribal, federal, or state, and the enactment of this law shall not be construed to be a waiver of the sovereign immunity of the Nation, its offices, departments, agents, subsidiaries, corporations or enterprises nor a consent to suit against the Nation in any court.
- 508.5-2. *Authority of the Division*. The Division is hereby delegated the authority to regulate and oversee hemp production under the Nation's plan and shall have all powers necessary to fulfill the requirements of this law. At a minimum, the Division shall have the authority and responsibility to:
  - (a) Provide prospective producers with information necessary to participate in the Nation's plan, to include, but not be limited to:
    - (1) How to determine prospective geospatial locations;
    - (2) How to obtain and properly submit a criminal history report; and
    - (3) How to share requisite information with the Farm Service Agency.
  - (b) Issue licenses to produce hemp and make all decisions relating thereto;
  - (c) Conduct inspections and investigate complaints;
  - (d) Develop standard operating procedures, protocols and forms necessary to administer this law;
  - (e) Enforce this law through appropriate means, including, but not limited to, ensuring that producers licensed through the Nation are operating in compliance with the Farm Bill.

#### **508.6.** Licensing Requirements

- 508.6-1. *License Required*. Any person engaging in or intending to engage in hemp production within the jurisdiction of the Nation shall only do so pursuant to a valid license issued by the Division in accordance with this law.
  - (a) *Valid License*. For purposes of this law, a valid license means the license is unexpired, unsuspended and unrevoked.
    - (1) A license may not be transferred or assigned absent prior approval from the Division, which, at a minimum, shall be contingent upon:
      - (A) The license not being subject to a pending revocation or suspension under section 508.11 of this law; and

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209	(B) The transferee or assignee undergoing and being approved for licensure
210	pursuant to the application process set forth in section 508.6-2 of this law.
211	(b) License Period. All licenses shall be valid for a period of three (3) year from the date
212	of issuance unless otherwise revoked at an earlier date pursuant to this law or any other
213	applicable law of the Nation.
214	508.6-2. Application Process. Any person under the jurisdiction of the Nation who wishes to
215	engage in the production of hemp shall apply to the Division in accordance with this section.
216	(a) Applicants must submit a complete application to the Division pursuant to the process
217	set forth in the standard operating procedure adopted by the Division before the application
218	will be accepted or considered. The application process shall require, at a minimum, that
219	the applicant provide/submit the following:
220	(1) The applicant's full name, address, telephone number and, if available, email
221	address;
222	(A) If the applicant represents a business or other entity where the business/
223	entity will be the producer, the applicant shall be required to provide the
224	business/entity's:
225	(i) Full business/entity name;
226	(ii) Principal business/entity location address;
227	(iii) Key participants' full name and title;
228	(iv) EIN number or, if no EIN number, Social Security Number; and
229	(v) Email address, if available.
230	(2) The street address (if possible), legal description and geospatial location for
231	each field, greenhouse, building or site where hemp will be cultivated, handled,
232	processed or stored;
233	(3) Proof of ownership of the land and/or property where hemp will be produced;
234	or proof of permission from the land/property owner to utilize the land and/or
235	property where hemp will be produced for hemp production;
236	(4) A description of the intended output (e.g. raw hemp or some other hemp
237	product), method of cultivation (e.g. organic, natural or genetically modified) and
238	any pesticides, herbicides or other potentially hazardous materials the applicant
239	intends to use;
240	(5) An acknowledgment that by signing the application, the applicant is agreeing
241	to abide by all rules and regulations governing the Nation's plan and is further
242	certifying that the information provided in and submitted with the application is
243	accurate and truthful;
244	(6) A criminal history report that was completed no greater than sixty (60) days
245	before the application submission date;
246	(A) For businesses/entities, a criminal history report shall be completed for
247	each of the key participants.  (7) The liganing fee set purposent to the fee schedule greated by the Division and
<ul><li>248</li><li>249</li></ul>	(7) The licensing fee set pursuant to the fee schedule created by the Division and
249	approved by the Oneida Business Committee through resolution; and (8) Any further information, disclosure or consent required under the Division's
251	governing standard operating procedure.

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- (b) Applications for renewal, transfer and assignment shall be subject to the same terms and approved under the same criteria as initial applications unless there has been an intervening change as defined in the Division's governing standard operating procedure.
  - (1) The initial fee for license transfers and assignments shall be prorated for that term as set forth in the licensing fee schedule created by the Division and approved by the Oneida Business Committee through resolution.
- (c) A license modification shall be requested pursuant to the process set forth within the Division's governing standard operating procedure if there is any change to the information submitted in the initial or renewal application including, but not limited to, the sale of a business/entity, the production of hemp in a new location, or a change in any key participants who are producing under the license.
  - (1) Applicants shall notify the Division immediately shall there be any change in the information provided during the application process.
- (d) The application and all materials submitted during the application process, whether pursuant to a request for an initial, renewed, transferred/assigned or modified license, shall become the property of the Nation and shall be maintained by the Division for a minimum of seven (7) years.
- 508.6-3. *License Eligibility*.
  - (a) Applicants who materially falsify any information provided in or along with their application shall be deemed ineligible for licensure.
  - (b) Applicants with a state or felony conviction relating to a controlled substance shall be deemed ineligible to receive a license for a period of ten (10) years from the date of their conviction.
    - (1) Exception. Persons lawfully growing hemp under the 2014 Farm Bill before December 20, 2018 and whose conviction also occurred before that date shall not be considered ineligible hereunder.
- 508.6-4. *License Issuance*. Applications for licensure and license renewal, transfer/assignment or modification shall be reviewed by the Division for completeness and to determine an applicant's eligibility.
  - (a) The Division shall set the process for issuing licenses hereunder in a standard operating procedure that includes, at a minimum:
    - (1) That the applicant be notified of his or her eligibility within thirty (30) days following the Division's receipt of a complete application;
    - (2) That denial of an application for licensure, license renewal, license transfer/ assignment or license modification be provided to the applicant in writing and include the basis for denial, as well as information on how to appeal the Division's decision:
    - (3) That each applicant deemed eligible for licensure shall be assigned a license identification number; and
    - (4) That for each license it issues, the Division, in cooperation with the DivisionArea of Land Management, shall record the type of land designation for each parcel of land listed in the licensee's application as an intended hemp production site and maintain such information within the Division's files for a

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295 minimum of seven (7) years. 508.7. Required Recordkeeping and Reporting 296 297 508.7-1. Division Reporting. 298 (a) Hemp Grower Report. By the first of each month, the Division shall submit to the 299 USDA a report providing the contact information and the status of the license issued for each producer under the Nation's plan. The report shall contain: 300 301 (1) For each new producer who is a natural person, the producer's: 302 (A) Full name; 303 (B) License identification number; 304 (C) Business address: 305 (D) Telephone number; (E) Email address (if available); and 306 307 (F) A legal description of the land on which the producer is producing or intends to produce, including, to the extent practicable, its geospatial 308 309 location. (2) For each new producer that is a business/entity, the business/entity's: 310 311 (A) Full business/entity name; (B) License identification number; 312 (C) Principal business/entity location address; 313 314 (D) Full name, title and email address (if available) of each key participant; (E) A legal description of the land on which the producer is producing or 315 intends to produce, including, to the extent practicable, its geospatial 316 317 318 (3) For each producer that was included in a previous report and whose reported 319 information has changes, the report shall include the previously reported 320 information and the new information. 321 (b) Hemp Disposal Report. By the first of each month, the Division shall submit a report 322 to the USDA of any occurrence of non-conforming plants or plant materials and provide a 323 disposal record for those plants and plant materials that contains: 324 (1) The producer's name and address; (2) The producer's license identification number; 325 (3) Location information, such as lot number, location type and geospatial location 326 327 or other location descriptor for the production area subject to disposal; 328 (4) Information on the agent handling the disposal; and 329 (5) The total acreage. 330 (c) Annual Report. By December 15 of each year, the Division shall submit an annual report to the USDA that contains the following information: 331 332 (1) Total planted acreage; 333 (2) Total harvested acreage; and 334 (3) Total disposed of acreage. 335 Producer Reporting. 508.7-2. 336 (a) Planting and Harvesting. The Division shall create a standard operating procedure

which sets forth a process for producers to report planting, pre-harvest and post-harvest

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343	(c) FSA Reporting. Upon the issuance of a license, producers shall report their hemp crop
344	acreage to the FSA using form FSA-578 or any alternative form approved by the FSA for
345	purposes hereof.
346	(1) The report shall include, at a minimum:
347	(A) The producer's contact information and license number;
348	(B) The crop acreage; and
349	(C) The specific location where hemp is being produced.
350	(i) The specific location where hemp is being produced must be
351	identified, to the extent practicable, by the geospatial location for
352	each lot, greenhouse, building or site where hemp will be produced.
353	(2) Producers are responsible for filling out and filing the FSA-578 or alternative
354	form consistent with the process set by the FSA.
355	(3) Producers shall be responsible for forwarding a copy of the FSA-578 or
356	alternative form to the Division at the same time they file it with the FSA.
357	(d) Convictions. Within five (5) business days of conviction, the producer must notify the
358	Division of any felony convictions that would subject the producer to immediate revocation
359	under section 508.11-4 of this law.
360	508.7-3. Recordkeeping.
361	(a) The Division shall retain for a minimum of (7) years all information required to be
362	collected in section 508.6 of this law for every license it issues, renews, transfers/assigns
363	and modifies in accordance with the Nation's plan.
364	(b) The Division and producers shall retain all documentation referenced within sections
365	508.7 and 508.8 of the law for a period of at least seven (7) years.
366	(1) Producers shall retain the documentation in a manner that it can be readily
367	provided to the Division upon request.
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369	508.8. Sampling and Testing
370	508.8-1. General. Samples of all hemp produced under the Nation's plan must be collected and
371	tested in accordance with this section of the law to determine whether it exceeds the acceptable
372	hemp THC level.
373	(a) Subject to section 508.8-1(a)(1), the Division shall be responsible for the collection
374	and testing of samples of all hemp produced under the Nation's plan.
375	(1) The Division may, in its discretion, appoint an outside agent or agency, other

than a producer, to carry out the collection and testing of samples hereunder.

(b) Producers shall be responsible to pay any fees associated with the sampling and testing

(c) Alternative sampling and testing protocols may be used in place of the protocols set forth herein if approved by the USDA as being comparable and similarly reliable to the

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information to the Division that will allow for the Division to carry out its reporting duties

(b) Test Results. Producers shall share any test results obtained under section 508.8 of this

law with the Division and, as required, to the USDA pursuant to the process set forth in the

under section 508.7-1 of this law in a timely manner.

Division's standard operating procedure for producer reporting.

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of their hemp production.

baseline mandated by the Farm Bill.

 508.8-2. *Sampling*. The method used for sampling must:

(a) Require that the sample is taken from the flower material of the cannabis plant;

 (b) Be sufficient at a confidence level of 95% that no more than 1% of the plants in the lot would exceed the acceptable hemp THC level;

 (c) Ensure that a representative sample is collected that represents a homogeneous composition of the lot; and

 (d) Ensure that samples of hemp plant material from one lot are not commingled with hemp plant material from other lots.

 508.8-3. *Protocol for the Collection of Samples*. The hemp to be selected for sampling shall be determined by a representative of the Division or the agent/agency appointed by the Division and, subject to section 508.8-1(c), shall be collected as follows:

(a) Producers shall be required to report in writing to the Division at least fifteen (15) days before an expected harvest date that a crop is about to be harvested.

(1) The Division's receipt of a harvest notification triggers a site inspection and sample collection by the Division, or the agent/agency appointed by the Division.

(2) Producers shall not harvest any crop prior to samples being collected.

 (b) The Division shall contact the producer to confirm the field's location and schedule a time for inspection and sample collection prior to harvest.

 During a scheduled sample collection, the producer or authorized representative of the producer shall be present at the growing site.
 The Division, or agent/agency appointed by the Division, shall be provided

with complete and unrestricted access to all hemp, and other cannabis plants, if any, whether growing or harvested, and all land, buildings, and other structures used for the production of hemp and other cannabis plants, if any, and all locations listed in the producer's application.

(c) A separate sample shall be taken for each variety and from each lot of a given variety.

(d) Cuttings shall be collected to make one representative sample as follows:

(1) The top twenty (20) cm of the hemp plant's flower, including female floral

complete sample shall be placed in a paper bag;

 material, shall be clipped;
(2) Cuttings from at least five (5) hemp plants within the lot shall be taken and the

(3) The bag shall be sealed by folding over the top once and stapling shut;

 (4) The bag shall be labeled with a sample identification that includes, at a minimum, the last four (4) numerical digits of the producer's license identification number, the date (MM/DD/YY) of collection, and a two (2) digit sequential sample number assigned by the Division, or agent/agency appointed by the Division.

(e) The sample shall be transported to the Division for storage in a secure area until it is sent to the testing lab for analysis.

(f) Producers shall be required to harvest their crop not more than fifteen (15) days following the date of the sample collection.

(1) If the producer fails to complete the harvest within fifteen (15) days of the sample collection, a secondary sample of the lot shall be required to be submitted

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124	for testing.
125	(2) Harvested lots of hemp plants shall not be commingled with other harvested
126	lots or other material without prior written permission from the Division.
127	(3) Floral materials harvested for phytocannabinoid extraction shall not be moved
128	beyond the processor, or commingled, or extracted, until the Division releases the
129	material.
130	(4) Producers shall be notified within thirty (30) days of sampling of the status of
431	the testing.
132	(5) Any producer may request additional testing at its cost if it is believed that the
133	original delta-9 THC concentration level test results were in error.
134	508.8-4. Testing. Subject to section 508.8-1(c), sample testing shall be completed by one of the
435	DEA-registered laboratories designated by the Division for meeting the requirements of the
<del>1</del> 36	Nation's plan and the Farm Bill.
437	(a) Laboratories designated by the Division hereunder shall be approved by the Oneida
438	Business Committee through resolution.
139	508.8-5. Testing Protocol.
140	(a) Methodology. The testing process shall be able to accurately identify whether a sample
<b>141</b>	contains a delta-9 THC content concentration level that exceeds the acceptable hemp THC
142	level by including, at a minimum, a validated testing methodology that uses:
143	(1) Postdecarboxylation or other similarly reliable method;
144	(2) Considers the potential conversion of THC-A in hemp into THC; and
145	(3) A test result that measures total available THC derived from the sum of the
146	THC and THC-A content.
147	(A) Testing methodologies meeting the requirements of this section include
148	gas or liquid chromatography with detection.
149	(b) The total THC concentration level shall be determined and reported on a dry weight
450	basis.
451	(1) Analytical testing for purposes of detecting the concentration levels of THC
152	shall meet the following standards:
153	(A) Laboratory quality assurance must ensure the validity and reliability of
154	test results;
155	(B) Analytical method selection, validation, and verification must ensure
456	that the testing method used is appropriate (fit for purpose), and that the
157	laboratory can successfully perform the testing;
458 458	(C) The demonstration of testing validity must ensure consistent, accurate
159	and analytical performance;
160 161	(D) Method performance specifications must ensure analytical tests are
461 462	sufficiently sensitive for the purposes of the detectability requirements of
162 162	the Nation's plan; and
163 164	(E) An effective disposal procedure for hemp plants that are produced that
164 165	do not meet the requirements of the Nation's plan.
165 166	(c) Any test of a representative sample resulting in higher than the acceptable hemp THC
166	level shall be conclusive evidence that the lot represented by the sample is not in

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compliance with the Nation's plan.
468 (1) Lots that do not test at

- (1) Lots that do not test at or below the acceptable hemp THC level may not be further handled, processed, or enter the stream of commerce.
- (2) The Division shall ensure the lot is disposed of in accordance with the Nation's plan, the Controlled Substances Act and the DEA regulations.
- (3) The Division shall notify the USDA of its intent to dispose of non-conforming plants and verify disposal by submitting required documentation.
- (d) Measurement of uncertainty must be estimated and reported with test results.
  - (1) Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

#### **508.9.** Disposal of Noncompliant Plants

- 508.9-1. If the test results conclude that the THC levels exceed the acceptable hemp THC level, the lot represented by the sample shall be destroyed in accordance with this section.
  - (a) In the event test results exceed the acceptable hemp THC level, that harvest must be segregated from other harvested lots and remain segregated.
    - (1) Leaf and floral material from the harvest of that lot must then be destroyed.
  - (b) If a variety is designated as a prohibited variety, the Division shall require the producer to surrender without compensation the entire harvest and any unharvested crop, any live plants, and all germplasm of this variety to the Division for destruction by composting or burning.

508.9-2. *Destruction* 

- (a) Subject to section 508.9-2(a)(1), the Division shall be responsible to dispose facilitate the disposal of all hemp that exceeds the acceptable hemp THC level in accordance with the Controlled —Substances Act and DEA regulations.
  - (1) The Division may, in its discretion, appoint an outside agent or agency, other than a producer, to carry out the destruction of noncompliant hemp hereunder. The destruction of hemp that exceeds the acceptable hemp THC level shall be carried out by a reverse distributer, a USDA approved law enforcement officer or other agent/agency so long as authorized under the Farm Bill and/or any regulation promulgated in accordance therewith.
  - (b) So long as in compliance with the Controlled Substances Act and DEA regulations, hemp may be destroyed by burning or by composting where it is made unusable and rendered indistinguishable from any other plant material.
  - (c) The Division shall promptly notify the USDA by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the definition of hemp in the Nation's plan and attach the records demonstrating the appropriate disposal of all those plants and materials in the lot from which the representative samples were taken.
    - (1) The notification shall include the test results from the representative samples.

#### 508.10. Compliance

508.10-1. *Inspections*. The Division shall conduct scheduled inspections of all producers and production sites at least once per growing season to verify that hemp is not being produced in

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violation of this law.

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- (a) In addition to scheduled inspections, the Division shall have authority to conduct random inspections of all producers and production sites at any time.
- (b) Whether a scheduled or random inspection, the Division shall be granted unrestricted access to the production sites.
- 508.10-2. Producers must maintain copies of all records and reports necessary to demonstrate compliance with the Nation's plan for a minimum of seven (7) years.

#### 508.11. Enforcement

- 519 508.11-1. *General*. Violations with this law shall be subject to enforcement solely in accordance with this section.
  - 508.11-2. *Negligent Violations*. A producer that negligently violates the Nation's plan and/or this law shall not, as a result of that violation, be subject to any criminal enforcement action by the Tribal, federal, state or local government.
    - (a) Negligent violations shall include, but not be limited to:
      - (1) A failure to provide a legal description of land on which the producer produces hemp;
      - (2) A failure to obtain a license from the Division to produce hemp;
      - (3) The production of cannabis with a delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level.
        - (A) Cannabis produced with a delta-9 tetrahydrocannabinol concentration of not more than 0.5 percent on a dry weight basis shall not be considered a negligent violation if the producer made reasonable efforts to grow hemp.
          - (i) The cannabis plants and plant materials from such representative samples must still be disposed of in accordance with section 508.9 of this law.
    - (b) If the Division finds that a negligent violation occurred, it shall establish a corrective action plan that includes, at a minimum:
      - (1) A plan to correct the violation;
      - (2) A reasonable date by which producers shall correct the negligent violation; and (A) The Division shall be responsible to monitor producers under corrective action plans for implementation and adherence thereto.
      - (3) A requirement that producers periodically report to the Division on their compliance with the Nation's plan for a period of not less than the next two (2) years from the date of the negligent violation.
    - (c) Producers found to have negligently violated this law three (3) times within a five (5) year period shall be ineligible to produce hemp for a period of at least five (5) years from the date of the third violation.
    - 508.11-3. Violations Made with a Culpable Mental State Greater Than Negligence.
      - (a) If it determines that a producer violation was committed with a culpable mental state greater than negligence, the Division shall immediately report the producer to the U.S. Attorney General, USDA and the Nation's chief law enforcement officer or chief law enforcement officer of the state charged with receiving such information.

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<b>333</b>	508.11-4. Enforcement.
554	(a) Suspensions.
555	(1) The Division may suspend a license if it determines that the producer has:
556	(A) Engaged in conduct considered a violation of this law; or
557	(B) Failed to comply with a corrective plan or other written order of the
558	Division relating to a negligent violation of this law.
559	(2) Producers whose licenses have been suspended shall be prohibited from:
560	(A) Absent written permission from the Division, handling or removing
561	hemp or cannabis from the location where hemp or other cannabis was
562	located at the time when the Division issued its notice of suspension; and
563	(B) Producing hemp during the period of suspension.
564	(3) A suspended license may be restored after a minimum waiting period of one
565	(1) year.
566	(A) Producers whose license have been suspended may be required to
567	comply with a corrective action plan before having their licenses restored.
568	(b) Immediate Revocation. The Division shall immediately revoke a license if it finds that
569	the producer:
570	(1) Plead guilty to, or is convicted of, any felony related to a controlled substance
571	or a violent/sex crime;
572	(2) Made materially false statements during the application process or to Division
573	representatives while in the process of monitoring or enforcing this law with a
574	culpable mental state greater than negligence;
575	(3) Was found to be growing cannabis exceeding the acceptable hemp THC level
576	with a culpable mental state greater than negligence; or
577	(4) Was found to have negligently violated this law three (3) times in a five (5)
578	year period.
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580	508.12. Appeals
581	508.12-1. Any person aggrieved by an action of the Division may appeal to the Judiciary in
582	accordance with governing laws of the Nation.
583 584	End.
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# INDUSTRIAL HEMP LAW LEGISLATIVE ANALYSIS

#### **SECTION 1. EXECUTIVE SUMMARY**

Analysis by the Legislative Petersonee Office			
Analysis by the Legislative Reference Office			
Intent of the Proposed Law	To authorize hemp production within the boundaries of the Reservation and to grant the Oneida Nation primary regulatory authority over hemp production by setting forth criteria that all persons under the jurisdiction of the Nation who wish to participate in the production of hemp must follow, including, but not limited to: <ul> <li>Mandatory licensing and the process for licensure;</li> <li>A definition of what constitutes an acceptable hemp THC level for the processing and distribution of hemp plants;</li> <li>Sampling and testing requirements to accurately determine whether a hemp crop exceeds the acceptable hemp THC level;</li> <li>Requirements for the destruction and reporting of hemp crops that exceed the acceptable hemp THC level;</li> <li>Reporting requirements for the Nation to track hemp production within the Reservation and ensure that hemp is being produced in accordance with the Law; and</li> <li>Enforcement mechanisms for the Nation to detect and respond to non-</li> </ul>		
Purpose	<ul> <li>compliance with the Law.</li> <li>To authorize the production of hemp within the Reservation of the Oneida Nation [5 O.C. 508.1-1(a)];</li> <li>To grant the Oneida Nation primary regulatory authority over the production of hemp within the jurisdiction of the Nation [5 O.C. 508.1-1(b)];</li> <li>To assert the Nation's inherent sovereign authority by creating a hemp production plan that regulates hemp as an agricultural commodity consistent with the Nation's, as well as the federal, law [5 O.C. 508.1-1(c)]; and</li> <li>To promote the Nation's hemp industry to the maximum extent permitted by law [5 O.C. 508.1-1(d)].</li> </ul>		
Affected Entities	Any person under the jurisdiction of the Nation who wishes to produce hemp; the Environmental, Health, Safety and Land Division; the Oneida Police Department; and the Nation's Judiciary.		
<b>Related Legislation</b>	Rules of Civil Procedure; Rules of Appellate Procedure.		
Public Meeting	A public comment period will be held open until July 9, 2020. A public meeting will not be held in accordance with the Nation's COVID-19 Core Decision Making Team's declaration titled, "Suspension of Public Meetings under the Legislative Procedures Act."		
Fiscal Impact	A fiscal impact statement has not yet been requested.		

#### **SECTION 2. INDUSTRIAL HEMP**

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- **A.** Industrial hemp ("hemp") is a highly versatile crop that belongs to the cannabis sativa plant species. There are three main parts of the hemp plant that are harvested to produce over 25,000 products today:
  - <u>Stalk</u> the stalk is harvested for its fiber, which can be used to make such products as rope, textiles, yarn, paper, construction materials, plastics and car parts;

<sup>&</sup>lt;sup>1</sup> Ryan LeCloux, "Regulating Wisconsin's Hemp Industry," Wisconsin Policy Project, vol. 2, no. 9 (August 2019).

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- <u>Seeds</u> the seeds are harvested for use in such products as cooking oil, dietary supplements, hygienic products (e.g. shampoo and lotion) and medicinal/pharmaceutical products; and
- <u>Hemp Flower</u> the hemp flower is harvested for cannabidiol ("CBD"), which is a non-psychoactive chemical compound that has been purported to possess medicinal and therapeutic benefits.<sup>2</sup>
- **B.** *Industrial Hemp v. Marijuana.* Like hemp, marijuana belongs to the cannabis sativa plant species, and thus, botanically, the two plants are the same.<sup>3</sup> Legally, however, the plants vary based on the level of delta-9 tetrahydrocannabinol ("THC") they contain. THC is the chemical in cannabis that provides the psychoactive effect and hemp has a significantly lower THC concentration level (typically, less than one (1) percent) when compared to marijuana, which has an average THC concentration between ten (10) percent and thirty (30) percent.<sup>4</sup>
  - A THC concentration of around one (1) percent is the generally accepted threshold for the plant to have a psychoactive effect that people associate with the "high" sensation.<sup>5</sup>
  - Under federal law, hemp is defined as having a THC concentration of not more than 0.3 percent on a dry weight basis, which is the same definition that the Nation has used in this Law to produce hemp in accordance with the 2018 Federal Farm Bill.<sup>6</sup>

#### **SECTION 3. HISTORY OF INDUSTRIAL HEMP (PRE-1970'S)**

**A.** Hemp Production in the United States. The United States "has a rich history of growing hemp for industrial and agricultural purposes, dating back to the colonial period." Hemp was brought to the American colonies in 1645 as a source of fiber to make cloth, paper, canvas and rope. It was a significant in producing the ropes and canvas necessary for ships.

In 1937, however, the federal government passed the Marijuana Tax Act, which taxed all forms of marijuana, including hemp, and put in place restrictions that made it significantly more difficult to grow hemp. The restrictions were briefly loosened during WWII due to a shortage of imported fibers and an increased domestic demand for fibers that resulted from the war. In response, the federal government created a program called "Hemp for Victory" to promote the production of hemp in the United States. Hemp fiber became pivotal in producing much needed war materials, such as thread for shoes, as well as rope and other materials for building ships and calking vessels.

After the war, U.S. hemp production declined significantly when the federal government resumed the strict regulations that it put in place through enactment of the Marijuana Tax Act. Then, in 1970, the

<sup>3</sup> *Id*.

<sup>&</sup>lt;sup>2</sup> *Id*.

<sup>&</sup>lt;sup>4</sup> *Id* (citing Renee Johnson, "Hemp as and Agricultural Commodity," Congressional Research Service (June 22, 2018)).

<sup>&</sup>lt;sup>5</sup> Id (citing Renee Johnson, "Defining Hemp: A Fact Sheet," Congressional Research Service (March 22, 2019)).

<sup>&</sup>lt;sup>6</sup> 7 U.S.C. s. 5940(a)(2).

<sup>&</sup>lt;sup>7</sup> Ryan LeCloux, "Regulating Wisconsin's Hemp Industry," Wisconsin Policy Project, vol. 2, no. 9 (August 2019).

<sup>&</sup>lt;sup>8</sup> Id (citing Economic Research Service, "Industrial Hemp in the United States: Status and Market Potential," U.S. Department of Agriculture (January 2000)).

<sup>&</sup>lt;sup>9</sup> Id (citing Carey Reed, "8 Things You Didn't Know about Hemp," PBS NewsHour (October 17, 2015)).

<sup>&</sup>lt;sup>10</sup> Id (citing Gerald J. McKenna, "The current Status of Medical Marijuana in the United States," Hawaii Journal of Medicine & Public Health 73, no. 4 (April 2014)).

<sup>&</sup>lt;sup>11</sup> Id (citing Carey Reed, "8 Things You Didn't Know about Hemp," PBS NewsHour (October 17, 2015)).

<sup>&</sup>lt;sup>12</sup> Id (citing Deb Kozel, "Industrial Hemp Update," Iowa Legislative Services Agency (February 1, 2019)).

<sup>&</sup>lt;sup>13</sup> Id (citing Albert Hazen Wright, "Wisconsin's Hemp Industry," Wisconsin Bulletin 293, Madison: Agricultural Experiment Station of the University of Wisconsin (1918)).

hemp industry was outlawed entirely when the federal government passed the Controlled Substances Act, identifying marijuana, which included hemp, as a Schedule I drug.

**B.** Hemp Production in the State of Wisconsin. The State of Wisconsin harvested its first hemp crop in 1908.<sup>14</sup> Wisconsin proved well-suited for the hemp cultivation due to its humid and temperate climate, as well as its fertile soil.<sup>15</sup> In 1917, a scientist in Madison, Wisconsin invented a machine that could harvest and process hemp more efficiently.<sup>16</sup> Soon thereafter, hemp mills were built to process hemp stalks into fiber, making Wisconsin the nation's hemp fiber hub and, by 1920, the country's top producer of hemp.<sup>17</sup> Wisconsin remained the country's top producer of hemp until the 1950's.<sup>18</sup>

#### **SECTION 4. HISTORY OF INDUSTRIAL HEMP (POST 1970'S TO THE PRESENT)**

- **A.** 2014 Farm Bill. In 2014, Congress passed the Agricultural Act of 2014, also known as the 2014 Farm Bill, legalizing the production of hemp for the first time since 1970. The 2014 Farm Bill allowed states to create agricultural pilot programs to study the growth, cultivation and marketing of industrial hemp. However, it did not change hemp's classification as a Schedule I drug, and thus, hemp remained illegal for all other purposes, meaning:
  - Hemp products could be sold only for purposes of marketing research;
  - Hemp products could not be sold in states that did not have hemp pilot programs;
  - Hemp seeds and plants could not be transported over state lines;
  - Individuals had to be registered with the U.S. Drug Enforcement Agency to import viable cannabis seeds; and
  - Rules for controlled substances still applied to products containing hemp, which meant they couldn't be manufactured or distributed without U.S. Food and Drug Administration's approval.

In 2017, the State of Wisconsin established a hemp pilot program in accordance with the 2014 Farm Bill, officially launching its program in time for the 2018 growing season. <sup>20</sup> The state's pilot program required state licensure for participants of the program, registration fees, a research plan through a university or state department of agriculture, background checks, testing of crops for acceptable THC levels and other regulatory provisions. <sup>21</sup>

The 2014 Farm Bill did not designate Indian tribes as "states" for the purpose of producing industrial hemp under their own pilot programs. Therefore, tribes desiring to participate in a pilot program had to do so by obtaining a license through the department delegated authority by the state to administer its pilot program.<sup>22</sup> In Wisconsin, that department was the Department of Agriculture, Trade and Consumer Protection ("DATCP").

The Oneida Nation participated in the Wisconsin Hemp Pilot Research Project in 2019 by obtaining a license through DATCP. The major project components included licensure, registration fees, reporting, recordkeeping, inspections, testing, and destruction requirements for plants that exceeded a THC

<sup>&</sup>lt;sup>14</sup> Id.

<sup>&</sup>lt;sup>15</sup> Id (citing Jerry Apps, "Wisconsin Agriculture: A History," Wisconsin Historical Society Press (2015)).

<sup>&</sup>lt;sup>16</sup> *Id*.

<sup>&</sup>lt;sup>17</sup> Id.

<sup>&</sup>lt;sup>18</sup> Id

<sup>&</sup>lt;sup>19</sup> Agricultural Act of 2014, Pub. L. 113-79, section 7606.

<sup>&</sup>lt;sup>20</sup> 2017 WI Act 100.

<sup>&</sup>lt;sup>21</sup> Id.

<sup>&</sup>lt;sup>22</sup> USDA Clarifies Industrial Hemp Production for Indian Tribes. USDA: Agricultural Marketing Service. Ams.usda.gov. March 2020.

- concentration level of 0.3 percent.<sup>23</sup> The Nation's goals for participating in the program were to learn about different hemp varieties, various end-use products, growth characteristics, labor requirements, post-harvest processing, and marketability.
- **B.** 2018 Farm Bill. In 2018, Congress enacted the 2018 Farm Bill, which made substantial changes to the way the federal government regulated hemp under the 2014 Farm Bill.<sup>24</sup> Most significantly, it removed hemp from the controlled substances list and granted Indian tribes regulatory authority over hemp production within its jurisdiction.<sup>25</sup> Under the 2018 Farm Bill:
  - Hemp is defined as the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a THC concentration of not more than 0.3 percent on a dry weight basis;
  - The United States Department of Agriculture ("USDA") is required to establish a permanent federal hemp program that would act to phase out state pilot programs created under the 2014 Farm Bill by terminating them one (1) year after the USDA releases regulations to govern hemp production under 2018 Farm Bill's federal program;
  - Tribes and states are authorized to establish their own hemp production programs in lieu of the USDA's program so long as they submit a plan for approval to the USDA that includes the specific requirements set forth in the 2018 Farm Bill, as well as USDA regulations promulgated in accordance therewith; and
  - Tribes and states are not allowed to prohibit the transportation of hemp or hemp products across their boundary lines even if they do not have a hemp program.<sup>26</sup>
- **C.** *The Proposed Legislation.* It the policy of the Nation to protect the health, security and general welfare of the community. The Nation finds that hemp is a valuable agricultural crop and commodity and that through proper regulation, hemp can be put to its highest and best use, thereby providing jobs and revenue for essential governmental programs and services that will benefit the Nation and its members.
  - This legislation was carried over from the 2014-2017 term and placed onto the Active Files List again on September 6, 2017 for the 2017-2020 term.
  - The proposed legislation will create a framework and a licensing program for the Oneida Nation to regulate hemp and hemp growers on the Oneida Reservation, which will be submitted to the USDA for approval in accordance with the 2018 Farm Bill.

#### **SECTION 5. CONSULTATION AND OUTREACH**

- **A.** *Hemp Team.* In 2018, the Oneida Business Committee adopted resolution BC-04-25-18-J, which supported the Nation's participation in Wisconsin's Industrial Hemp Pilot Program and ultimately created the Nation's hemp team that is composed of members from the following areas within the Oneida Nation:
  - The Community & Economic Development Division;
  - The Environmental, Health, Safety and Land Division ("EHSLD");
  - The Environmental Resources Board; and
  - The Community Development Planning Committee ("CDPC").

The LRO, as well as members of the LOC, met often with the Hemp Team and relied on their experience and expertise when drafting the proposed legislation.

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<sup>&</sup>lt;sup>23</sup> Hemp Pilot Research Program. WI. Department of Agriculture, Trade, and Consumer Protection. Datcp.wi.gov/Pages/ProgramsServices/Hemp. March 2020

<sup>&</sup>lt;sup>24</sup> Agricultural Improvement Act of 2018, Pub. L. 115-334, section 11106.

<sup>&</sup>lt;sup>25</sup> Id.

<sup>&</sup>lt;sup>26</sup> Id.

#### 122 B. Outside Resources.

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- The LRO staff attorney, as well as members of the LOC, participated in several conference calls
  with the USDA and attended various USDA sponsored trainings to stay up to date on the most
  current regulatory information regarding the 2018 Farm Bill and the USDA regulations
  promulgated thereunder.
- The LRO staff attorney, as well as members of the LOC, attended two (2) meetings held by the Wisconsin Tribal Conservation Advisory Council ("WTCAC") to learn more about hemp and the strategies/practices of other tribes pursuing legislation and regulatory programs under the 2018 Farm Bill.

#### **SECTION 6. PROCESS**

- **A.** Thus far, the development of this Law has followed the process set forth in the Legislative Procedures Act ("LPA").
- **B.** This legislation was carried over from the 2014-2017 term and placed onto the Active Files List again on September 6, 2017 for the 2017-2020 term.
- C. The following work meetings were held regarding the development of this Law and legislative analysis:
  - August 1, 2018: Work meeting with LOC.
- August 28, 2018: Work meeting with CDPC.
  - October 25, 2018: Work meeting with LOC.
  - December 5, 2018: Work meeting with LOC.
- February 5, 2019: Work meeting with Hemp Team.
  - April 11, 2019: Work meeting with LOC.
  - July 2, 2019: Work meeting with Hemp Team.
    - July 9, 2019: Work meeting with Hemp Team.
- July 15, 2019: Work meeting with LOC.
  - September 11, 2019: Work meeting with Hemp Team.
  - October 24, 2019: Work meeting with Hemp Team.
  - November 14, 2019: Work meeting with Hemp Team.
  - December 23, 2019: Work meeting with Hemp Team.
- January 30, 2020: Work meeting with LOC.
  - February 14, 2020: Work meeting with Hemp Team.
  - February 21, 2020: Work meeting with Hemp Team.
  - March 12, 2020: Work meeting with Hemp Team.
- April 8, 2020: Work meeting with LOC.
  - April 15, 2020: Work meeting with LOC.
    - April 16, 2020: Work meeting with LOC.
    - April 23, 2020: Work meeting with LOC.
    - April 28, 2020: Work meeting with LOC.
    - May 7, 2020: Work meeting with LOC.
    - May 15, 2020: Work meeting with LOC.
  - **D.** *COVID-19 Pandemic's Effect on the Legislative Process*. A public meeting for the proposed Law will not be held due to the COVID-19 pandemic.
- On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

- On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Safer at Home" declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibits all public gatherings of any number of people.
  - Then on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a "Suspension of Public Meetings under the Legislative Procedures Act" declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.
  - On March 28, 2020, the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "Extension of March 12th Declaration of Public Health State of Emergency" which extended the Nation's Public Health State of Emergency declaration until May 12, 2020.
  - On April 21, 2020, the COVID-19 Core Decision Making Team issued an "*Updated Safer at Home*" declaration which allowed for gaming and golf operations to resume.
  - On May 6, 2020, the Oneida Business Committee adopted resolution BC-05-06-20-A titled, "Extension of Declaration of Public Health State of Emergency Until June 11, 2020" which further extended the Nation's Public Health State of Emergency until June 11, 2020.
  - On May 19, 2020, the COVID-19 Core Decision Making Team issued a "Safer at Home Declaration, Amendment, Open for Business" which directs that individuals within the Oneida Reservation should continue to stay at home, businesses can re-open under certain safer business practices, and social distancing should be practiced by all persons.
  - On June 10, 2020, the Oneida Business Committee adopted resolution BC-06-10-20-A titled, *Extension of Declaration of Public Health State of Emergency Until July 12, 2020*" which further extended the Nation's Public Health State of Emergency until July 12, 2020.
  - Although a public meeting will not be held on the proposed Industrial Hemp law, a public comment period will still be scheduled and held open in accordance with the Legislative Procedures Act and the COVID-19 Core Decision Making Team's "Suspension of Public Meetings under the Legislative Procedures Act" declaration.

#### **SECTION 7. CONTENTS OF THE LEGISLATION**

- **A.** *Application.* This Law regulates the production of hemp within the boundaries of the Oneida Nation and applies to all persons under the jurisdiction of the Nation that intend to engage, whether directly or indirectly, in the production of hemp. [5 O.C. 508.4-1].
  - The Law provides that persons doing business with the Nation or persons engaged in commercial dealings, leases, licenses, easements or other transactions related to hemp production within the exterior boundaries of the Reservation have voluntarily and explicitly consented to the jurisdiction of the Nation and are subject to regulation by the Nation. [5 O.C. 508.4-1].
- **B.** *Effectiveness.* Per the requirements of the 2018 Farm Bill and USDA regulations created thereunder, this Law shall not become effective until approved by the USDA. [5 O.C. 508.4-1].
  - Before the legislation is submitted to the USDA for approval, the 2018 Farm Bill further requires that the Oneida Business Committee certify in writing that the Nation is capable and prepared to implement the Law immediately upon said approval.
- **C.** *Compliance*. All hemp produced within the jurisdiction of the Nation must meet the requirements of this Law and any applicable portions of the 2018 Farm Bill, which includes the USDA regulations promulgated in accordance therewith. [5 O.C. 508.4-2]. Such compliance includes, but is not limited to:
  - That persons intending to produce hemp or participate in the production of hemp may only do so upon receipt of a valid license from EHSLD. [5 O.C. 508.6].

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- The license application process requires that persons:
  - Fill out the application form created by EHSLD;
  - Provide proof of ownership of the land and/or property where hemp will be produced; or proof of permission to use another's property for purposes of the same:
  - Provide EHSLD with a description of the intended use of the hemp crop, the intended method of cultivation and whether the applicant intends to use any pesticides, herbicides or other potentially hazardous materials during the cultivation process;
  - Acknowledge, through execution of the application, that they are agreeing to abide by all rules and regulations governing the Nation's plan and certifying that the information they provided in and submitted with the application is accurate and truthful:
    - The Law provides that applicants found to have materially falsified any information provided in or along with their application shall be deemed ineligible for licensure. [5 O.C. 508.6-3].
  - Provide a criminal history report through the U.S. Federal Bureau of Investigations that was completed no greater than sixty (60) days before the application submission date:
    - The Law provides that applicants with a state or felony conviction relating to a controlled substance will be deemed ineligible to receive a license for a period of ten (10) years from the date of their conviction unless the applicant had been lawfully producing hemp under the 2014 Farm Bill before December 20, 2018 and had been convicted before that date. [5] O.C. 508.6-31.
  - Pay the licensing fee set pursuant to the fee schedule that was created by EHSLD and approved by the Oneida Business Committee through resolution; and
  - Provide any further information, disclosure or consent that EHSLD requires under a standard operating procedure. [5 O.C. 508.6-2].
- That, once licensed, steps are taken to ensure hemp crops do not exceed the acceptable hemp THC level, which the Law defines as "when the application of the measurement of uncertainty (MU) to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range of not more than 0.3%." [5 O.C. 508.3-1]. Such steps include, but are not limited to:
  - From EHSLD:
    - That it provides prospective applicants with information necessary to produce hemp in compliance with the Law [5 O.C. 508.5];
    - That it collects and maintains, for at least seven (7) years, specific information on each license it issues, including:
      - The producer's contact information;
      - The locations of the producer's growing sites; and
      - Information relating to the producer's acreage; crop sampling, testing and results; and destruction of non-compliant plants [5 O.C. 508.7-1].
    - That it conducts inspections and investigates complaints [5 O.C. 508.5];
    - That it samples and tests hemp crops pursuant to the protocol set forth in the Law to determine whether they exceed the acceptable THC concentration level and, if they do, that it destroys the non-compliant plants in accordance with the 2018 Farm Bill [5 O.C. 508.8]; and
      - The Law provides that EHSLD may collect samples, facilitate testing and oversee destruction of non-compliant plants using representatives of the

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- Nation (so long as they are not the actual producers) or by outsourcing to an appropriate individual or entity of EHSLD's choosing [5 O.C. 508.8].
- The sampling, testing and destruction protocols set forth in the Law are per the requirements of the 2018 Farm Bill and USDA regulations promulgated thereunder. However, the Law carves out flexibility for the Nation to use alternative protocols at such time that the federal guidelines allow for it [5 O.C. 508.8].
- That it enforces the Law through appropriate means, including the issuance of corrective actions and mandatory reporting to the USDA for non-compliance that has a culpable mental state greater than negligence [5 O.C. 508.7-1].
- From Producers (License Holders):
  - That they maintain, as well as share, information in accordance with the EHSLD's standard operating procedure for a period of at least seven (7) years and that they retain such information in a manner that can be easily accessible upon request of EHSLD [5 O.C. 508.7-2];
  - That they grant EHSLD or designees of EHSLD complete access to their growing sites to conduct inspections, sampling and, if necessary, destruction of non-compliant plants [5 O.C. 508.7-2];
  - That, upon issuance of a license, they report their hemp crop acreage report to the Farm Service Agency using the requisite forms and send copies to EHSLD [5 O.C. 508.7-2];
  - That they report any changes in their status to EHSLD, including any recent felony convictions related to a controlled substance or a violent crime, within the time period set forth within the Law so that EHSLD can respond appropriately [5 O.C. 508.7-2]; and
  - That they comply with any EHSLD corrective action plan that was issued for non-compliance [5 O.C. 508.11].
- **D.** Sampling, Testing and Destruction. The 2018 Farm Bill and accompanying USDA regulations set forth specific protocols that must be followed for collecting samples of each hemp crop, for testing those samples and, if a sample tests above the acceptable THC concentration level, for destroying the entire crop associated with that sample. To ensure compliance with the 2018 Farm Bill and accompanying USDA regulations, this Law has adopted these protocols in their entirety, but carved out flexibility for the Nation to adopt different protocols in the event the federal government decides to loosen some of its current sampling, testing and destruction requirements. [5 O.C. 508.8-1].

#### E. Enforcement and Appeals.

- Violations. The Law provides that violators of the Law shall not, as a result of the violation, be subject to any criminal enforcement action by the Tribal, Federal, State or local government. [5 O.C. 508.11]. It then divides violations into the following two (2) categories:
  - Negligent violations, which include, but are not limited to:
    - A failure to provide a legal description of land on which the producer produces hemp:
    - o A failure to obtain a license from EHSLD to produce hemp;
    - The production of hemp with a concentration exceeding the acceptable hemp THC level.
      - The Law affords some flexibility with respect to hemp that is produced with a THC concentration in excess of 0.3 percent, but not more than 0.5 percent, in that it does not consider this to be a negligent violation so long as the producer made reasonable efforts to grow hemp, but still requires that the crop be destroyed.

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- Violations made with a culpable mental state greater than negligence, which the Law defines as acting intentionally, knowingly, willfully, or recklessly. [5 O.C. 508.11].
- Enforcement.
  - If EHSLD finds that a negligent violation occurred, the Law requires it to establish a corrective action plan that includes, at a minimum:
    - o A plan to correct the violation;
    - o A reasonable date by which producers shall correct the negligent violation; and
    - o A requirement that producers periodically report to EHSLD on their compliance with the Nation's plan for a period of not less than the next two (2) years from the date of the negligent violation.
      - Producers found to have negligently violated this Law three (3) times within a five (5) year period shall be ineligible to produce hemp for a period of at least five (5) years from the date of the third violation. [5 O.C. 508.11].
  - If EHSLD determines that a producer violation was committed with a culpable mental state greater than negligence, the Law requires that it immediately report the producer to the U.S. Attorney General, USDA and the Nation's chief law enforcement officer or chief law enforcement officer of the State charged with receiving such information. [5 O.C. 508.11].
- Appeals. The Law allows for appeals of decisions of EHSLD to be filed with the Judiciary in accordance with the Nation's governing laws. [5 O.C. 508.12].

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

- **A.** *Certification by Oneida Business Committee.* Under the 2018 Farm Bill and accompanying USDA regulations, in the event the OBC decides to adopt this Law, it will have to include a certification to the USDA that it is ready and capable of implementing the Law as soon as approved by the USDA.
- **B.** *Fiscal Impact*. A fiscal impact statement has not yet been requested.
  - Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation. [Legislative Procedures Act 1 O.C. 109.6-1].
  - A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee. [Legislative Procedures Act 1 O.C. 109.6-1(a) and (b)].



#### Oneida Nation **Oneida Business Committee** Legislative Operating Committee

PO Box 365 • Oneida, WI 54155-0365



TO: Lawrence E. Barton, Chief Financial Officer

Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer

David P. Jordan, Legislative Operating Committee Chairman FROM:

DATE: August 4, 2020

RE: Industrial Hemp Law Fiscal Impact Statement

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

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

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed legislation being forwarded to the Oneida Business Committee for consideration. [1 O.C. 109.6-2]. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct the Finance Department or any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. [1] O.C. 109.6-1].

Oneida Business Committee resolution BC-09-25-19-A titled, "Interpreting 'Fiscal Impact Statement' in the Legislative Procedures Act" provides further clarification on the process for directing a fiscal impact statement be completed. This resolution provides that when developing a fiscal impact statement for proposed legislation to be used for presentation to and consideration of adoption by the Oneida Business Committee, the Finance Department shall, within ten (10) business days of final approval of draft legislation by the LOC, provide a fiscal impact statement to the LOC.

On August 4, 2020, the Legislative Operating Committee approved the final draft of the proposed Industrial Hemp law. Therefore, the LOC is directing the Finance Department to provide a fiscal impact statement on the proposed law by August 18, 2020.

A copy of the proposed Industrial Hemp law, as well as the legislative analysis, have been attached to this memorandum for your convenience.

#### **Requested Action**

Provide the LOC a fiscal impact statement on the proposed Industrial Hemp law by August 18, 2020.





#### Oneida Nation

Oneida Business Committee Legislative Operating Committee PO Box 365 • Oneida, WI 54155-0365 Oneida-nsn.qov



TO: Oneida Business Committee

FROM: David P. Jordan, LOC Chairperson

DATE: August 26, 2020

RE: 2017-2020 LOC End of Term Report

The Legislative Operating Committee is the legislative body of the Oneida Nation and is comprised of the five (5) non-officer members of the Oneida Business Committee. This report details the Legislative Operating Committee's accomplishments during the 2017-2020 legislative term and is based on information from the Legislative Operating Committee's Active Files List, which is used to track the work of the Legislative Operating Committee.

Table 1 below provides a summary of the Legislative Operating Committee's work during the 2017-2020 Term. The remainder of the report provides more in-depth detail on the accomplishments of the Legislative Operating Committee.

Table 1. Summary of the Legislative Operating Committee 2017-2020 Term		
LEGISLATION		
New Laws		
New Laws Adopted	6	
New Laws Added to AFL and Incomplete at End of Term	14	
New Laws Added to AFL and Later Removed	11	
Amendments		
Amendments Adopted	27	
Amendments Added to AFL and Incomplete at End of Term	12	
Amendments Added to AFL and Later Removed	5	
Total Legislative Items	75	
NON-LEGISLATIVE ITEMS		
Bylaws Amendments		
Bylaws Amendments Adopted	21	
Bylaws Amendments Added to AFL and Incomplete at End of Term	4	
Administrative Rules		
Administrative Rules Certified and Adopted	13	
General Tribal Council Petitions		
GTC Petitions Processed	21	
GTC Petitions Placed onto AFL and Incomplete at End of Term	1	
Total Non-Legislative Items	60	
Total Legislative and Non-Legislative Items During Term	135	

#### LEGISLATION

The main responsibility of the Legislative Operating Committee is the drafting of legislation. Drafting legislation allows the Nation to exercise its inherent sovereignty. Legislation of the Nation effects every facet of the Nation:

- Legislation assists in creating strong economic systems and ensuring the long-term stability of the Nation;
- Legislation promotes social changes and public safety;
- Legislation provides effective guidance for every area and department of the Nation; and
- Legislation promotes good governance.

The drafting and development of legislation helps build a responsible Nation which advances On^yote?a.ka principles. The Legislative Operating Committee adopted thirty-three (33) pieces of legislation this term.

Once the Legislative Operating Committee decides to add a legislative request to its Active Files List the development of proposed legislation begins with conducting research on the topic of the legislation. The Legislative Operating Committee organizes and conducts collaborative work meetings with affected entities to develop the proposed legislation. Once a draft of the proposed legislation is developed and a legislative analysis is completed, the Legislative Operating Committee holds a public meeting and public comment period for the proposed legislation for the purpose of collecting input from the community. Once the Legislative Operating Committee considers all public comments that were received and finalizes the draft, a fiscal impact statement is requested. The proposed legislation is then presented to the Oneida Business Committee or General Tribal Council for adoption.

Table 2 below provides more details on the Legislative Operating Committee's legislative accomplishments during the 2017-2020 term.

Table 2. Legislation During the 2017-2020 Term ADOPTED LEGISLATION			
Law		Adopting Resolution	Sponsor
Boards, Committees, and Commissions Amendments	Law	BC-08-12-20-B	Jennifer Webster
Boards, Committees, and Commissions Emergency Amendments	Law	BC-03-11-20-B	Jennifer Webster
Boards, Committees, and Commissions Emergency Amendments	Law	BC-03-17-20-B	Jennifer Webster
Child Support Law Amendments		BC-01-08-20-C	David P. Jordan
Children's Burial Fund Amendments		BC-04-22-20-A	Kirby Metoxen
Citations Law		BC-02-12-20-A	Jennifer Webster



Business Corporations Law		Ernest Stevens III
Attorney Contract Policy Amendments	David P. Jordan	
Law		Sponsor
LEGISLATION ADDED TO AFL BUT INCOMPLETE AT END OF TERM		
Law Amendments		
Vehicle Driver Certification and Fleet Management	BC-04-08-20-H	-
Tobacco Law Amendments	BC-06-10-20-D	·
Tobacco Law Emergency Amendments	BC-02-26-20-A	
5 ,	BC-07-22-20-A	
Real Property Law Emergency Amendments	BC-01-22-20-B	
Real Property Law Amendments	BC-05-19-18-A	Ernest Stevens III
Law	200,2,1,0	24,141,0014411
Professional Conduct for Attorneys and Advocates	BC-09-27-17-G	David P. Jordan
Emergency Amendments	DC-04-23-10-Е	David F. Juidall
Emergency Amendments Oneida Personnel Policies and Procedures	BC-04-25 18 E	David P. Jordan
Oneida Judiciary Rules of Civil Procedure	BC-04-25-18-F	David P. Jordan
Law – Emergency Adoption	DC 04 25 10 F	David P. Jordan
Oneida Higher Education Pandemic Relief Fund	BC-08-12-20-E	David P. Jordan
Adoption	DG 00 15 50 =	D 115 7 1
Oneida General Welfare Law – Emergency	BC-08-12-20-D	Jennifer Webster
Oneida Food Service Code Amendments	BC-05-13-20-E	
Emergency Amendments		
Military Service Employee Protection Act	BC-04-25-18-D	David P. Jordan
Legal Resource Center Law	BC-09-13-17-L	
Landlord-Tenant Law Amendments	BC-12-13-17-D	David P. Jordan
Indian Preference in Contracting Law Amendments	BC-04-08-20-I	Ernest Stevens III
Policy Emergency Amendments		
General Tribal Council Meeting Stipend Payment	BC-04-08-20-A	David P. Jordan
Whistleblower Protection Law)		
Employee Protection Policy Amendments (now	BC-02-12-19-B	David P. Jordan
Amendments		
Employee Protection Policy Emergency	BC-04-25-18-G	David P. Jordan
Law Emergency Amendments		24,141,0014411
Emergency Management and Homeland Security	BC-03-17-20-E	
Election Law Emergency Amendments  Election Law Emergency Amendments	BC-06-24-20-B	
Election Law Emergency Amendments  Election Law Emergency Amendments	BC-05-13-20-H	
Election Law Emergency Amendments	BC-03-17-20-B	
Domestic Animals Law Amendments	BC-05-13-20-B	
Domestic Animals Law Amendments	BC-05-08-19-D	
Curfew Law Amendments	BC-05-13-20-A	
Curfew Law	BC-10-09-19-A	Ernest Stevens III
Boards, Committees, and Commissions Law)		
Committees, and Commissions Amendments (now	BC-09-20-18-C	Jenniier webster
Comprehensive Policy Governing Boards,	BC-09-26-18-C	Jennifer Webster

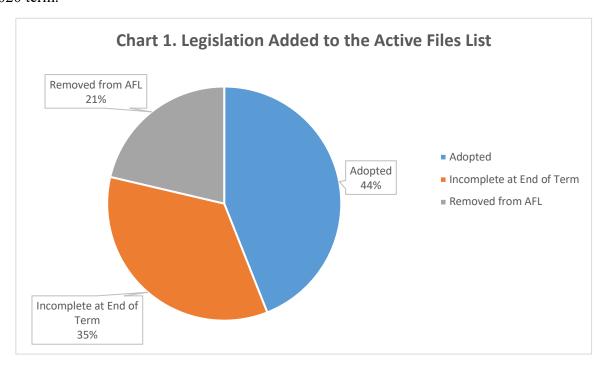
	Danial Guzman Vina		
	Daniel Guzman King		
Code of Ethics Law Amendments	Jennifer Webster		
Drug and Alcohol Free Law for Elected and Appointed Officials	Jennifer Webster		
Election Law Amendments*	David P. Jordan		
Emergency Management and Homeland Security Law Amendments*	David P. Jordan		
Environmental Review Law	Ernest Stevens III		
General Tribal Council Meeting Stipend Payment Policy Emergency	David P. Jordan		
Amendments*			
Guardianship Law	Kirby Metoxen		
Industrial Hemp Law	Daniel Guzman King		
Investigative Leave Policy Amendments	David P. Jordan		
Law Enforcement Ordinance Amendments	Ernest Stevens III		
Oneida General Welfare Law*	Jennifer Webster		
Oneida Higher Education Pandemic Relief Fund Law*	David P. Jordan		
Oneida Judiciary Rules of Civil Procedure Amendments	David P. Jordan		
Oneida Personnel Policies and Procedures Amendments	David P. Jordan		
Public Peace Law	Jennifer Webster		
Real Property Law Amendments*	Jennifer Webster		
	Ernest Stevens III		
Recycling and Solid Waste Disposal Law Amendments	Jennifer Webster		
Sanctions and Penalties Law	Jennifer Webster		
Taxation Law	Ernest Stevens III		
Tribal Institutional Review Board Law	Daniel Guzman King		
Tribal Traffic Code	Ernest Stevens III		
Wellness Court Law	Daniel Guzman King		
Workplace Violence Law Amendments	David P. Jordan		
Work Visas Law	Daniel Guzman King		
LEGISLATION REMOVED FROM THE AFL			
Law	Sponsor		
Business Organizations Law	Ernest Stevens III		
Commerce Law	N/A		
Corporate Laws	Ernest Stevens III		
	Daniel Guzman King		
Criminal Code	Daniel Guzman King		
Election Law Amendments – Rejected by GTC 7/11/19	Jennifer Webster		
Employment Law	Kirby Metoxen		
General Tribal Council Meetings Law	Daniel Guzman King		
Hall of Fame Law Amendments/Rescission	Ernest Stevens III		
Harvest Law	Ernest Stevens III		
Internal Audit Law Amendments	Kirby Metoxen		
Military Service Employee Protection Act Amendments	David P. Jordan		
Nonprofit Incorporation Law	David P. Jordan		
Oneida Personnel Policies and Procedures Amendments	David P. Jordan		
Research Protection Act	Jennifer Webster		
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Secured Transactions Law	David P. Jordan
Tribal Identification Law	Jennifer Webster

<sup>\*</sup>Identifies legislation adopted as an emergency, but still on AFL for permanent adoption.

Chart 1 below looks at the status of all items added to the Active Files List at the end of the 2017-2020 term.



Thirty-three (33) legislative items were adopted into law. Twenty-six (26) legislative items remain incomplete on the Active Files List at the end of term. Sixteen (16) legislative items were removed from the Active Files List during the 2017-2020 term based on time, resources, and priorities of the Legislative Operating Committee.

The Legislative Operating Committee completed approximately fifty-six percent (56%) of items that remained on the Active Files List during the 2017-2020 term and were not purposefully removed. In comparison to prior terms, the completion rate for the 2008-2011 term was fifty-eight percent (58%), for the 2011-2014 term it was fifty-four percent (54%), and for 2014-2017 term it was fifty-three percent (53%).

#### **BYLAWS AMENDMENTS**

When the Oneida Business Committee adopted amendments to the Boards, Committees, and Commissions law through resolution BC-09-26-18-C the Legislative Reference Office was directed to hold two (2) informational meetings for the Nation's boards, committees, and commissions to provide them with an update on the new bylaws requirements mandated by the Boards, Committees and Commissions law; provide a template for the boards, committees and commissions to use when revising their respective bylaws; and provide assistance to the boards, committees and commissions in the development and drafting of their bylaws. The Legislative

Operating Committee assisted many boards, committees, and commissions with the drafting of their updated bylaws, and also provided a legislative analysis of all bylaws which provided a plain English explanation of the changes and also ensured the bylaws were in compliance with the amended Boards, Committees, and Commissions law.

Table 3 below demonstrates the status of all bylaws that were added to the Active Files List during the 2017-2020 term.

Table 3. Bylaws During the 2017-2020 Term			
ADOPTED BYLAWS			
Board, Committee, or Commission Bylaws	Date		
	Adopted		
Anna John Resident Centered Care Community Board By-Laws Amendments	2/27/19		
Anna John Resident Centered Care Community Board By-Laws Amendments	9/25/19		
Oneida Election Board Bylaws Amendments	9/25/19		
Environmental Resource Board Bylaws Amendments	10/23/19		
Oneida Land Commission Bylaws Amendments	10/9/19		
Oneida Community Library Board Bylaws Amendments	9/25/19		
Oneida Gaming Commission Bylaws Amendments	10/9/19		
Oneida Land Claims Commissions Bylaws Amendments	10/23/19		
Oneida Nation Arts Board Bylaws Amendments	10/9/19		
Oneida Nation Commission on Aging Bylaws Amendments	10/9/19		
Oneida Nation Veteran's Affairs Committee	9/25/19		
Oneida Personnel Commission Bylaws Amendments	1/9/19		
Oneida Personnel Commission Bylaws Amendments	10/23/19		
Oneida Personnel Selection Committee Bylaws	5/23/18		
Oneida Police Commission Bylaws Amendments	9/25/19		
Oneida Pow-wow Committee Bylaws Amendments	2/27/19		
Oneida Pow-wow Committee Bylaws Amendments	9/25/19		
Pardon and Forgiveness Committee Bylaws Amendments	2/27/19		
Pardon and Forgiveness Committee Bylaws Amendments	10/9/19		
Southeastern Wisconsin Tribal Services Advisory Board Bylaws Amendments	10/9/19		
Southeastern Wisconsin Tribal Services Advisory Board Bylaws Amendments	2/12/20		
BYLAWS ADDED TO AFL BUT INCOMPLETE AT END OF TI	ERM		
Board, Committee, or Commission Bylaws			
Oneida Nation Emergency Planning Committee Bylaws Amendments			
Oneida Land Commission Bylaws Amendments			
Oneida Nation School Board Bylaws Amendments			
Oneida Trust Enrollment Committee Bylaws Amendments			



#### GENERAL TRIBAL COUNCIL PETITIONS

The Constitution and Bylaws of the Oneida Nation provides that fifty (50) qualified voters may, by written notice, call special meetings of the General Tribal Council. [Article III Section 6 of the Constitution]. The Oneida Business Committee requires that when a petition for a special General Tribal Council meeting is submitted a legislative, legal, and financial opinion are developed regarding the petition so that the information can be shared with the General Tribal Council in order to assist in creating informed discussion and improved decision-making. The Legislative Reference Office provides a statement of effect for all petitions. The statement of effect for petitions explains the legislative impact adopting the requested action of a petition would have on the laws and policies of the Nation.

Table 4 below provides the number of General Tribal Council petitions a statement of effect was provided for during the 2017-2020 term:

Table 4.
General Tribal Council Petitions during the 2017-2020 Term
GENERAL TRIBAL COUNCIL PETITIONS PROCESSED
Petition: Benton – Change Pre-employment Drug Testing for Marijuana
Petition: Dallas – 2017 Tri-Annual General Election
Petition: Nancy Dallas – Funeral Home
Petition: Nancy Dallas – Hold on Building
Petition: Dallas – Special Per Capita Payments and/or Options
Petition: Debraska – Health Care Board
Petition: Delgado – Trust Land Distribution
Petition: Dodge – Law Firm for GTC
Petition: G. Dallas - \$5k Per Capita Payment
Petition: Gladys Dallas - \$5,000 Payment
Petition: Graham – 2017 General Election
Petition: Metoxen – Oneida Youth Leadership Institute
Petition: G. Powless – Banishment Law Resolution
Petition: G. Powless – Oneida Personnel Commission Dissolution
Petition: G. Powless – Rescinding the Removal Law
Petition: Linda Dallas – Medicare Part B Premium Payment
Petition: Metivier – Treatment Clinic
Petition: Metivier – Hourly Wage Increase
Petition: Debra Powless – 2017 Tri Annual General Election
Petition: Scott Kosbab – Creating Term Limits Law
Petition: Vandehei – E-Poll Process
GENERAL TRIBAL COUNTIL PETITIONS INCOMPLETE AT END OF TERM
Petition: M. Debraska – Increase GTC Meeting Stipend



#### ADMINISTRATIVE RULES

The Legislative Operating Committee assists in the development of rules under the Administrative Rulemaking law. Upon request the Legislative Operating Committee will provide guidance and drafting assistance to any entity of the Nation that has been delegated administrative rulemaking authority and tasked with the development of a rule. Once a rule has been drafted by an entity, the Legislative Reference Office provides the entity with a statement of effect for the proposed rule. The statement of effect explains the impact adopting a rule would have on the laws and policies of the Nation and provides whether the rule exceeds the delegated rulemaking authority.

The Legislative Operating Committee is then tasked with certifying a rule before it is presented to the Oneida Business Committee for consideration. The Legislative Operating Committee reviews the proposed rule and accompanying administrative record to ensure that the promulgation of the rule complies with the procedural requirements contained in this law; that the administrative record is complete; and that the rule does not exceed its rulemaking authority or conflict with any other law, policy, rule or resolution of the Nation.

Table 5 below demonstrates the administrative rules that have been certified by the Legislative Operating Committee and adopted by the Oneida Business Committee during the 2017-2020 term.

Table 5.		
Administrative Rules During the 2017-2020 Term		
ADOPTED ADMINISTRATIVE RULES		
Rule	Date Adopted	
Community Support Fund Law Rule Handbook	1/24/18	
Domestic Animals Law Rule No. 1 – Licensing, Fees, and Penalties	4/25/18	
Family Court Law Rule No. 1 – Family Court Rules	9/11/19	
Judiciary Law Rule No. 1 – Oneida Trial Court Rules	9/25/19	
Landlord Tenant Law Rule No. 1- General Rental Program Eligibility,	10/24/18	
Selection, and Other Requirements Amendments		
Legal Resource Center Law Rule No. 1 – Application for Services	7/25/18	
Leasing Law Rule No. 1 – Residential Leasing	8/15/18	
Leasing Law Rule No. 2 – Agriculture Leases	5/16/18	
Leasing Law Rule No. 3 – Commercial Leases	5/16/18	
Leasing Law Rule No. 4 – Home Building Opportunities Residential Leasing	7/8/20	
Membership Ordinance Rule No. 1 – Enrollment Rule	1/10/18	
Membership Ordinance Rule No. 2 – Voiding Unlawful Membership	2/14/18	
Oneida Nation Seal and Flag Rule No. 1 -Placement, Maintenance, and Authorized Use	9/13/17	



#### **COMMUNITY OUTREACH EVENTS**

In addition to the public meeting and public comment period that is required by the Legislative Procedures Act, the Legislative Operating Committee focused this term on providing more opportunities for the community to get involved in the development of legislation for the Nation by holding various community outreach events.

Table 6 below demonstrates the various community outreach events the Legislative Operating Committee held during the 2017-2020 term.

Table 6. Community Outreach Events During the 2017-2020 Term		
COMMUNITY OUTREACH EVENTS HELD		
Event	Date Held	
General Tribal Council Meetings Law: Community Meeting – NHC Potluck	10/23/17	
Sanctions and Penalties Law: Community Meeting – NHC Potluck	5/3/18	
Harvest Law: Community Meeting – NHC Potluck	9/27/18	
Curfew Law: Community Meeting – NHC Potluck	3/21/19	
Sanctions and Penalties Law: Community Meeting - Radisson Hotel and	7/11/19	
Conference Center		
Sanctions and Penalties Law: Community Meeting – NHC	7/17/19	
Sanctions and Penalties Law: Community Meeting – Veteran's Breakfast	8/9/19	
Sanctions and Penalties Law: Community Meeting – Oneida Farmer's Market	8/15/19	
Sanctions and Penalties Law: Community Meeting – Elder Services Congregate	10/7/19	
Meal Site		
Sanctions and Penalties Law: Community Meeting – SEOTS	10/18/19	

#### CONCLUSION

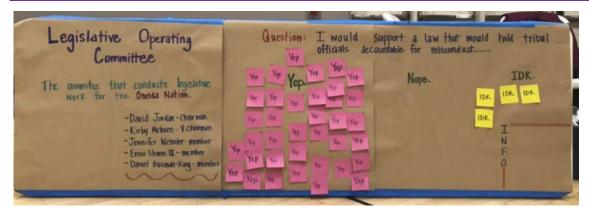
The Legislative Operating Committee's 2017-2020 legislative term was successful. Important legislative work was completed that aligns with the Oneida Nation's vision "A Nation of strong families built on Tsi >Niyukwaliho T^ and a strong economy".

The Legislative Operating Committee hopes that the 2020-2023 legislative term will continue to focus on improving public participation and the development of important legislative efforts.

Yaw^ko.



#### PHOTOGRAPHS OF THE LEGISLATIVE OPERATING COMMITTEE IN ACTION



Interactive display collecting information during the Community Budget Meeting.



LOC at the Elder Congregate Meal Site for a community outreach event on October 7, 2018.



LOC Chairman David P. Jordan and Councilwoman Jennifer Webster in Milwaukee discussing legislation with a community member.



Councilman Ernest Stevens III and Councilman Daniel Guzman King conducting community outreach at the Oneida Farmer's Market.



LOC Chairman David P. Jordan and Vice-Chairman Kirby Metoxen conversing about legislation with those in attendance at the Oneida Veterans Breakfast.



#### PHOTOGRAPHS OF THE LEGISLATIVE OPERATING COMMITTEE IN ACTION



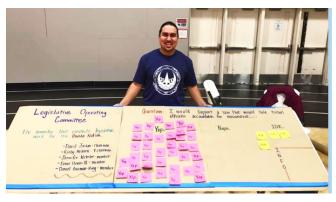
Above: LOC members in Milwaukee holding a community outreach event at the SEOTS building.

Below: LOC Vice-Chairman Kirby Metoxen presenting on the Sanctions and Penalties law at the Elder Congregate Meal Site.



Behind the scenes look at Councilman Daniel Guzman King filming an informational video.





Councilman Daniel Guzman King collecting input at the Community Budget Meeting.



LOC Chairman David P. Jordan and Councilwoman Jennifer Webster at the Oneida Farmer's Market.



LOC Chairman David P. Jordan and Vice-Chairman Kirby Metoxen at the Oneida Veterans Breakfast community outreach event.

