



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room - 2nd Floor Norbert Hill Center

August 4, 2021

9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be Approved**
 - 1. July 21, 2021 LOC Meeting Minutes (pg. 2)
- III. Current Business**
 - 1. Public Peace Law (pg. 4)
 - 2. Furlough Law Amendments (pg. 40)
- IV. New Submissions**
 - 1. Oneida Nation Emergency Planning Committee Bylaws Amendments (pg. 69)
- V. Additions**
- VI. Administrative Updates**
- VII. Executive Session**
- VIII. Recess/Adjourn**



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
July 21, 2021
9:00 a.m.

Present: David P. Jordan, Marie Summers, Jennifer Webster

Excused: Daniel Guzman King, Kirby Metoxen

Others Present: Clorissa N. Santiago, Kristal Hill, Lawrence Barton, Justin Nishimoto (Microsoft Teams), Eric Boulanger (Microsoft Teams), Amy Spears (Microsoft Teams), Linda Taylor (Microsoft Teams), Geraldine Danforth (Microsoft Teams), Matthew Denny (Microsoft Teams), Patricia Garvey (Microsoft Teams), Katsisiyo Danforth (Microsoft Teams).

I. Call to Order and Approval of the Agenda

David P. Jordan called the July 21, 2021, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Marie Summers to adopt the agenda with two add-ons: one under Section V. Oneida General Welfare Law Emergency Amendments Extension, and two under Section VI. Administrative Updates discussion on Continuing or Not Continuing Virtual Meetings; seconded by Jennifer Webster. Motion carried unanimously.

II. Minutes to be Approved

1. July 7, 2021 LOC Meeting Minutes

Motion by Jennifer Webster to approve the July 7, 2021 LOC meeting minutes and forward to the Oneida Business Committee; seconded by Marie Summers. Motion carried unanimously.

III. Current Business

1. Public Peace Law

Motion by Marie Summers to accept the updated public comment review memorandum and direct the drafting attorney to prepare the final draft of the proposed Public Peace law; seconded by Jennifer Webster. Motion carried unanimously.

IV. New Submissions

V. Additions

1. Oneida General Welfare Law Emergency Amendments Extension

Motion by Marie Summers to approve the Oneida General Welfare law emergency amendments extension packet and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

VI. Administrative Items

1. Continuing or Not Continuing Virtual Meetings

Note: Legislative Operating Committee held a discussion on continuing the use of Microsoft Teams for Legislative Operating Committee meetings and did not make a motion for this item.



VII. Executive Session

VIII. Adjourn

Motion by Jennifer Webster to adjourn at 9:15 a.m.; seconded by Marie Summers. Motion carried unanimously.



Legislative Operating Committee August 4, 2021

Public Peace Law

Submission Date: 12/7/16	Public Meeting: Due to the COVID-19 pandemic, public meetings were suspended by declaration of the Nation's COVID-19 Core Decision Making Team. A public comment period was still offered in accordance with the Legislative Procedures Act and held open until 6/9/21.
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a

Summary: *The item was carried over from the last two terms. On October 26, 2016, the Oneida Police Commission, in its quarterly report to the Oneida Business Committee, made a recommendation to develop a Public Peace law in an effort to exercise the Nation's sovereignty and jurisdiction. This recommendation was made based on input received during a community meeting held in Site 2 by the Oneida Police Department and Oneida Housing Authority due to a homicide investigation. The Oneida Business Committee then forwarded this request to the LOC who placed this item on the Active Files List in December 2016. The purpose of developing a Public Peace law would be to address trespassing, damage to property, noise nuisances, loitering, etc.*

10/7/20 LOC: Motion by Jennifer Webster to add the Public Peace Law to the Active Files List with Jennifer Webster as the sponsor; seconded by Marie Summers. Motion carried unanimously.

12/16/20: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Joel Maxam, Renita Hernandez, Scott Denny, Brandon Yellowbird Stevens, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to begin discussing issues that are currently affecting neighborhoods in the Nation so that they can be addressed in the Public Peace law.

1/15/21: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Eric Boulanger, Joel Maxam, Renita Hernandez, Leslie Doxtator, Brandon Yellowbird Stevens, Krystal John, Michelle Hill, Lisa Rauschenbach, Jennifer Garcia, James Petitjean, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss the potential relationship between the enforcement of the Public Peace law and the enforcement of leases.

1/28/21: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss a plan for moving this item forward through the legislative process.

2/11/21: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Kristal Hill, Rhiannon Metoxen, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the first draft of the Public Peace law.

- 3/17/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Clorissa N. Santiago, Eric Boulanger, Joel Maxam, Renita Hernandez, Brandon Yellowbird Stevens, Kelly McAndrews, Krystal John, Michelle Hill, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the first draft of the Public Peace law with the larger work team.
- 4/7/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Marie Summers Clorissa N. Santiago, Eric Boulanger, Joel Maxam, Renita Hernandez, Leslie Doxtator, Brandon Yellowbird Stevens, Kelly McAndrews, Michelle Hill, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the updated draft of the Public Peace law with the larger work team so that the law can move forward for a legislative analysis to be completed.
- 4/21/21 LOC:** Motion by Daniel Guzman King to approve the Public Peace law draft and legislative analysis; seconded by Kirby Metoxen. Motion carried unanimously.
- 5/5/21 LOC:** Motion by Jennifer Webster to approve the Public Peace law public comment period packet and forward the Public Peace law to a public comment period to be held open until June 9, 2021; seconded by Marie Summers. Motion carried unanimously.
- 6/9/21:** *Public Comment Period Closed.* The Legislative Operating Committee received written submissions of comments from six (6) individuals.
- 7/7/21 LOC:** Motion by Daniel Guzman King to accept the public comments and the public comment review memorandum, and forward to a work session for further consideration; seconded by Marie Summers. Motion carried unanimously.
- 7/7/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers Clorissa N. Santiago, Kristal Hill. The purpose of this work meeting was to begin reviewing and considering the public comments that were received for the proposed Public Peace law.
- 7/7/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers Clorissa N. Santiago, Eric Boulanger, Joel Maxam, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to begin developing the Public Peace Law Citation Schedule resolution by discussing and determining the specific fine amounts for each civil infraction contained in the law.
- 7/13/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers Clorissa N. Santiago, Kristal Hill, Rhiannon Metoxen, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to continue reviewing and considering the public comments that were received for the proposed Public Peace law.
- 7/21/21:** *Work Meeting.* Present: David P. Jordan, Marie Summers, Jennifer Webster, Clorissa N. Santiago, Eric Boulanger, Joel Maxam, Kelly McAndrews, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to continue developing the Public Peace Law Citation Schedule resolution by discussing and determining the specific fine amounts for each civil infraction contained in the law

7/29/21: *Work Meeting.* Present: Clorissa N. Santiago, James Bittorf. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss a definition for “public property” to be included in the Law.

Next Steps:

- Approve the draft of the Public Peace law and the fiscal impact statement request memorandum and forward to the Finance Department directing that a fiscal impact statement be prepared and submitted to the LOC by August 18, 2021.

Title 3. Health & Public Safety - Chapter 309 PUBLIC PEACE

309.1. Purpose and Policy
309.2. Adoption, Amendment, Repeal
309.3. Definitions
309.4. Jurisdiction and Authority
309.5. Civil Infractions Against Property
309.6. Civil Infractions Against the Peace

309.7. Civil Infractions Against Government
309.8. Civil Infractions Against the Person
309.9. Civil Infractions Involving Alcohol, Tobacco, and Drugs
309.10. Civil Infractions Affecting Health and Safety
309.11. Enforcement and Penalties

309.1. Purpose and Policy

309.1-1. *Purpose.* The purpose of this law is to set forth community standards and expectations which preserve the peace, harmony, safety, health, and general welfare of individuals who live within the boundaries of the Reservation.

309.1-2. *Policy.* It is the policy of the Nation to promote peace and order within the boundaries of the Reservation while also providing an orderly process for addressing civil infractions that occur.

309.2. Adoption, Amendment, Repeal

309.2-1. This law was adopted by the Oneida Business Committee by resolution BC-__-__-__.

309.2-2. 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.

309.2-3. 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.

309.2-4. 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.

309.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

309.3. Definitions

309.3-1. 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) “Adult at risk” means any adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.

(b) “Alcohol beverage” means a fermented malt beverage and any intoxicating liquor.

(c) “Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.

(d) “Child” means a person who has not attained the age of eighteen (18) years.

(e) “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.

(f) “Drug paraphernalia” means any equipment, product, object or container used or intended for use to cultivate, plant, maintain, manufacture, package or store a prohibited

drug or inject, ingest, inhale or otherwise introduce an prohibited drug into the human body, regardless of the material composition of the instrument used for such purposes.

(g) “Elder at risk” means any person age fifty-five (55) or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.

(h) “Electronic cigarette” means 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.

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

(j) “Gang” means an association of three (3) or more individuals whose members collectively identify themselves by adopting a group identity which they use to create an atmosphere of fear or intimidation frequently by employing one (1) or more of the following: a common name, slogan, identifying sign, symbol, tattoo, or other physical marking, style or color of clothing, hairstyle, hand sign or graffiti.

(k) “Intoxication” means not having the normal use of mental or physical faculties by reason of the introduction of an alcohol beverage or a prohibited drug, or any other substance into the body.

(l) “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, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

(m) “Liter” means all rubbish, waste materials refuse, garbage, trash debris, or other foreign substances, solid, liquid, or every form, size, and kind.

(n) “Merchant” means a person who deals in goods of the kind or otherwise by his or her occupation holds himself or herself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his or her employment of an agent or broker or other intermediary who by his or her occupation holds himself or herself out as having such knowledge or skill.

(o) “Nation” means the Oneida Nation.

(p) “Official” means any person who is elected or appointed to serve a position for the Nation, including, but not limited to, a position on a board, committee, commission, or office of the Nation, including the Oneida Business Committee and Judiciary.

(q) “Pecuniary loss” means a loss of money, or of something by which money or of value may be acquired.

(r) “Prohibited drug” 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. Prohibited drugs also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

(s) “Recklessly” mean a person acts recklessly, or is reckless, with respect to circumstance surrounding his or her conduct, or the result of his or her conduct when he or she is aware of, but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the person’s standpoint.

(t) “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.

(u) “Sexual harassment” means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

(v) “Theft detection device” means any tag or other device that is used to prevent or detect theft and that is attached to merchandise held for resale by a merchant or to property of a merchant.

(w) “Theft detection device remover” means any tool or device used, designed for use or primarily intended for use in removing a theft detection device from merchandise held for resale by a merchant or property of a merchant.

(x) “Theft detection shielding device” means any laminated or coated bag or device designed to shield merchandise held for resale by a merchant or property of a merchant from being detected by an electronic or magnetic theft alarm sensor.

(y) “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.

(z) “Trial Court” means the Trial Court of the Oneida Nation Judiciary.

~~(aa)~~(aa) “Tribal property” means all land owned in fee by the Nation or held in trust by the United States for the benefit of the Nation, excluding leased parcels and parcels under a right of way.

~~(bb)~~ “Venerated object” means any object of worship, devotion, reverence, tradition, or adoration regarded with great respect.

~~(cc)~~ “Weapon” means guns, switchblade knives, knives with blades longer than three (3) inches that are not being used for food preparation, electric weapons, billy clubs, and any other similar instrument or device.

309.4. Jurisdiction and Authority

309.4-1. *Jurisdiction of the Court.* The Trial Court shall have jurisdiction over any action brought under this law.

309.4-2. *Standard of Proof.* All matters to be decided by the Trial Court shall be proven by clear and convincing evidence.

309.4-3. *Authority of the Oneida Police Department.* The Oneida Police Department shall have the authority to:

(a) investigate complaints involving civil infractions under this law; and

(b) issue citations for violations of this law.

309.4-4. *General Prohibition of Civil Infractions.* No person shall commit a civil infraction under this law.

309.5. Civil Infractions Against Property

309.5-1. *Damage to Property.* A person commits the civil infraction of damage to property if he or she, without the consent of the owner:

- (a) damages or destroys the property of the owner;
- (b) tampers with property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person;
- (c) makes markings, including inscriptions, slogans, drawings, or paintings on the property of the owner; ~~and/or~~
- (d) alters, defaces, or damages in any way property owned by the Nation.

309.5-2. *Reckless Damage or Destruction.* A person commits the civil infraction of reckless damage or destruction if without the consent of the owner he or she recklessly damages or destroys the property of the owner.

309.5-3. *Trespass.* A person commits the civil infraction of trespass if he or she:

- (a) enters or remains on private property or Tribal property ~~of the Nation~~ without consent and he or she:

- (1) had notice that the entry was forbidden; or
 - (2) received notice or order to depart but failed to do so.

- (b) *Notice.* Notice or an order to depart may be given by:

- (1) written or verbal communication given to the intruder by an Oneida Police Department officer, the owner of the property, or a person authorized to act on behalf of the owner;
 - (2) written notice posted on or about the property in a manner reasonably likely to come to the attention of potential intruders; or
 - (3) fences, barricades, or other devices manifestly designed to enclose the property and to exclude potential intruders.

309.5-4. *Theft.* A person commits the civil infraction of theft if he or she:

- (a) obtains, exercises control over, or conceals anything of value of another without the consent of the owner; or
- (b) having lawfully obtained possession for temporary use of the property, deliberately and without consent, fails to return or reveal the whereabouts of said property to the owner, his or her representative or the person from which he or she has received it with the intent to permanently deprive the owner of its use and benefit.

309.5-5. *Retail Theft.* A person commits the civil infraction of retail theft if he or she without the merchant's consent and with intent to deprive the merchant permanently of possession or the full purchase price of the merchandise or property:

- (a) intentionally alters indicia of price or value of merchandise held for resale by a merchant or property of a merchant;
- (b) intentionally takes and carries away merchandise held for resale by a merchant or property of a merchant;
- (c) intentionally transfers merchandise held for resale by a merchant or property of a merchant;
- (d) intentionally conceals merchandise held for resale by a merchant or property of a merchant;
- (e) intentionally retains possession of merchandise held for resale by a merchant or property of a merchant;
- (f) while anywhere in the merchant's premises, intentionally removes a theft detection device from merchandise held for resale by a merchant or property of a merchant;
- (g) uses, or possesses with intent to use, a theft detection shielding device to shield merchandise held for resale by a merchant or property of merchant from being detected by an electronic or magnetic theft alarm sensor; ~~and/or~~

(h) uses, or possesses with intent to use, a theft detection device remover to remove a theft detection device from merchandise held for resale by a merchant or property of a merchant.

309.5-6. *Loitering*. A person commits the civil infraction of loitering if he or she loiters or prowls in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity.

(a) Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the person:

- (1) takes flight upon appearance of an Oneida Police Department Officer;
- (2) refuses to identify himself or herself or manifestly endeavors to conceal himself or herself or any object; or
- (3) refuses to leave the premises after being requested to move by an Oneida Police Department officer or by any person in authority at such place.

309.5-7. *Fraud*. A person commits the civil infraction of fraud if, to obtain property, money, gain, advantage, interest, asset, or services for himself or herself or another he or she:

- (a) makes a materially false or misleading statement which he or she knows to be untrue or makes a remark with reckless disregard to the accuracy of the statement;
- (b) withholds information by misrepresentation or deceit; or
- (c) with intent to defraud or harm another, he or she destroys, removes, conceals, alters, substitutes or otherwise impairs the verity, legibility, or availability of a writing.

309.5-8. *Negligent Handling of Burning Material*. A person commits the civil infraction of negligent handling of burning material if he or she handles burning material in a highly negligent manner in which the person should realize that a substantial and unreasonable risk of serious damage to another person or another's property is created.

309.6. Civil Infractions Against the Peace

309.6-1. *Disorderly Conduct*. A person commits the civil infraction of disorderly conduct if he or she engages in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance. A civil infraction of disorderly conduct may include, but is not limited to, the following behaviors:

- (a) fights with another person within the boundaries of the Reservation;
- (b) discharges a firearm ~~and~~/or air gun that ~~are~~is prohibited;
- (c) makes or causes to be made any loud, disturbing or unnecessary sounds or noises which may annoy or disturb a person of ordinary sensibilities;
(1) Between the hours of 10:00 p.m. and 6:00 a.m. any excessive noise shall be prohibited.
- (d) abuses or threatens a person on Tribal property ~~of the Nation~~ in an obviously offensive manner;
- (e) lies or sleeps on any street, alley or sidewalk, or in any other Tribal property ~~of the Nation~~, or upon private property that he or she has no right to occupy; or
- (f) uses abusive, indecent, profane, or vulgar language in Tribal property ~~of the Nation~~, and the language by its very utterance tends to incite an immediate breach of the peace.

309.6-2. *Carrying a Prohibited Weapon*. A person commits the civil infraction of carrying a prohibited weapon if he or she bears or carries on or about his or her person, whether in the open or concealed, a weapon on ~~any public~~Tribal property ~~of the Nation~~, including any buildings, gaming or retail business, facility, construction site, fleet vehicle, or at any event sponsored by the Nation.

(a) *Exceptions.* An individual shall not be considered to have committed the civil infraction of carrying a prohibited weapon if he or she is actively engaged in:

(1) the performance of the duties of his or her employment which requires a weapon to be carried, including sworn law enforcement officers or vendors who transport ~~and/or~~ distribute cash;

(2) hunting, fishing, or trapping in accordance with the Nation's laws and rules governing hunting, fishing, and trapping; or

(3) cultural activities or ceremonies.

309.6-3. *Gang Related Activity.* A person commits the civil infraction of gang activity if he or she participates in any activity with a gang which:

(a) creates an atmosphere of fear and intimidation in the community;

(b) engages in acts injurious to the public health, safety, or morals of the Nation; ~~and/or~~

(c) engages in gang-focused illegal activity either individually or collectively.

309.6-4. *Throwing or Shooting Projectiles.* A person commits the civil infraction of throwing or shooting projectiles if he or she throws or shoots any object, stone, snowball, or other projectile by hand or by any other means, at any person, or at or into any building, street, sidewalk, alley, highway, park, playground or other public place.

309.6-5. *Obstructing Streets and Sidewalks.* A person commits the civil infraction of obstructing streets and sidewalks if he or she stands, sits, loafs, loiters, engages in any sport of exercise, or uses or maintains a motor vehicle on any public street, sidewalk, bridge, or public ground within the Reservation in such manner as to:

(a) prevent or obstruct the free passage of pedestrian or vehicular traffic;

(b) prevent or hinder free ingress to or egress from any place of business or amusement or any church, public building or meeting place; or

(c) prevent the Nation from utilizing a snowplow or other maintenance equipment or vehicles.

309.6-6. *Nuisance.* A person commits the civil infraction of nuisance whenever he or she engages in a thing, act, occupation, condition or use of property which shall continue for such length of time as to:

(a) substantially annoy, injure or endanger the comfort, health, repose or safety of the public;

(b) in any way render the public insecure in life or in the use of property; ~~and/or~~

(c) greatly offend the public morals or decency.

309.6-7. *Maintaining a Chronic Nuisance House.* A person commits the civil infraction of maintaining a chronic nuisance house if he or she has three (3) or more police contacts occurring during a twelve (12) month period at the premises that he or she owns or occupies through a lease or rental agreement.

309.6-8. *Interfering with Lawful Arrest or Resisting Arrest.* A person commits the civil infraction of interfering with lawful arrest or resisting arrest if by force, violence or other means, he or she:

(a) interferes, hinders or resists any Oneida Police Department officer in the performance of his or her official duties;

(b) flees from any Oneida Police Department officer who is attempting to lawfully arrest or detain him or her; or

(c) assists another to avoid a lawful arrest or harbors a fugitive.

309.7. Civil Infractions Against Government

309.7-1. *Disrupting a Meeting or Government Function.* A person commits the civil infraction of disrupting a meeting or government function if he or she:

- (a) conducts himself or herself in a manner intended to prevent or disrupt a lawful meeting held in any property owned or controlled by the Nation;
- (b) refuses or fails to leave any Tribal property ~~of the Nation~~ upon being requested to do so by any official charged with maintaining order in such Tribal property ~~of the Nation~~;
- (c) willfully denies any official, employee or member of the Nation the lawful right of such person to enter, to use the facilities, or to leave any Tribal property ~~of the Nation~~;
- (d) at or in any Tribal property ~~of the Nation~~ willingly impedes any official or employee in the lawful performance of his or her duties or activities through the use of restraint, coercion, intimidation or by force and violence or threat thereof; ~~and/or~~
- (e) at any meeting or session conducted by any official of the Nation, held in any Tribal property ~~of the Nation~~; through the use of restraint, coercion, intimidation or by force and violence or threat thereof; willfully impedes, disrupts, or hinders the normal proceedings of such a meeting or session by any act of intrusion into the chamber or other areas designated for the use of the body or official to conduct such a meeting.

309.7-2. *Breach of Confidentiality.* A person commits the civil infraction of breach of confidentiality if he or she;

- (a) makes or disseminates any unauthorized audio or video recording within the designated meeting area of a General Tribal Council meeting, or executive session portion of a meeting of the Oneida Business Committee or any other board, committee, or commission of the Nation; or
- (b) disseminates any confidential meeting materials of the General Tribal Council, Oneida Business Committee, or any other board, committee, or commission of the Nation, including but not limited to, meeting packets and meeting minutes, to any individual not authorized to access the materials.

309.7-3. *Threatening an Official.* A person commits the civil infraction of threatening an official if he or she threatens to inflict serious injury against an official, a member of the official's family, or the official's property as a result of any action taken by the official in the course of his or her duties.

309.8. Civil Infractions Against the Person

309.8-1. *Assault.* A person commits the civil infraction of assault if he or she:

- (a) causes bodily harm to another;
- (b) threatens another with imminent bodily harm;
- (c) causes physical contact with another when the person knows or should reasonably believe that the other person will regard the contact as offensive or provocative;
- (d) uses or exhibits a weapon during the commission of the assault; or
- (e) forcibly assaults or intimidates any authorized law enforcement official lawfully discharging an official duty.

309.8-2. *Harassment.* A person commits the civil infraction of harassment if, with intent to harass, alarm, abuse, or torment another he or she:

- (a) initiates communication in person, by telephone, in writing, or through any means of electronic communication and in the course of the communication makes a comment, request, suggestion or proposal that is obscene or false;

(b) threatens, in person, by telephone, in writing, or through any means of electronic communication in a manner reasonably likely to alarm the person receiving the threat, to inflict serious injury against the person, a member of his or her family, or his or her property;

(c) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyer to be false, that another person has suffered death or serious bodily harm;

(d) causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, alarm, abuse, torment, or offend another;

(e) knowingly permits a telephone or electronic device under his or her control to be used by a person to commit an infraction under this section; or

(f) intentionally subjects another to sexual harassment.

309.8-3. *Abuse of Individuals at Risk.* A person commits the civil infraction of abuse of individuals at risk if he or she subjects an adult at risk or elder at risk to any of the following:

(a) physical abuse;

(b) emotional abuse;

(c) sexual abuse;

(d) unreasonable confinement or restraint;

(e) financial exploitation; ~~and/or~~

(f) deprivation of a basic need for food, shelter, clothing, or personal or health care, including deprivation resulting from the failure to provide or arrange for a basic need by a person who has assumed responsibility for meeting the need voluntarily or by contract, agreement, or court order.

309.8-4. *Truancy.* A person commits the civil infraction of truancy if he or she fails without good cause to ensure that a child he or she is responsible for the care of attends school in accordance with the rules of the school district in which the child is enrolled.

309.9. Civil Infractions Involving Alcohol, Tobacco, and Drugs

309.9-1. *Public Intoxication.* A person commits the civil infraction of public intoxication if he or she appears intoxicated by alcohol beverages ~~and/or~~ prohibited drugs on ~~public Tribal~~ property ~~of the Nation~~ to the degree that the person may endanger himself or herself, or another person.

309.9-2. *Unauthorized Alcohol Beverage.* A person commits the civil infraction of unauthorized alcohol beverage if he or she consumes or possesses any open or unsealed container containing an alcohol beverage on any public way, in any parking lot held for public use, or on or within the premises of a public place or on or in any motor vehicle on a public way or in parking lot held out for public use, unless such person is on the premises of an establishment holding a valid license for the on premises consumption of alcoholic beverages. No person may possess or consume an alcohol beverage on school premises or while participating in a school-sponsored activity.

309.9-3. *Underage Possession of Alcohol.* A person commits the civil infraction of underage possession of alcohol if he or she purchases, attempts to purchase, possesses, or consumes an alcohol beverage prior to reaching the age of twenty-one (21) years unless accompanied by his or her parent, guardian, or spouse who has attained the legal drinking age.

309.9-4. *Furnishing Alcohol Beverages to Minors.* A person commits the civil infraction of furnishing alcohol beverages to minors if he or she procures for, sells, dispenses or gives away any alcohol beverages to any person under the age of twenty-one (21) years who is not accompanied by his or her parent, guardian, or spouse who has attained the legal drinking age.

309.9-5. *Underage Possession of Tobacco*. A person commits the civil infraction of underage possession of tobacco if he or she purchases, attempts to purchase, possesses, or consumes a cigarette, electronic cigarette, or other tobacco product prior to reaching the age of twenty-one (21) years.

309.9-6. *Furnishing Tobacco to Minors*. A person commits the civil infraction of furnishing tobacco to minors if he or she procures for, sells, dispenses or gives away a cigarette, electronic cigarette, or other tobacco product to any person under the age of twenty-one (21) years.

309.9-7. *Misrepresentation of Identification Card*. A person commits the civil infraction of misrepresentation of identification card if he or she:

(a) intentionally carries an official identification card not legally issued to him or her, an official identification card obtained under false pretenses or an official identification card which has been altered or duplicated to convey false information;

(b) makes, alters or duplicates an official identification card purporting to show that he or she has attained the legal age to purchase and consume alcohol beverages or cigarettes, electronic cigarettes, or other tobacco products;

(c) presents false information to an issuing officer in applying for an official identification card; ~~and/or~~

(d) intentionally carries an official identification card or other documentation showing that the person has attained the legal age to purchase and consume alcohol beverages or cigarettes, electronic cigarettes, or other tobacco products, with knowledge that the official identification card or documentation is false.

309.9-8. *Possession of Prohibited Drugs*. A person commits the civil infraction of possession of prohibited drugs if he or she possesses or consumes a prohibited drug or is in possession of any drug paraphernalia.

309.9-9. *Manufacturing Prohibited Drugs*. A person commits the civil infraction of manufacturing prohibited drugs if he or she manufactures, sells, or distributes any prohibited drug or drug paraphernalia.

309.9-10. *Maintaining a Drug House*. A person commits the civil infraction of maintaining a drug house if he or she owns or occupies any premise that is used to facilitate the use, delivery, distribution or manufacture of a prohibited drug.

309.9-11. *Determination of Prohibited Drugs*. An Oneida Police Department officer shall make the determination as to whether a substance is a prohibited drug using standard law enforcement field testing practices.

309.10. Civil Infractions Affecting Health and Safety

309.10-1. *Littering*. A person commits the civil infraction of littering if he or she deposits, throws, dumps, discards, abandons, leaves any litter on any private property or Tribal property ~~of the Nation~~.

309.10-2. *Unightly Areas*. A person commits the civil infraction of unsightly areas if he or she allows any scrap, refuse, junk, salvage, rubbish or property within the exterior boundaries of the Reservation that creates unsightly areas ~~and/or~~ contributes to health and safety hazards.

309.10-3. *Depositing Human Waste*. A person commits the civil infraction of depositing human waste if he or she urinates or defecates upon any public or private property other than into a toilet or other device designed and intended to be used to ultimately deposit such human waste products into a septic or sanitary sewer system.

309.10-4. *Exposure of a Communicable or Infectious Disease*. A person commits the civil infraction of exposure of a communicable or infectious disease if he or she is knowingly infected

with a communicable or infectious disease and willfully exposes himself or herself to another person, which puts that person in danger of contracting the communicable or infectious disease.

309.11. Enforcement and Penalties

309.11-1. *Issuance of a Citation.* An individual who violates a provision of this law may be subject to the issuance of a citation by an Oneida Police Department officer.

(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) *Notice to the Comprehensive Housing Division.* An Oneida Police Department officer shall provide notice to the Oneida Law Office attorney assigned to the Comprehensive Housing Division of any citation issued to an individual located at a property rented or leased through the Comprehensive Housing Division. Any information or reports shared by the Oneida Police Department officer with the Oneida Law Office attorney shall remain confidential as agreed upon between the Oneida Law Office and the Oneida Police Department Chief of Police.

(1) Notwithstanding constraints imposed by any rules promulgated under any laws of the Nation governing leases, eviction, ~~and~~/or termination, the Oneida Law Office attorney is vested with the discretion to resolve any housing related enforcement occurring in accordance with this law to the mutual benefit of all involved parties.

309.11-2. *Penalties.* Upon a finding by the Trial Court that a violation of this law has occurred, the individual 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 adopt through resolution a citation 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 negotiated by the Oneida Law Office and approved by the Trial Court.

(3) If an individual does not pay his or her fine the Trial 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 Trial 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 Trial Court. The Trial 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 Trial 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 Trial 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 Trial Court determines is relevant.
- (c) *Counseling ~~and~~/or other Programs.* An individual may be ordered to participate in counseling ~~and~~/or any other program relevant and available to the Nation.
- (d) *Restitution.* An individual may be ordered to pay restitution, which may include the repayment of any improperly received benefit, or any other payment which is intended to make another whole after suffering losses as a result of the actions of the individual.
- (1) The Trial Court shall determine an appropriate amount of restitution to be paid for the theft or damage of any venerated object, which may be higher than the monetary value of the venerated object due to its venerated status.
- (e) Any other penalty as deemed appropriate by the Trial Court.

End.

Adopted – BC-__-__-__-__

Title 3. Health & Public Safety - Chapter 309 PUBLIC PEACE

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309.1. Purpose and Policy

309.1-1. *Purpose.* The purpose of this law is to set forth community standards and expectations which preserve the peace, harmony, safety, health, and general welfare of individuals who live within the boundaries of the Reservation.

309.1-2. *Policy.* It is the policy of the Nation to promote peace and order within the boundaries of the Reservation while also providing an orderly process for addressing civil infractions that occur.

309.2. Adoption, Amendment, Repeal

309.2-1. This law was adopted by the Oneida Business Committee by resolution BC-__-__-__.

309.2-2. This law may be amended or repealed by the Oneida Business Committee or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

309.2-3. 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.

309.2-4. 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.

309.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

309.3. Definitions

309.3-1. 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) “Adult at risk” means any adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.

(b) “Alcohol beverage” means a fermented malt beverage and any intoxicating liquor.

(c) “Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.

(d) “Child” means a person who has not attained the age of eighteen (18) years.

(e) “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.

(f) “Drug paraphernalia” means any equipment, product, object or container used or intended for use to cultivate, plant, maintain, manufacture, package or store a prohibited

drug or inject, ingest, inhale or otherwise introduce an prohibited drug into the human body, regardless of the material composition of the instrument used for such purposes.

(g) “Elder at risk” means any person age fifty-five (55) or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.

(h) “Electronic cigarette” means 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.

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

(j) “Gang” means an association of three (3) or more individuals whose members collectively identify themselves by adopting a group identity which they use to create an atmosphere of fear or intimidation frequently by employing one (1) or more of the following: a common name, slogan, identifying sign, symbol, tattoo, or other physical marking, style or color of clothing, hairstyle, hand sign or graffiti.

(k) “Intoxication” means not having the normal use of mental or physical faculties by reason of the introduction of an alcohol beverage or a prohibited drug, or any other substance into the body.

(l) “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, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

(m) “Liter” means all rubbish, waste materials refuse, garbage, trash debris, or other foreign substances, solid, liquid, or every form, size, and kind.

(n) “Merchant” means a person who deals in goods of the kind or otherwise by his or her occupation holds himself or herself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his or her employment of an agent or broker or other intermediary who by his or her occupation holds himself or herself out as having such knowledge or skill.

(o) “Nation” means the Oneida Nation.

(p) “Official” means any person who is elected or appointed to serve a position for the Nation, including, but not limited to, a position on a board, committee, commission, or office of the Nation, including the Oneida Business Committee and Judiciary.

(q) “Pecuniary loss” means a loss of money, or of something by which money or of value may be acquired.

(r) “Prohibited drug” 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. Prohibited drugs also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

(s) “Recklessly” mean a person acts recklessly, or is reckless, with respect to circumstance surrounding his or her conduct, or the result of his or her conduct when he or she is aware of, but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the person’s standpoint.

(t) "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.

(u) "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

(v) "Theft detection device" means any tag or other device that is used to prevent or detect theft and that is attached to merchandise held for resale by a merchant or to property of a merchant.

(w) "Theft detection device remover" means any tool or device used, designed for use or primarily intended for use in removing a theft detection device from merchandise held for resale by a merchant or property of a merchant.

(x) "Theft detection shielding device" means any laminated or coated bag or device designed to shield merchandise held for resale by a merchant or property of a merchant from being detected by an electronic or magnetic theft alarm sensor.

(y) "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.

(z) "Trial Court" means the Trial Court of the Oneida Nation Judiciary.

(aa) "Tribal property" means all land owned in fee by the Nation or held in trust by the United States for the benefit of the Nation, excluding leased parcels and parcels under a right of way.

(bb) "Venerated object" means any object of worship, devotion, reverence, tradition, or adoration regarded with great respect.

(cc) "Weapon" means guns, switchblade knives, knives with blades longer than three (3) inches that are not being used for food preparation, electric weapons, billy clubs, and any other similar instrument or device.

309.4. Jurisdiction and Authority

309.4-1. *Jurisdiction of the Court.* The Trial Court shall have jurisdiction over any action brought under this law.

309.4-2. *Standard of Proof.* All matters to be decided by the Trial Court shall be proven by clear and convincing evidence.

309.4-3. *Authority of the Oneida Police Department.* The Oneida Police Department shall have the authority to:

(a) investigate complaints involving civil infractions under this law; and

(b) issue citations for violations of this law.

309.4-4. *General Prohibition of Civil Infractions.* No person shall commit a civil infraction under this law.

309.5. Civil Infractions Against Property

309.5-1. *Damage to Property.* A person commits the civil infraction of damage to property if he or she, without the consent of the owner:

- (a) damages or destroys the property of the owner;
- (b) tampers with property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person;
- (c) makes markings, including inscriptions, slogans, drawings, or paintings on the property of the owner; or
- (d) alters, defaces, or damages in any way property owned by the Nation.

309.5-2. *Reckless Damage or Destruction.* A person commits the civil infraction of reckless damage or destruction if without the consent of the owner he or she recklessly damages or destroys the property of the owner.

309.5-3. *Trespass.* A person commits the civil infraction of trespass if he or she:

- (a) enters or remains on private property or Tribal property without consent and he or she:
 - (1) had notice that the entry was forbidden; or
 - (2) received notice or order to depart but failed to do so.
- (b) *Notice.* Notice or an order to depart may be given by:
 - (1) written or verbal communication given to the intruder by an Oneida Police Department officer, the owner of the property, or a person authorized to act on behalf of the owner;
 - (2) written notice posted on or about the property in a manner reasonably likely to come to the attention of potential intruders; or
 - (3) fences, barricades, or other devices manifestly designed to enclose the property and to exclude potential intruders.

309.5-4. *Theft.* A person commits the civil infraction of theft if he or she:

- (a) obtains, exercises control over, or conceals anything of value of another without the consent of the owner; or
- (b) having lawfully obtained possession for temporary use of the property, deliberately and without consent, fails to return or reveal the whereabouts of said property to the owner, his or her representative or the person from which he or she has received it with the intent to permanently deprive the owner of its use and benefit.

309.5-5. *Retail Theft.* A person commits the civil infraction of retail theft if he or she without the merchant's consent and with intent to deprive the merchant permanently of possession or the full purchase price of the merchandise or property:

- (a) intentionally alters indicia of price or value of merchandise held for resale by a merchant or property of a merchant;
- (b) intentionally takes and carries away merchandise held for resale by a merchant or property of a merchant;
- (c) intentionally transfers merchandise held for resale by a merchant or property of a merchant;
- (d) intentionally conceals merchandise held for resale by a merchant or property of a merchant;
- (e) intentionally retains possession of merchandise held for resale by a merchant or property of a merchant;
- (f) while anywhere in the merchant's premises, intentionally removes a theft detection device from merchandise held for resale by a merchant or property of a merchant;
- (g) uses, or possesses with intent to use, a theft detection shielding device to shield merchandise held for resale by a merchant or property of merchant from being detected by an electronic or magnetic theft alarm sensor; or

(h) uses, or possesses with intent to use, a theft detection device remover to remove a theft detection device from merchandise held for resale by a merchant or property of a merchant.

309.5-6. *Loitering*. A person commits the civil infraction of loitering if he or she loiters or prowls in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity.

(a) Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the person:

- (1) takes flight upon appearance of an Oneida Police Department Officer;
- (2) refuses to identify himself or herself or manifestly endeavors to conceal himself or herself or any object; or
- (3) refuses to leave the premises after being requested to move by an Oneida Police Department officer or by any person in authority at such place.

309.5-7. *Fraud*. A person commits the civil infraction of fraud if, to obtain property, money, gain, advantage, interest, asset, or services for himself or herself or another he or she:

- (a) makes a materially false or misleading statement which he or she knows to be untrue or makes a remark with reckless disregard to the accuracy of the statement;
- (b) withholds information by misrepresentation or deceit; or
- (c) with intent to defraud or harm another, he or she destroys, removes, conceals, alters, substitutes or otherwise impairs the verity, legibility, or availability of a writing.

309.5-8. *Negligent Handling of Burning Material*. A person commits the civil infraction of negligent handling of burning material if he or she handles burning material in a highly negligent manner in which the person should realize that a substantial and unreasonable risk of serious damage to another person or another's property is created.

309.6. Civil Infractions Against the Peace

309.6-1. *Disorderly Conduct*. A person commits the civil infraction of disorderly conduct if he or she engages in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance. A civil infraction of disorderly conduct may include, but is not limited to, the following behaviors:

- (a) fights with another person within the boundaries of the Reservation;
- (b) discharges a firearm or air gun that is prohibited;
- (c) makes or causes to be made any loud, disturbing or unnecessary sounds or noises which may annoy or disturb a person of ordinary sensibilities;
 - (1) Between the hours of 10:00 p.m. and 6:00 a.m. any excessive noise shall be prohibited.
- (d) abuses or threatens a person on Tribal property in an obviously offensive manner;
- (e) lies or sleeps on any street, alley or sidewalk, or in any other Tribal property, or upon private property that he or she has no right to occupy; or
- (f) uses abusive, indecent, profane, or vulgar language in Tribal property, and the language by its very utterance tends to incite an immediate breach of the peace.

309.6-2. *Carrying a Prohibited Weapon*. A person commits the civil infraction of carrying a prohibited weapon if he or she bears or carries on or about his or her person, whether in the open or concealed, a weapon on Tribal property, including any buildings, gaming or retail business, facility, construction site, fleet vehicle, or at any event sponsored by the Nation.

(a) *Exceptions*. An individual shall not be considered to have committed the civil infraction of carrying a prohibited weapon if he or she is actively engaged in:

(1) the performance of the duties of his or her employment which requires a weapon to be carried, including sworn law enforcement officers or vendors who transport or distribute cash;

(2) hunting, fishing, or trapping in accordance with the Nation's laws and rules governing hunting, fishing, and trapping; or

(3) cultural activities or ceremonies.

309.6-3. *Gang Related Activity*. A person commits the civil infraction of gang activity if he or she participates in any activity with a gang which:

(a) creates an atmosphere of fear and intimidation in the community;

(b) engages in acts injurious to the public health, safety, or morals of the Nation; or

(c) engages in gang-focused illegal activity either individually or collectively.

309.6-4. *Throwing or Shooting Projectiles*. A person commits the civil infraction of throwing or shooting projectiles if he or she throws or shoots any object, stone, snowball, or other projectile by hand or by any other means, at any person, or at or into any building, street, sidewalk, alley, highway, park, playground or other public place.

309.6-5. *Obstructing Streets and Sidewalks*. A person commits the civil infraction of obstructing streets and sidewalks if he or she stands, sits, loafs, loiters, engages in any sport of exercise, or uses or maintains a motor vehicle on any public street, sidewalk, bridge, or public ground within the Reservation in such manner as to:

(a) prevent or obstruct the free passage of pedestrian or vehicular traffic;

(b) prevent or hinder free ingress to or egress from any place of business or amusement or any church, public building or meeting place; or

(c) prevent the Nation from utilizing a snowplow or other maintenance equipment or vehicles.

309.6-6. *Nuisance*. A person commits the civil infraction of nuisance whenever he or she engages in a thing, act, occupation, condition or use of property which shall continue for such length of time as to:

(a) substantially annoy, injure or endanger the comfort, health, repose or safety of the public;

(b) in any way render the public insecure in life or in the use of property; or

(c) greatly offend the public morals or decency.

309.6-7. *Maintaining a Chronic Nuisance House*. A person commits the civil infraction of maintaining a chronic nuisance house if he or she has three (3) or more police contacts occurring during a twelve (12) month period at the premises that he or she owns or occupies through a lease or rental agreement.

309.6-8. *Interfering with Lawful Arrest or Resisting Arrest*. A person commits the civil infraction of interfering with lawful arrest or resisting arrest if by force, violence or other means, he or she:

(a) interferes, hinders or resists any Oneida Police Department officer in the performance of his or her official duties;

(b) flees from any Oneida Police Department officer who is attempting to lawfully arrest or detain him or her; or

(c) assists another to avoid a lawful arrest or harbors a fugitive.

309.7. Civil Infractions Against Government

309.7-1. *Disrupting a Meeting or Government Function*. A person commits the civil infraction of disrupting a meeting or government function if he or she:

- (a) conducts himself or herself in a manner intended to prevent or disrupt a lawful meeting held in any property owned or controlled by the Nation;
- (b) refuses or fails to leave any Tribal property upon being requested to do so by any official charged with maintaining order in such Tribal property;
- (c) willfully denies any official, employee or member of the Nation the lawful right of such person to enter, to use the facilities, or to leave any Tribal property;
- (d) at or in any Tribal property willingly impedes any official or employee in the lawful performance of his or her duties or activities through the use of restraint, coercion, intimidation or by force and violence or threat thereof; or
- (e) at any meeting or session conducted by any official of the Nation, held in any Tribal property; through the use of restraint, coercion, intimidation or by force and violence or threat thereof; willfully impedes, disrupts, or hinders the normal proceedings of such a meeting or session by any act of intrusion into the chamber or other areas designated for the use of the body or official to conduct such a meeting.

309.7-2. *Breach of Confidentiality.* A person commits the civil infraction of breach of confidentiality if he or she;

- (a) makes or disseminates any unauthorized audio or video recording within the designated meeting area of a General Tribal Council meeting, or executive session portion of a meeting of the Oneida Business Committee or any other board, committee, or commission of the Nation; or
- (b) disseminates any confidential meeting materials of the General Tribal Council, Oneida Business Committee, or any other board, committee, or commission of the Nation, including but not limited to, meeting packets and meeting minutes, to any individual not authorized to access the materials.

309.7-3. *Threatening an Official.* A person commits the civil infraction of threatening an official if he or she threatens to inflict serious injury against an official, a member of the official's family, or the official's property as a result of any action taken by the official in the course of his or her duties.

309.8. Civil Infractions Against the Person

309.8-1. *Assault.* A person commits the civil infraction of assault if he or she:

- (a) causes bodily harm to another;
- (b) threatens another with imminent bodily harm;
- (c) causes physical contact with another when the person knows or should reasonably believe that the other person will regard the contact as offensive or provocative;
- (d) uses or exhibits a weapon during the commission of the assault; or
- (e) forcibly assaults or intimidates any authorized law enforcement official lawfully discharging an official duty.

309.8-2. *Harassment.* A person commits the civil infraction of harassment if, with intent to harass, alarm, abuse, or torment another he or she:

- (a) initiates communication in person, by telephone, in writing, or through any means of electronic communication and in the course of the communication makes a comment, request, suggestion or proposal that is obscene or false;
- (b) threatens, in person, by telephone, in writing, or through any means of electronic communication in a manner reasonably likely to alarm the person receiving the threat, to inflict serious injury against the person, a member of his or her family, or his or her property;

(c) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyer to be false, that another person has suffered death or serious bodily harm;

(d) causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, alarm, abuse, torment, or offend another;

(e) knowingly permits a telephone or electronic device under his or her control to be used by a person to commit an infraction under this section; or

(f) intentionally subjects another to sexual harassment.

309.8-3. *Abuse of Individuals at Risk.* A person commits the civil infraction of abuse of individuals at risk if he or she subjects an adult at risk or elder at risk to any of the following:

(a) physical abuse;

(b) emotional abuse;

(c) sexual abuse;

(d) unreasonable confinement or restraint;

(e) financial exploitation; or

(f) deprivation of a basic need for food, shelter, clothing, or personal or health care, including deprivation resulting from the failure to provide or arrange for a basic need by a person who has assumed responsibility for meeting the need voluntarily or by contract, agreement, or court order.

309.8-4. *Truancy.* A person commits the civil infraction of truancy if he or she fails without good cause to ensure that a child he or she is responsible for the care of attends school in accordance with the rules of the school district in which the child is enrolled.

309.9. Civil Infractions Involving Alcohol, Tobacco, and Drugs

309.9-1. *Public Intoxication.* A person commits the civil infraction of public intoxication if he or she appears intoxicated by alcohol beverages or prohibited drugs on Tribal property to the degree that the person may endanger himself or herself, or another person.

309.9-2. *Unauthorized Alcohol Beverage.* A person commits the civil infraction of unauthorized alcohol beverage if he or she consumes or possesses any open or unsealed container containing an alcohol beverage on any public way, in any parking lot held for public use, or on or within the premises of a public place or on or in any motor vehicle on a public way or in parking lot held out for public use, unless such person is on the premises of an establishment holding a valid license for the on premises consumption of alcoholic beverages. No person may possess or consume an alcohol beverage on school premises or while participating in a school-sponsored activity.

309.9-3. *Underage Possession of Alcohol.* A person commits the civil infraction of underage possession of alcohol if he or she purchases, attempts to purchase, possesses, or consumes an alcohol beverage prior to reaching the age of twenty-one (21) years unless accompanied by his or her parent, guardian, or spouse who has attained the legal drinking age.

309.9-4. *Furnishing Alcohol Beverages to Minors.* A person commits the civil infraction of furnishing alcohol beverages to minors if he or she procures for, sells, dispenses or gives away any alcohol beverages to any person under the age of twenty-one (21) years who is not accompanied by his or her parent, guardian, or spouse who has attained the legal drinking age.

309.9-5. *Underage Possession of Tobacco.* A person commits the civil infraction of underage possession of tobacco if he or she purchases, attempts to purchase, possesses, or consumes a cigarette, electronic cigarette, or other tobacco product prior to reaching the age of twenty-one (21) years.

309.9-6. *Furnishing Tobacco to Minors.* A person commits the civil infraction of furnishing tobacco to minors if he or she procures for, sells, dispenses or gives away a cigarette, electronic cigarette, or other tobacco product to any person under the age of twenty-one (21) years.

309.9-7. *Misrepresentation of Identification Card.* A person commits the civil infraction of misrepresentation of identification card if he or she:

(a) intentionally carries an official identification card not legally issued to him or her, an official identification card obtained under false pretenses or an official identification card which has been altered or duplicated to convey false information;

(b) makes, alters or duplicates an official identification card purporting to show that he or she has attained the legal age to purchase and consume alcohol beverages or cigarettes, electronic cigarettes, or other tobacco products;

(c) presents false information to an issuing officer in applying for an official identification card; or

(d) intentionally carries an official identification card or other documentation showing that the person has attained the legal age to purchase and consume alcohol beverages or cigarettes, electronic cigarettes, or other tobacco products, with knowledge that the official identification card or documentation is false.

309.9-8. *Possession of Prohibited Drugs.* A person commits the civil infraction of possession of prohibited drugs if he or she possesses or consumes a prohibited drug or is in possession of any drug paraphernalia.

309.9-9. *Manufacturing Prohibited Drugs.* A person commits the civil infraction of manufacturing prohibited drugs if he or she manufactures, sells, or distributes any prohibited drug or drug paraphernalia.

309.9-10. *Maintaining a Drug House.* A person commits the civil infraction of maintaining a drug house if he or she owns or occupies any premise that is used to facilitate the use, delivery, distribution or manufacture of a prohibited drug.

309.9-11. *Determination of Prohibited Drugs.* An Oneida Police Department officer shall make the determination as to whether a substance is a prohibited drug using standard law enforcement field testing practices.

309.10. Civil Infractions Affecting Health and Safety

309.10-1. *Littering.* A person commits the civil infraction of littering if he or she deposits, throws, dumps, discards, abandons, leaves any litter on any private property or Tribal property.

309.10-2. *Unightly Areas.* A person commits the civil infraction of unsightly areas if he or she allows any scrap, refuse, junk, salvage, rubbish or property within the exterior boundaries of the Reservation that creates unsightly areas or contributes to health and safety hazards.

309.10-3. *Depositing Human Waste.* A person commits the civil infraction of depositing human waste if he or she urinates or defecates upon any public or private property other than into a toilet or other device designed and intended to be used to ultimately deposit such human waste products into a septic or sanitary sewer system.

309.10-4. *Exposure of a Communicable or Infectious Disease.* A person commits the civil infraction of exposure of a communicable or infectious disease if he or she is knowingly infected with a communicable or infectious disease and willfully exposes himself or herself to another person, which puts that person in danger of contracting the communicable or infectious disease.

309.11. Enforcement and Penalties

309.11-1. *Issuance of a Citation.* An individual who violates a provision of this law may be subject to the issuance of a citation by an Oneida Police Department officer.

(a) A citation for a violation of this law 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) *Notice to the Comprehensive Housing Division.* An Oneida Police Department officer shall provide notice to the Oneida Law Office attorney assigned to the Comprehensive Housing Division of any citation issued to an individual located at a property rented or leased through the Comprehensive Housing Division. Any information or reports shared by the Oneida Police Department officer with the Oneida Law Office attorney shall remain confidential as agreed upon between the Oneida Law Office and the Oneida Police Department Chief of Police.

(1) Notwithstanding constraints imposed by any rules promulgated under any laws of the Nation governing leases, eviction, or termination, the Oneida Law Office attorney is vested with the discretion to resolve any housing related enforcement occurring in accordance with this law to the mutual benefit of all involved parties.

309.11-2. *Penalties.* Upon a finding by the Trial Court that a violation of this law has occurred, the individual 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 adopt through resolution a citation 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 negotiated by the Oneida Law Office and approved by the Trial Court.

(3) If an individual does not pay his or her fine the Trial 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 Trial 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 Trial Court. The Trial Court shall give preference to culturally relevant community service assignments or community service assignments that focus on the betterment of the individual's community.

(2) The Trial 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 Trial 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 Trial Court determines is relevant.

(c) *Counseling or other Programs.* An individual may be ordered to participate in counseling or any other program relevant and available to the Nation.

(d) *Restitution.* An individual may be ordered to pay restitution, which may include the repayment of any improperly received benefit, or any other payment which is intended to make another whole after suffering losses as a result of the actions of the individual.

(1) The Trial Court shall determine an appropriate amount of restitution to be paid for the theft or damage of any venerated object, which may be higher than the monetary value of the venerated object due to its venerated status.

(e) Any other penalty as deemed appropriate by the Trial Court.

End.

Adopted – BC-__-__-__-__



PUBLIC PEACE LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Law	<ul style="list-style-type: none"> ▪ Delegate jurisdiction to the Trial Court for any action brought under this law [3 O.C. 309.4-1]; ▪ Delegate authority to the Oneida Police Department to investigate complaints involving civil infraction under this law and issue citations for violations of this law [3 O.C. 309.4-3]; ▪ Prohibit a person from committing a civil infraction under this law [3 O.C. 309.4-4]; ▪ Provide the various civil infractions including: <ul style="list-style-type: none"> ▪ Civil infractions against property [3 O.C. 309.5]; ▪ Civil infractions against the peace [3 O.C. 309.6]; ▪ Civil infractions against government [3 O.C. 309.7]; ▪ Civil infractions against the person [3 O.C. 309.8]; ▪ Civil infractions involving alcohol, tobacco, and drugs [3 O.C. 309.9]; and ▪ Civil Infractions affecting health and safety [3 O.C. 309.10]; ▪ Provide that 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. 309.11-1(b)]; ▪ Require that an Oneida Police Department officer provide notice to the Oneida Law Office attorney assigned to the Comprehensive Housing Division of any citation issued to an individual located at a property rented or leased through the Comprehensive Housing Division, and that the Oneida Law Office attorney is then vested with the discretion to resolve any housing related enforcement occurring in accordance with this law to the mutual benefit of all involved parties, notwithstanding constraints imposed by any rules promulgated under any laws of the Nation governing leasing, eviction, and/or termination [3 O.C. 309.11-1(c)]; and ▪ Provide various penalties to be utilized by the Trial Court upon a finding that a violation of this law has occurred, including: <ul style="list-style-type: none"> ▪ Fines [3 O.C. 309.11-2(a)]; ▪ Community service [3 O.C. 309.11-2(b)]; ▪ Counseling and/or other programs [3 O.C. 309.11-2(c)]; ▪ Restitution [3 O.C. 309.11-2(d)]; and/or ▪ Any other penalty as deemed appropriate by the Trial Court. [3 O.C. 309.11-2(e)].
Purpose	To set forth community standards and expectations which preserve the peace, harmony, safety, health, and general welfare of individuals who live within the boundaries of the Reservation. [1 O.C. 309.1-1]
Affected Entities	Oneida Nation Judiciary, Oneida Police Department, Oneida Law Office, Comprehensive Housing Division.
Related Legislation	Citations law, Per Capita law, Garnishment law, Eviction and Termination law, Leasing law

Public Meeting	A public comment period was held open until June 9, 2021. A public meeting was not held in accordance with the Nation's COVID-19 Core Decision Making Team's declaration titled, " <i>Suspension of Public Meetings under the Legislative Procedures Act.</i> "
Fiscal Impact	A fiscal impact statement will be requested from the Finance Department on August 4, 2021.

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Background.** The request for the Legislative Operating Committee to develop and adopt a Public Peace law ("the Law") was originally submitted on December 7, 2016. On October 26, 2016, the Oneida Police Commission, in its quarterly report to the Oneida Business Committee, made a recommendation to develop a Public Peace law in an effort to exercise the Nation's sovereignty and jurisdiction. This recommendation was made based on input received during a community meeting held in Site 2 by the Oneida Police Department and Oneida Housing Authority due to a homicide investigation. The Oneida Business Committee then forwarded this request to the LOC who originally placed this item on the Active Files List in December 2016. The purpose of developing a Public Peace law would be to address community issues such as trespassing, damage to property, noise nuisances, and loitering.
- B.** On October 7, 2020, the Legislative Operating Committee added the Public Peace law to its Active Files List with Jennifer Webster as the sponsor. This item had been carried over from the last two (2) Legislative Operating Committee terms. Since that time, a work group of representatives from the Oneida Police Department, Oneida Law Office, Tribal Action Plan (TAP), Comprehensive Housing Division, and the Oneida Business Committee has met to work on the development of the Law.
- C.** On November 13, 2020, the LOC received a request from Vice Chairman Brandon Stevens to develop a Nuisance law on an emergency basis. Vice Chairman Stevens provided that he would like a Nuisance law developed on an emergency basis to preserve the welfare of the community from homes that are suspected drug houses. He also provided that currently the Comprehensive Housing Division and the Oneida Police Department have little authority over some homes on the Reservation, especially conveyed homes, and he would like to see that changed. The Legislative Operating Committee denied the request to develop a Nuisance law because the Legislative Operating Committee already had the development of a Public Peace law on its Active Files List, and the Public Peace law would address the social issues the request for a Nuisance law identified.

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 Business Committee;
 - Oneida Law Office;
 - Oneida Police Department;
 - Strategic Planner;
 - Tribal Action Plan (TAP); and
 - Comprehensive Housing Division.
- B.** The following laws of the Nation were reviewed in the drafting of this analysis:
- Citations law;
 - Per Capita law;
 - Garnishment law;

- Oneida Judiciary Rules of Civil Procedure;
- Real Property law;
- Leasing law;
- Eviction and Termination law.

C. The following laws and ordinances from other States, municipalities, and Tribes were reviewed in the drafting of this law and analysis:

- Ysleta del Sur Pueblo Peace Code;
- Stockbridge-Munsee Public Peace and Good Order Ordinance;
- Saginaw Chippewa Public Nuisance Order;
- Rincon Band of Luiseno Mission Indians Peace and Security Ordinance;
- Ho-Chunk Nation Public Nuisance Act;
- Village of Hobart Peace and Good Order Law;
- Green Bay Public Peace and Good Order Ordinance;
- Green Bay Public Nuisance Ordinance;
- Brown County Offenses Against Public Peace and Safety; and
- Relevant State of Wisconsin statutes.

D. ***COVID-19 Pandemic's Effect on the Legislative Process.*** The world is currently facing a pandemic of 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 this proposed Law will not be held due to the COVID-19 pandemic, but a public comment period for the submission of written comments will be held open until June 9, 2021.

- ***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 the COVID-19 pandemic 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 September 26, 2021, 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, BC-07-08-20-A, BC-08-06-20-A, BC-09-09-20-A, BC-10-08-20-A, BC-11-10-20-A, BC-12-09-20-D, BC-01-07-21-A, BC-02-10-21-A, BC-03-10-21-D, BC-05-12-21-A, BC-06-23-21-B, and BC-07-28-21-N.
- ***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 Law, a public comment period was still held open until June 9, 2021, 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 4. PROCESS

A. This Law has followed the process set forth in the Legislative Procedures Act (LPA).

- On October 7, 2020, the Legislative Operating Committee added the Public Peace law to its Active Files List.
- On April 21, 2021, the Legislative Operating Committee approved the draft and legislative analysis for this Law.
- On May 5, 2021, the Legislative Operating Committee scheduled a public comment period to be held for this proposed Law.
- The public comment period for this proposed Law was held open until June 9, 2021.
- On July 7, 2021, the Legislative Operating Committee accepted the public comments that were received for this legislative item and deferred this item to a work meeting for consideration.
- On July 7, 2021 and July 13, 2021, the Legislative Operating Committee reviewed and considered the public comments that were received.
- On August 4, 2021, the Legislative Operating Committee will consider approving the final draft of the proposed Law and directing the Finance Department to complete a fiscal impact statement.

B. At the time this legislative analysis was developed the following work meetings had been held regarding the development of this Law:

- December 16, 2020: LOC work meeting held with representatives from the Oneida Police Department, TAP, Comprehensive Housing Division, and Oneida Business Committee.
- January 15, 2021: LOC work meeting held with representatives from the Oneida Police Department, TAP, Comprehensive Housing Division, Oneida Law Office, Oneida Business Committee, and Strategic Planner.
- January 28, 2021: LOC work meeting.
- February 11, 2021: LOC work meeting.
- March 17, 2021: LOC work meeting held with representatives from the Oneida Police Department, TAP, Comprehensive Housing Division, Oneida Law Office, and Oneida Business Committee.
- April 7, 2021: LOC work meeting held with representatives from the Oneida Police Department, TAP, Comprehensive Housing Division, Oneida Law Office, and Oneida Business Committee.
- July 7, 2021: LOC work meeting.
- July 7, 2021: LOC work meeting held with representatives from the Oneida Police Department.
- July 13, 2021: LOC work meeting.
- July 21, 2021: LOC work meeting held with representatives from the Oneida Police Department and Oneida Law Office.
- July 29, 2021: Work meeting with the Oneida Law Office.

SECTION 5. CONTENTS OF THE LEGISLATION

126 **A. *Intent of the Law.*** The purpose of this law is to set forth community standards and expectations which
127 preserve the peace, harmony, safety, health, and general welfare of individuals who live within the
128 boundaries of the Reservation. [3 O.C. 309.1-1]. It is the policy of the Nation to promote peace and
129 order within the boundaries of the Reservation while also providing an orderly process for addressing
130 civil infractions that occur. [3 O.C. 309.1-2]. The Legislative Operating Committee was motivated to
131 develop this Law after hearing concerns from fellow Oneida Business Committee councilmembers and
132 members of the community regarding issues and problems occurring in neighborhoods throughout the
133 Reservation.

134 **B. *Prohibition of Civil Infractions.*** This Law prohibits a person from committing a civil infraction. [3
135 O.C. 309.4-4]. The Law then goes on to provide details on what constitutes various civil infractions
136 and organizes each civil infraction into different categories. The following constitutes the organization
137 of the civil infractions:

138 ▪ *Civil Infractions Against Property* [3 O.C. 309.5].

- 139 ▪ Damage to Property;
- 140 ▪ Reckless Damage or Destruction;
- 141 ▪ Trespass;
- 142 ▪ Theft;
- 143 ▪ Retail Theft;
- 144 ▪ Loitering;
- 145 ▪ Fraud; and
- 146 ▪ Negligent Handling of Burning Material.

147 ▪ *Civil Infractions Against the Peace* [3 O.C. 309.6].

- 148 ▪ Disorderly Conduct;
- 149 ▪ Carrying a Prohibited Weapon;
- 150 ▪ Gang Related Activity;
- 151 ▪ Throwing or Shooting Projectiles;
- 152 ▪ Obstructing Streets and Sidewalks;
- 153 ▪ Nuisance;
- 154 ▪ Maintaining a Chronic Nuisance House; and
- 155 ▪ Interfering with Lawful Arrest or Resisting Arrest.

156 ▪ *Civil Infractions Against Government* [3 O.C. 309.7].

- 157 ▪ Disrupting a Meeting or Government Function;
- 158 ▪ Breach of Confidentiality; and
- 159 ▪ Threatening an Official.

160 ▪ *Civil Infractions Against the Person* [3 O.C. 309.8].

- 161 ▪ Assault;
- 162 ▪ Harassment;
- 163 ▪ Abuse of Individuals at Risk; and
- 164 ▪ Truancy.

165 ▪ *Civil Infractions Involving Alcohol, Tobacco, and Drugs* [3 O.C. 309.9].

- 166 ▪ Public Intoxication;
- 167 ▪ Unauthorized Alcohol Beverage;
- 168 ▪ Underage Possession of Alcohol;
- 169 ▪ Furnishing Alcohol Beverages to Minors;

- Underage Possession of Tobacco;
- Furnishing Tobacco to Minors;
- Misrepresentation of Identification Card;
- Possession of Prohibited Drugs;
- Manufacturing Prohibited Drugs;
- Maintaining a Drug House; and
- Determination of a Prohibited Drug.
- *Civil Infractions Affecting Health and Safety [3 O.C. 309.10].*
 - Littering;
 - Unsightly Areas;
 - Depositing Human Waste; and
 - Exposure of a Communicable or Infectious Disease.

C. *Enforcement.* The Oneida Police Department is delegated the authority to investigate complaints involving civil infractions under this Law, and to issue citations for violations of this Law. [3 O.C. 309.4-3(a)-(b), 309.11-1]. A citation issued for a violation of this Law is required to be processed in accordance with the process and procedure contained in the Nation's Citations law. [3 O.C. 309.11-1(b)]. Once an Oneida Police Department Officer issues a citation, the Trial Court then has jurisdiction over any action brought under this law. [3 O.C. 309.4-1]. 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. [3 O.C. 309.11-1(a)]. All matters decided by the Trial Court shall be proven by clear and convincing evidence. [3 O.C. 309.4-2]. The Citations law requires that this standard of proof be used. [8 O.C. 807.6-2(a)]. Clear and convincing evidence means that the person filing the complaint must provide evidence indicating that the allegation to be proved is highly probable or reasonably certain. This is a greater burden than "preponderance of the evidence" standard, which is the standard used in most civil trials, but a lesser burden than "beyond a reasonable doubt" standard, which is used for criminal trials. The Trial Court is then responsible for determining that a violation of this Law has occurred, and if so, imposing a penalty on the individual. [3 O.C. 309.11-2].

D. *Penalties.* Upon a finding by the Trial Court that a violation of this law has occurred, an individual may be subject to the following penalties:

- *Fines.* An individual may be ordered to pay a fine as a result of a violation of this law. The Oneida Business Committee is given the responsibility to adopt through resolution a citation schedule which sets forth specific fine amounts for violations of this law. [3 O.C. 309.11-2(a)]. The Law then goes on to provide details as to who fines should be paid to, and the deadline for paying a fine. [3 O.C. 309.11-2(a)(1)-(2)]. If an individual does not pay his or her fine within the required timeframe, the Trial 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 Trial Court. [3 O.C. 309.11-2(a)(3)].
- *Community Service.* An individual may be ordered to perform community service, which can be used in lieu of, or in addition to, a fine. [3 O.C. 309.11-2(b)]. The Law then goes on to provide how community service assignments will be approved, what information the community service order is required to contain, and how the community service assignment will be monitored. [3 O.C. 309.11-2(b)(1)-(3)].
- *Counseling and/or other programs.* An individual may be ordered to participate in counseling and/or any other program relevant and available to the Nation. [3 O.C. 309.11-2(c)].

- *Restitution.* An individual may be ordered to pay restitution, which may include the repayment of any improperly received benefit, or any other payment which is intended to make another whole after suffering losses as a result of the actions of the individual. [3 O.C. 309.11-2(d)]. The Trial Court is delegated the authority to determine an appropriate amount of restitution to be paid for the theft or damage of any venerated object, which may be higher than the monetary value of the venerated object due to its venerated status. [3 O.C. 309.11-2(d)(1)].
- *Any other penalty as deemed appropriate by the Trial Court.* The Trial Court is given discretion and flexibility to utilize any other penalty that may be deemed appropriate based on the facts and details of each specific case. [3 O.C. 309.11-2(e)].

E. Interaction with the Comprehensive Housing Division. An Oneida Police Department officer is required to provide notice of a citation to the Oneida Law Office attorney assigned to the Comprehensive Housing Division if the citation was issued to an individual located at a property rented or leased through the Comprehensive Housing Division. [3 O.C. 309.11-1(c)]. Any information or reports shared by the Oneida Police Department officer with the Oneida Law Office attorney shall remain confidential as agreed upon between the Oneida Law Office and the Oneida Police Department Chief of Police. *Id.* Notwithstanding constraints imposed by any rules promulgated under any laws of the Nation governing leases, eviction, and/or termination, the Oneida Law Office attorney is vested with the discretion to resolve any housing related enforcement occurring in accordance with this law to the mutual benefit of all involved parties. [3 O.C. 309.11-1(c)(1)]. The purpose of this provision is to promote communication between the Oneida Police Department and the Comprehensive Housing Division, and recognize that the Comprehensive Housing Division has its own enforcement mechanisms, that although separate from the process and procedures contained in this Law, may be triggered when an individual who they hold lease or rental agreement with violates this Law and receives a citation. Discretion is given to the Comprehensive Housing Division's attorney to resolve housing related enforcement occurring in accordance with this Law despite the confines of any rules promulgated under relevant housing related laws in an effort to provide more flexibility to the Comprehensive Housing Division to resolve an issue to the mutual benefit of all parties involved.

SECTION 6. EXISTING LEGISLATION

A. Related Legislation. The following laws of the Nation are related to this Law:

- *Citations law.* The Citations law provides 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. [8 O.C. 807.1-2]. 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].
 - 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. 302.10-2]. The Citations law is the Nation's law governing citations.
 - 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. [3 O.C. 309.11-1(b)].
- *Garnishment Law.* The Garnishment law allows the Nation to exercise its authority to provide an effective mechanism for creditors to access an employee's income for reduction of personal debt.

[2 O.C. 204.1-1]. Garnishment of an individual's income to collect debt owed to an entity of the Nation is allowed under the Garnishment law. [2 O.C. 204.6].

- If an official is ordered to pay a fine in accordance with this Law and does not pay according to the deadline, the Trial Court may seek to collect that fine through the Nation's garnishment process. [3 O.C. 309.11-2(a)(3)].
- *Per Capita Law.* The Per Capita law specifies the procedure to be followed in the event that per capita payments are distributed by the Nation and states the responsibilities of the various Oneida entities in the distribution or maintenance of any such per capita payments. [1 O.C. 123.1-1]. The Per Capita law allows per capita payments to be subject to attachment prior to distribution for debt owed to an Oneida entity. [1 O.C. 123.4-9, 123.4-9(a)(2)].
 - If an official is ordered to pay a fine in accordance with this Law and does not pay according to the deadline, the Trial Court may seek to collect that fine through the Nation's per capita attachment process. [3 O.C. 309.11-2(a)(3)].
- *Leasing Law.* The Leasing law sets out the Nation's authority to issue, review, approve and enforce leases. [6 O.C. 602.1-1]. The Leasing law delegates all powers necessary and proper to the Comprehensive Housing Division to enforce the lease terms, the Leasing law and any rules developed pursuant to the Leasing law. [6 O.C. 602.11-1]. If a lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, the Comprehensive Housing Division may take appropriate emergency action, which may include cancelling the lease and/or securing judicial relief. [6 O.C. 602.11-2].
 - If a person commits a civil infraction under this Law, his or her violations of this Law may be used as a basis of lease enforcement action by the Comprehensive Housing Division.
- *Eviction and Termination Law.* The Eviction and Termination law provides consistent procedures relating to the Nation's rental and leasing programs for terminating a contract and/or evicting an occupant which affords the applicant due process and protects all parties involved. [6 O.C. 610.1-1]. The Eviction and Termination law provides that an owner may terminate the contract prior to the contract term and evict the occupant if the occupant is alleged to have violated any applicable law or rule of the Nation, or is alleged to have committed one or more nuisance activities. [6 O.C. 610.5-1(b)-(c)].
 - If a person commits a civil infraction under this Law, his or her violations of this Law may be used as a basis of eviction or termination of a contract action by the Comprehensive Housing Division.

SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

A. *Effect on Existing Rights.* An individual who is issued a citation for a violation of this law has due process protections under the Citations law. The Citations law protects due process rights by:

- Requiring that all citations be properly noticed and served on the defendant, including a notice of the defendant's rights and privileges, hearing dates and information [8 O.C. 807.4-3, 807.4-4];
- Ensuring that defendants have the right to contest their citations in the Nation's Judiciary [8 O.C. 807.6-1];
- Establishing a formal process for stipulations that require defendants to acknowledge that they are waiving their rights to contest the citation in court and sign a statement that they enter into the agreement free of duress and coercion [8 O.C. 807.5]; and

- Providing an opportunity for a defendant to appeal the Trial Court or Family Court’s decision to the Nation’s Court of Appeals in accordance with the Rules of Appellate Procedure. [8 O.C. 807.6-3].

SECTION 8. ENFORCEMENT AND ACCOUNTABILITY

A. *Enforcement.* The Oneida Police Department is delegated enforcement authority under this Law.

- The Oneida Police Department has the authority to investigate complaints involving civil infractions under this Law, and to issue citations for violations of this Law. [3 O.C. 309.4-3(a)-(b), 309.11-1].

B. *Citation Schedule Resolution.* The Oneida Business Committee is delegated the authority to adopt through resolution a citation schedule which sets forth specific fine amounts for violations of this Law. [3 O.C. 30309.11-2(a)].

SECTION 9. OTHER CONSIDERATIONS

A. *Public Peace Law Citation Schedule.* This Law provides that the Oneida Business Committee shall hereby be delegated the authority to adopt through resolution a citation schedule which sets forth specific fine amounts for violations of this Law. [3 O.C. 309.11-2(a)]. A citation schedule will need to be developed and adopted.

- *Conclusion.* The Legislative Operating Committee has worked with the Oneida Law Office and Oneida Police Department to develop a citation schedule resolution that will be presented to the Oneida Business Committee for consideration at the time the adoption of this Law is considered.

B. *Fiscal Impact.* 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-10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures Act,*” provides further clarification on who the Legislative Operating Committee may direct complete a fiscal impact statement at various stages of the legislative process, as well as timeframes for completing the fiscal impact statement.

- *Conclusion.* The Legislative Operating Committee will consider directing that a fiscal impact statement be completed by the Finance Department for the proposed Law on August 4, 2021.



TO: Cristina Danforth, Treasurer
Lawrence E. Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistance Chief Financial Officer
FROM: David P. Jordan, Legislative Operating Committee Chairman
DATE: August 4, 2021
RE: Public Peace Law Fiscal Impact Statement

The Legislative Operating Committee (LOC) is currently developing a Public Peace 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-10-28-20-A titled, “*Further Interpretation of ‘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 upon final approval of draft legislation by the LOC, the LOC may direct the Finance Department to provide a neutral and unbiased fiscal impact statement to the LOC within ten (10) business days for inclusion in adoption materials.

On August 4, 2021, the Legislative Operating Committee approved the final draft of the proposed Public Peace law. Therefore, the LOC is directing the Finance Department to provide a fiscal impact statement on the proposed Public Peace law by August 18, 2021.

A copy of the proposed Public Peace 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 Public Peace law by August 18, 2021.



Legislative Operating Committee August 4, 2021 **Amendments to the Furlough Law**

Submission Date: 10/7/2020	Public Meetings: n/a
LOC Sponsor: Marie Summers	Emergency Enacted: n/a Expires: n/a

Summary: *This item was added to the Active Files List on October 7, 2020 per the request of the Legislative Operating Committee to develop amendments to the Nation's Furlough law to incorporate Indian preference into the selection/recall process and to provide clarity regarding certain other furlough procedures that were flagged during the COVID-19 pandemic.*

10/7/20 LOC: Motion by Jennifer Webster to add the Furlough Law Amendments to the Active Files List with Marie Summers as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

10/22/20: *Work Meeting.* Present: Marie Summers and Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss the basis for the Councilwoman's request to have amendments to the Furlough law added to the Active Files List. The next step is for the drafting attorney to schedule a meeting with the workgroup that was created during this meeting to discuss the Councilwoman's concerns, as well as any other concerns/suggestions that the workgroup may have.

11/13/20: *Work Meeting.* Present: Eric McLester, Barbara Kolitsch, Geraldine Danforth, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to have a general discussion on needed amendments/updates to the Furlough law. The drafting attorney went through the law line-by-line with the workgroup to flag where they believed changes were needed. The next step is for the drafting attorney to update the draft based on the discussion and schedule a follow-up work meeting with the workgroup for review and further discussion/revision.

1/26/21: *Work Meeting.* Present: Eric McLester, Barbara Kolitsch, Geraldine Danforth, Matt Denny, Wendy Alvarez, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to go through the updated draft of the Furlough law amendments to discuss any areas of concern or in need of further revision before bringing to the Legislative Operating Committee for review/consideration.

2/3/21: *Work Meeting.* Present: David Jordan, Marie Summers, Daniel Guzman-King, Jennifer Webster, Rhiannon Metoxen, Kristal Hill, Clorissa Santiago, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to update the LOC on discussions had thus far with the workgroup regarding possible amendments to the Furlough law. The drafting attorney went through the draft line-by-line with the LOC to highlight where the workgroup was proposing amendments and to have the LOC flag additional

changes it deems necessary. The next steps are for the drafting attorney to: (1) create a bullet-point of the initial policy decisions the LOC must make before detailed amendments can be developed in alignment therewith; and (2) schedule a follow-up meeting with the workgroup and LOC to afford the LOC an opportunity to hear from the workgroup before making said policy decisions.

2/17/21: *Work Meeting.* Present: David Jordan, Jennifer Webster, Kirby Metoxen, Marie Summers, Rhiannon Metoxen, Kristal Hill, Kristen Hooker, Matthew Denny, Lucy Neville, Wendy Alvarez, Geraldine Danforth, Eric McLester (left early). This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to give LOC an opportunity to hear from the workgroup regarding amendments to the Furlough law. The goal of the meeting was to provide the LOC enough information to make certain policy decisions that are necessary to develop amendments to the law in alignment therewith. The next step is for the drafting attorney to compile the information/suggestions provided during the meeting and to present the compilation to the LOC at a future work meeting for further directive.

2/25/21: *Work Meeting.* Present: Marie Summers, Kirby Metoxen, Daniel Guzman-King, Jennifer Webster, Kristal Hill, Clorissa Santiago, Kristen Hooker. This was a work meeting held through Microsoft Teams. This work meeting was held in follow-up to the February 17, 2021 work meeting the LOC had with the Workgroup regarding possible amendments to the Furlough law. The purpose of this work meeting was to get directive from the LOC regarding the policy questions that were discussed on February 17th. The next step is for the drafting attorney to update the draft amendments to be consistent with the LOC's directive and to bring the updated draft back to a future LOC meeting for review and further revision.

4/9/21: *Work Meeting.* Present: David Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman-King, Rhiannon Metoxen, Kristal Hill, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to start going through the updated draft amendments to the Furlough law with the LOC.

4/13/21: *Work Meeting.* Present: David Jordan, Kirby Metoxen, Marie Summers, Jennifer Webster, Daniel Guzman-King, Rhiannon Metoxen, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this meeting was to finish going through the initial draft amendments to the Furlough law before updating the draft for the LOC's final review and consideration. The next step will be for the LRO attorney to update the draft based on the LOC's decisions/suggestions and to schedule a final meeting with the LOC to review the updated draft before sending it to a workgroup meeting for review and comment.

6/10/21: *Work Meeting.* Present: Kirby Metoxen, Marie Summers, Daniel Guzman-King, Jennifer Webster, Rhiannon Metoxen, Kristal Hill, Clorissa Santiago, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to go through the updated draft amendments with the LOC before sending it to the workgroup for review and comment. The next step is for the LRO attorney to update the draft based on the comments and suggestions from the LOC and to then schedule a meeting with the workgroup to provide an opportunity for them to comment and make suggestions for the LOC to consider before approving the draft for the public comment portion of the legislative process.

7/8/21: *Work Meeting.* Present: Barbara Kolitsch, Geraldine Danforth, Wendy Alvarez, Matthew Denny, James Petitjean (left early), Lucy Neville, Jessica Vandekamp, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of the meeting was to review the draft Furlough law amendments with the workgroup to see whether the members had any questions, concerns or suggested changes they wanted the LOC to consider. The next step is

for the LRO attorney to update the draft with the workgroup's suggestions and bring it back to a LOC work meeting for consideration and possible approval to move forward with the public comment portion of the legislative process.

7/21/21:

Work Meeting. Present: David Jordan, Marie Summers, Jennifer Webster, Justin Nishimoto, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to go through the final draft of the Furlough law amendments and have the LOC consider the comments/suggestions from the workgroup meeting of July 8, 2021. The next steps are for the drafting attorney to: (1) update the draft based on the LOC's decisions during the meeting; (2) draft a legislative analysis on the amendments to the Furlough law; (3) draft the materials for the public meeting notice packet for the LOC to review during its next work meeting; and (4) add the public notice packet for the Furlough law amendments to the next LOC agenda for consideration and possible approval.

Next Steps:

- Approve the Furlough law amendments draft and direct that a legislative analysis be prepared for consideration at the next LOC meeting.

Title 2. Employment – Chapter 205

[Oneida Language]

[Translation]

FURLOUGH ~~POLICY~~

205.1. Purpose and Policy

205.2. Adoption, Amendment, Repeal

205.3. Definitions

205.4. ~~Furlough~~ Application

205.5. ~~Furlough~~ Plans

205.6. Supervisor Responsibilities

205.7. Appeal

205.5. Furlough Implementation Plan

205.6. Furlough Implementation

205.7. Placing Employees in Furlough Status

205.8. Furloughed Employees

205.9. Recall of Furloughed Employees

205.10. Direct Report Level and Supervisor Responsibilities

205.11. Appeal

205.1. Purpose and Policy

205.1-1. Purpose. The purpose of this ~~Policy~~law is to ~~enable~~:

(a) Enable the ~~Tribe~~Nation to implement a furlough ~~as a tool~~program in response to ~~remedy an operating budget deficit~~interruption of governmental revenues or operations, ~~insufficient treasury funds or other emergencies/~~ unplanned events as determined by the ~~Oneida Business Committee~~ in accordance with this law;

~~205.1-2. Policy. This Policy shall apply to all employees of the Tribe. To utilize a furlough, a decrease or lapse of revenue or funding and/or any other budget situation warranting an unpaid leave shall be identified.~~

(b) Establish a consistent and equitable process for implementation of a furlough program;
and

(c) Incorporate Indian preference into the furlough program and require that it be applied in accordance with this law.

205.1-2. Policy. It is the policy of the Nation to have consistent and standard procedures to address events and/or incidents that impact employees of the Nation. It is further the policy of the Nation to incorporate and adhere to Indian preference in all aspects of employment within the Oneida Nation.

205.2. Adoption, Amendment, Repeal

205.2-1. This ~~Policy~~law was adopted by the Oneida Business Committee by resolution BC-11-10-15-B; and amended by resolution BC- - - - .

205.2-2. This ~~Policy~~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.

205.2-3. Should a provision of this ~~Policy~~law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this ~~policy~~law which are considered to have legal force without the invalid portions.

205.2-4. In the event of a conflict between a provision of this ~~Policy~~law and a provision of another ~~policy~~law, the provisions of this ~~Policy~~law shall control.

205.2-5. This ~~Policy~~law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

205.3. Definitions

205.3-1. This section shall govern the definitions of words or phrases as used within this

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~~Policy~~law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) ~~“Direct report level~~ “Additional duties” means responsibilities of another position ~~means within the Nation that is not within an employee’s current scope of work.~~

(b) ~~“Authorized designee” means an employee identified by a Direct Report Level position to develop or assist in developing a furlough implementation plan when the individual employed in the Direct Report Level position is unavailable or requests such assistance from that employee.~~

(c) ~~“Critical position” means a position of employment within the Nation that is crucial to governmental functions, including, but not limited to, health, safety, regulatory compliance and/or revenue generation.~~

(d) ~~“Direct Report Level position” means a position of employment within the Nation that is the highest level in the chain of command under the Oneida Business Committee and who is responsible for a Tribal Department~~department and/or Division~~division of the Nation.~~

~~(e)~~ “Employee” means any individual who is employed by the Tribe and is subject to the direction and control of the Tribe 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 the Nation, including, but not limited to, employees of any program or enterprise of the Tribe and Nation, political appointees, but does not include elected or appointed official temporary employees and employees on probationary status.

(~~e~~f) ~~“Furlough” means a temporary, unpaid leave from time off of work for a specified period of time.~~

~~(d)~~ (g) “Indian” means any person, other than an Oneida citizen, who is a citizen of a federally-recognized Indian tribe, other than the Oneida Nation.

~~(h) “Indian preference” means a preference granted to retain an Oneida member employee over other non member employees. for Indians, regardless of tribal affiliation, in all aspects of employment, with Oneida citizens receiving the highest levels of preference for purposes of this law.~~

~~(e)~~-i) “Nation” means the Oneida Nation.

~~(j) “Oneida citizen” means those persons who are enrolled members of the Nation, eligible for enrollment in the Nation or documented first generation Oneida descendants.~~

~~(k) “Supervisor” means a person an employee of the Nation who directly oversees the work and performance of an employee on a daily basis.~~

~~(f) “Tribe” or “Tribal”~~ “Temporary employee” means an employee hired by the Nation for a short-term assignment and consists of the following classifications:

(1) Emergency/Temp;

(2) Limited Term;

(3) Seasonal;

(4) Substitute/Relief;

(5) Youth Worker; and

(6) Student/Intern.

205.4. Application

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205.4-1. Unless otherwise stated herein, this law shall apply to all employees of the Nation and all employment decisions of the Nation that are governed, whether in whole or in part, by this law.

205.4-2. *Indian Preference.* It is the intent of this law, and the policy of the Nation, that no employee who is Indian shall be furloughed so long as an employee, within the same department/division and position, who is non-Indian is still employed.

(a) Title VII of the Civil Rights Act of 1964 allows private and government employers on or near a Federal Trust Indian Reservation to exercise Indian preference in employment.

(b) The Indian Self Determination and Education Act affirms that any tribal employment or contract preference laws adopted by such tribe shall govern.

(c) In accordance with this section and subject to any express exceptions set forth herein, a furlough program shall be administered in a manner that affords preferential treatment to Oneida Tribe of citizens and Indians of Wisconsin in the following order, starting with those employees to be given the highest level of preference when applying the provisions of this law:

_____ (1) Enrolled members of the Oneida Nation;

_____ (2) Oneida citizens eligible for enrollment in the Oneida Nation;

_____ (3) Documented first generation Oneida descendants;

_____ (4) Indians; and

_____ (5) Non-Indians.

205.4-3.

205.4-3. *Equal Opportunity Employer.* Notwithstanding section 205.4-2 above, the Nation is an Equal Opportunity Employer that prohibits the application of this law and/or the implementation of a furlough program in a manner that discriminates based on race, color, religion, sex, pregnancy, age, national origin, citizenship status, veteran status, physical or mental disability, genetic information and/or any other basis protected by the anti-discrimination provisions of Title VII of the Civil Rights Act of 1964.

205.4-4. *Training on Indian Preference.* The Human Resources Department shall be responsible for introducing new employees of the Nation to the concept of Indian preference, as well as how it applies to the furlough program set forth herein, during employee orientation. Such introduction shall include, at a minimum, coverage of the following topics:

(a) The history behind Indian preference, including the role that the Bureau of Indian Affairs ("BIA") had in its development;

(b) The Indian Self-Determination and Education Assistance Act of 1975, as well as the exception to Title VII of the Civil Rights Act of 1964; and

(c) Examples of how Indian preference would apply in the event of a furlough program when deciding which employees of the Nation would be placed in furlough status, as well as the order in which they would be recalled, using methods to include, but not be limited to, hypotheticals and charting.

205.4-5. *Prohibitions.* Any furlough program of the Nation that is initiated in accordance with this law shall not:

(a) Be used as a means to resolve performance-related problems, grievance issues or to take the place of disciplinary actions;

(b) Be administered or implemented in violation of this law or any other applicable laws/policies of the Nation; and/or

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(c) Be implemented in a manner that requires interdepartmental transfers when applying Indian preference to the processes set forth herein.

205.5. Furlough Implementation Plan

~~205.4-1.~~ 205.5-1. Implementation Plan. Within a reasonable time after this law goes into effect, all Direct Report Level positions, or their duly authorized designees, shall submit a furlough implementation plan to the Human Resources Department for approval.

(a) The Human Resources Department shall create a standard template that Direct Report Level positions and/or duly authorized designees must use when developing their furlough implementation plan hereunder.

(1) The intent of the standard template shall be to elicit, in advance, information that will allow the Nation to implement a furlough program in as efficient and consistent a manner as possible under the circumstances, the information of which shall include, but not be limited to:

(A) Which positions within their respective department or division may qualify as a critical position;

(B) Which employees within their respective department or division may qualify for Indian preference and the corresponding level of preference that would apply under section 205.4-2 of this law;

(C) Which positions and/or employees within their respective department or division may be exempt from the application of Indian preference and the basis for said exemption;

(D) Whether any employees within their respective department or division may be interested in volunteering to be placed in furlough status in the event a furlough program is implemented; and

(E) Whether any positions within their respective department or division are capable of being adjusted to promote Indian preference when deciding which employees to place in furlough status.

(2) The Human Resources Department shall submit its standard template to the Oneida Business Committee for approval by resolution prior to distributing it to the Direct Report Level positions and/or duly authorized designees for development in accordance herewith.

(b) The Human Resources Department shall create a Standard Operating Procedure which sets forth how a furlough implementation plan shall be processed under this law once the standard template is approved by the Oneida Business Committee, that shall, at a minimum, address the following:

(1) Distribution of the standard template to the Direct Report Level positions and/or their duly authorized designees;

(2) The process for Direct Report Level positions and/or duly authorized designees to follow upon receiving the standard template, including, but not limited to:

(A) How a furlough implementation plan shall be created using the standard template;

(B) How a furlough implementation plan shall be submitted to the Human Resources Department for approval; and

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(C) The amount of time the Direct Report Level positions and/or their duly authorized designees have to submit their furlough implementation plans to the Human Resources Department upon receipt of the standard template.

(3) How the Human Resources Department will process furlough implementation plans for approval upon submission by the Direct Report Level positions and/or duly authorized designees; and

(4) How the Human Resources Department will notify the Direct Report Level positions and/or duly authorized designees of its decision to approve or reject their furlough implementation plan and, if rejected, the reason for the rejection and the process for resubmitting the furlough implementation plan for reconsideration.

(c) Copies of approved furlough implementation plans shall be retained by the Human Resources Department, as well as the Direct Report Level positions and/or duly authorized designees, consistent with governing law.

205.5-2. *Furlough Implementation Plan Updates.* The furlough implementation plan, as well as the standard template upon which it is developed, shall be updated as follows:

(a) *Standard Template.* Within two (2) years of its initial approval by resolution and then every two (2) years thereafter, the Human Resources Department shall review its standard template to assess whether it should be updated to better advance the underlying goals/policies of this section, as well as the law in general.

(1) Updates to the standard template must be approved by the Oneida Business Committee in accordance with section 205.5-1 of this law.

(b) *Implementation Plan.* Within two (2) years of initial approval by the Human Resources Department and then every (2) years thereafter, the Direct Report Level positions and/or duly authorized designees shall review their furlough implementation plan to assess whether it needs to be updated to account for any relevant changes within their department/division, including, but not limited to, changes in personnel, changes in positions and/or changes to any of the job descriptions attached to a position.

(1) Updates to a furlough implementation plan must be processed and approved in accordance with section 205.5-1 of this law, as well as the Standard Operating Procedure created by the Human Resources Department in accordance therewith.

(c) Nothing in this section shall be interpreted to prohibit an earlier review of the standard template or furlough implementation plan nor the number of times they are reviewed.

205.6. Furlough Implementation

205.6-1. *Alternatives to Furlough.* Prior to adopting a furlough resolution hereunder, the Oneida Business Committee shall consider whether any reasonable alternative options to implementation of a furlough program exist and, if so, exhaust the option or options in advance of implementation so long as the burden of doing so on the Nation as a whole does not outweigh the benefit to the employees who may be affected by the implementation of a furlough program.

205.6-2. *Furlough Resolution.* —If the Oneida Business Committee has identified the ~~necessity~~need for a furlough program, a directive by resolution shall be given to the appropriate Direct Report Level positions-, duly authorized designees, and any other individual or entity deemed necessary by the Oneida Business Committee.

(a) The resolution shall ~~direct~~include the following:

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(1) The basis for implementing the furlough program;

(2) Whether it is being implemented as an administrative or emergency furlough program;

(3) If feasible under the circumstances and to the extent of such feasibility so long as not less than is required under this law for the particular furlough program being implemented, the beginning and ending dates of the furlough- program;

(4) If feasible under the circumstances and to the extent of such feasibility, which areas within the Nation will be subject to the furlough program and which positions, if any, are considered critical positions exempt from being placed in furlough status; and

(5) Whether an ad hoc committee will be established pursuant to this section to assist in the implementation of the furlough program.

(b) *Ad Hoc Committee.* The Oneida Business Committee may, in its discretion, establish an ad hoc committee to assist in the implementation of a furlough program by, among other activities, helping to identify which areas of the Nation should be subject to the furlough program and which positions, if any, should be deemed critical, including the number of those critical positions to be retained, when directed to by the Oneida Business Committee.

(1) The ad hoc committee shall be made up of employees of the Nation, identified by the Oneida Business Committee within the furlough resolution or through a subsequent resolution or motion, who possess an expertise commensurate with the type and severity of the event giving rise to the need for the implementation of a furlough program.

(2) The ad hoc committee shall meet as necessary and at the request of the Oneida Business Committee to~~205.4-2. Implementation of Furlough Plans. Upon the passage of a resolution directing that a furlough be implemented, all Direct Report Level positions shall immediately carry out the furlough plans for his or her respective departments or agencies. An employee shall be furloughed on days that the employee is normally scheduled to work or on holidays recognized by the Tribe, whether the employee is normally scheduled to work or not.~~

carry out its responsibilities per the directive of the Oneida Business Committee and in a manner consistent with this law.

(3) The ad hoc committee shall not be subject to the Boards, Committees and Commissions law and employees shall not be entitled to stipends or any additional form of compensation for serving on an ad hoc committee established hereunder.

(4) The ad hoc committee shall dissolve upon conclusion of the furlough program for which it was established or on an early date as determined by the Oneida Business Committee, subject to the following:

(A) The ad hoc committee shall prepare, as well as present, a close-out report, in accordance with the Oneida Business Committee's directive; and

(B) The ad hoc committee shall forward all materials and records that were used and/or created to carry out its responsibilities hereunder to the Human Resources Department for storage/disposal in accordance with governing law.

205.6-3. *Furlough Programs.* A furlough program shall be characterized as either an emergency or an administrative program in the furlough resolution and then carried out in accordance with

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the portions of this section that apply to such characterization.

(a) *In General.* The following shall apply to all furlough programs implemented hereunder, regardless of their characterization.

(1) ~~205.4-3.~~ ~~Notice.~~ ~~A supervisor shall give an employee~~ of the implementation of a furlough program shall be provided to employees in writing and, along with information relevant to the furlough program being implemented, include the following:

(A) Fair warning regarding the failure to respond to a notice of recall as set forth in section 205.9-2 of this law; and

(B) A directive that it is the employee's responsibility to ensure that the Nation has his or her most current contact information.

(2) Written notice shall be sent to employees via the outlet(s) deemed most capable of reaching them in as efficient a manner as possible under the circumstances.

(A) In the event that the Nation develops a formal process to provide mass notifications to employees for events such as the implementation of a furlough program, such process shall be deemed the most capable outlet hereunder and used to provide written notice to employees for purposes hereof.

(b) *Emergency Furlough Program.* An emergency furlough program may be initiated by the Oneida Business Committee on an emergency basis when in the best interest of the Nation due to acts of God or sudden emergencies requiring immediate curtailment of activities.

(1) *Notice.* Employees shall be notified of the Oneida Business Committee's decision to implement an emergency furlough program as far in advance of the program's implementation date as is reasonably possible under the circumstances.

(A) If circumstances do not allow for the Oneida Business Committee to set a specific date upon which the emergency furlough program will end within the furlough resolution, notice of the anticipated end date shall be provided as soon thereafter as is reasonably possible, consistent with section 205.6-3 of this law.

(2) *Duration.* No emergency furlough program implemented hereunder shall last for longer than twenty-six (26) weeks from the date of implementation, unless extended by the Oneida Business Committee through a subsequent resolution.

(c) *Administrative Furlough Program.* The Oneida Business Committee may initiate an administrative furlough in response to a foreseeable event that is likely to result in a temporary reduction in revenue/funding or some other organizational issue where the intent is to recall employees back to work once the event has subsided.

(1) *Notice.* Employees shall be notified of the Oneida Business Committee's decision to implement an administrative furlough program at least five (5) business days prior to a furlough being implemented in advance of the program's implementation date.

(2) *Duration.* The beginning and ending dates of the administrative furlough program shall be specified within the furlough resolution.

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(A) An administrative furlough program shall end on the date specified within the furlough resolution, unless revised or extended by the Oneida Business Committee through a subsequent resolution.

(B) Notice of a revised or extended end date for an administrative furlough program shall be provided as soon as reasonably possible in advance of the original end date, consistent with section 205.6-3 of this law.

205.7. Placing Employees in Furlough Status

205.7-1. This section shall govern the manner in which employees of the Nation are selected to be placed in furlough status following the adoption of a resolution triggering the implementation of a furlough program.

205.7-2. Critical Positions. Except as otherwise stated herein, employment positions identified as critical pursuant to this section of the law shall be exempt from placement into furlough status during the specific furlough program for which the position was deemed critical.

(a) Critical positions, as well as the requisite number thereof, shall be identified by the Oneida Business Committee, or ad hoc committee upon directive of the Oneida Business Committee and subject to its approval, within the furlough resolution referenced in section 205.6-2 of this law or as soon thereafter as is reasonably possible under the circumstances in a subsequent resolution or motion.

(1) Number of Critical Positions. If the number of individuals employed in the same position within a department or division that is deemed critical exceeds the maximum number directed to be retained, employees within that same position will be retained in accordance with the order of preference and priority provided in section 205.9-1 of this law.

(A) Critical position employees who are not retained hereunder shall be placed in furlough status and subject to recall in accordance with section 205.9 of this law.

(2) Amendments. The Oneida Business Committee, in its discretion, and if so desired with assistance from the ad hoc committee, may amend the list of identified critical positions as it deems necessary under the circumstances.

(A) Direct Report Level positions or their duly authorized designees may submit requests for amendments to the list of identified critical positions within their department or division to the Oneida Business Committee for consideration.

205.7-3. Order for Placement in Furlough Status. Unless otherwise stated herein, the following order shall be adhered to when placing non-critical position employees within the same department or division in furlough status.

(a) Temporary Employees. Temporary employees within a department or division shall be the first category of employees to be placed in furlough status.

(b) Volunteer Employees. Following the placement of temporary employees in furlough status, eligible employees who volunteer for said placement shall be the next category of employees to be placed in furlough status, subject to the following:

(1) Employees who volunteer to be placed in furlough status must sign a form, created by the Human Resources Department, confirming that:

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(A) They volunteered to be placed in furlough status, notwithstanding any preference or eligibility for retention that they may have;

(B) Their decision to volunteer was not coerced or based on any promises of compensation or other consideration; and

(C) They understand that they are not guaranteed a recall back to work, and as a result, could be terminated from their employment with the Nation.

(2) Once signed, the employee shall be provided with a copy for his or her position records and the Human Resources Department shall retain the original copy in a manner consistent with the Nation's Open Records and Open Meetings law and/or any other applicable laws of the Nation.

205.4 4. ~~Continuous Service.~~ A (3) Employees who volunteer to be placed in furlough status shall retain the rights afforded under, as well as be subject to, the recall process set forth in section 205.9 of this law.

(c) Indian Preference. Absent an express exception and upon application of (a) and (b), above, when the remaining number of employees in the same position within a department or division exceeds the number of said employees to be placed in furlough status, the order of placement shall occur in the following order, beginning with the first category:

(1) Non-Indians;

(2) Indians;

(3) Documented first generation Oneida descendants;

(4) Oneida citizens eligible for enrollment in the Oneida Nation; and

(5) Enrolled members of the Oneida Nation.

(A) Exceptions.

(i) Grant Positions. Employment positions within the Nation that are funded, in whole or part, by appropriations from outside of the Nation, which prohibit, as a condition of receiving said funds, the application of Indian preference in employment practices, shall be exempt from the requirements of section 205.7-3 of this law.

(ii) Other Exceptions. Where it would violate an applicable federal law, including any regulations related thereto, or the terms of an applicable loan, memorandum of understanding, contract or other agreement for which the Nation is a party, the requirements of section 205.7-3 shall not constitute apply.

(d) Other Priorities. If, following application of Indian preference, employees subject to placement in furlough status within the same preference category still remain, priority shall be given to their retention in the following order, beginning with the first category:

(1) Seniority. Employees who have served the Nation as a regular status employee without a break in ~~continuous service.~~ employment for the longest amount of time shall be retained first;

(2) Veteran Status. If employees remain after applying the priority for seniority, the remaining employees with veteran status shall be retained over those with a more favorable performance evaluation; and

(3) Performance Evaluation. If employees remain after applying the priority for veterans, the remaining employees with a more favorable performance evaluation

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shall be retained over those with a less favorable performance evaluation.

(A) The most current performance evaluation in existence on the date the furlough resolution is adopted by the Oneida Business Committee shall be the evaluation that is used when assessing priority hereunder.

205.8. Furloughed Employees

205.8-1. Employees shall not perform any work for the ~~Tribe while furloughed.~~ ~~This includes~~ Nation when off of work due to being placed in furlough status, which includes, but is not limited to, responding to work-related e-mail and ~~voice mail~~ voicemail, as well as traveling on behalf of the ~~Tribe.~~ Nation.

205.4-5. (a) Employees within the Nation's Gaming Operations who are placed in furlough status, shall continue to adhere to the "Who May Not Play Policy" throughout the furlough period.

205.8-2. Continuous Employment. Being placed in furlough status shall not be considered a break in continuous service under the Nation's Personnel Policies and Procedures law or any other governing law of the Nation that contemplates continuous employment therein.

205.8-3. Unemployment. ~~Furloughed employees~~ Employees placed in furlough status shall be responsible for contacting the State of Wisconsin Department of Workforce Development to determine if they qualify for unemployment insurance benefits. ~~Eligibility for unemployment insurance benefits is determined by the State of Wisconsin.~~

(a) Eligibility for unemployment insurance benefits shall be determined by the State of Wisconsin.

205.8-4-6. Benefits. Employees placed in furlough status shall not use or accrue personal or vacation time ~~when on furlough.~~ Employees for the time that they are off of work as a result of said placement.

(a) To the extent feasible and subject to the policy of insurance or contractual agreement governing the specific benefit, employees placed in furlough status shall continue to receive other benefits ~~during a furlough~~ for which they were entitled to prior to the implementation of the furlough program throughout the period of time in which the furlough program is in place.

205.4-7-8-5. Overtime and Additional Duty Pay. ~~When a furlough~~ Unless otherwise approved by the Oneida Business Committee on a case-by-case basis, when a furlough program is implemented in a department or ~~agency~~ division, no employee in that department or ~~agency~~ division shall be eligible for:

(a) ~~overtime~~ Overtime during the same pay period that another employee from the same department or ~~agency~~ division is ~~on~~ placed in furlough status; or

(b) ~~additional~~ Additional duty pay for performing duties for other employees in his or her department or ~~agency~~ division who ~~are on~~ have been placed in furlough status.

205.4-8-6. Back Pay. ~~Employees on furlough~~ Except as provided for in section 205.11 of this law, employees placed in furlough status shall not be eligible for back pay ~~awards~~ upon their return to work.

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205.5 Furlough Plans

~~205.5-1. Furlough Plans. The 205.8-7. Outside Employment. Employees placed in furlough status shall be allowed to obtain outside employment while in furlough status but shall remain subject to the recall provisions of section 205.9 of this law.~~

~~(a) Employees who obtain outside employment shall continue to adhere to any existing policies of the Nation that govern their positions of employment with the Nation, including, but not limited to, employee confidentiality and social media use, while in furlough status.~~

205.9. Recall of Furloughed Employees

~~205.9-1. The following shall be adhered to when deciding the order in which employees placed in furlough status are recalled back to work at the end of a furlough program.~~

~~(a) Order for Employee Recall. If every employee placed in furlough status is unable to be recalled back to work at the same time, or at all, employees shall be recalled as follows:~~

~~(1) Indian Preference. Indian preference shall be applied to the recall process in the following order, with the first category of employees receiving the greatest level of preference:~~

~~_____ (A) Enrolled members of the Oneida Nation;~~

~~_____ (B) Oneida citizens eligible for enrollment in the Oneida Nation;~~

~~_____ (C) Documented first generation Oneida descendants;~~

~~_____ (D) Indians; and~~

~~_____ (E) Non-Indians.~~

~~(2) Other Priorities. If, following application of Indian preference, employees subject to placement in furlough status within the same preference category still remain, priority shall be given to the recall of those remaining employees in the following order, beginning with the first category:~~

~~(A) Seniority. Employees who have served the Nation as a regular status employee without a break in employment for the longest amount of time shall be given recall priority first;~~

~~(B) Veteran Status. If employees remain after applying the priority for seniority, the remaining employees with veteran status shall be given recall priority over those with a more favorable performance evaluation; and~~

~~(C) Performance Evaluation. If employees remain after applying the priority for veterans, the remaining employees with a more favorable performance evaluation shall be given recall priority over those with a less favorable performance evaluation.~~

~~(i) The most current performance evaluation in existence on the date the furlough resolution was adopted by the Oneida Business Committee shall be the evaluation that is used when assigning priority hereunder.~~

~~(b) Volunteers. Except as stated herein, employees who qualify for Indian preference and volunteered to be placed in furlough status shall retain said preference rights during the recall process, regardless of volunteering, and be recalled consistent therewith.~~

~~(1) A volunteer employee in the same Indian preference category as an employee, who did not volunteer to be placed in furlough status and has no other priority over~~

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the volunteer employee, shall be recalled before the non-volunteer employee.

205.9-2. Notice of Recall and Responses.

(a) Employees shall be provided with written notice of their recall from placement in furlough status, using a method that can accurately determine the date of the employee's receipt of said notice.

(1) Along with information relevant to the employee's recall back to work, the written notice of recall shall include the language of subsection (b), below, in its entirety.

(b) Failure to Respond. A failure to respond to the notice of recall, in the manner indicated within the writing, within ten (10) business days of the employee's receipt thereof shall be interpreted to mean that the employee does not intend to return on the date of his or her recall and treated as a resignation of employment by that employee per the governing laws and policies of the Nation.

205.9-3. Separation in Lieu of Recall. Employees placed in furlough status who are not recalled at the end of the furlough program shall be terminated from their employment with the Nation in accordance with the governing laws/policies of the Nation.

205.10. Responsibilities of Direct Report Level positions shall develop furlough plans and Supervisor Positions

205.10-1. Generally. Persons employed in Direct Report Level and supervisory positions with the Nation, along with any of their duly authorized designees, shall be responsible for familiarizing themselves with this law, including any policies or procedures promulgated thereunder.

(a) Within a reasonable time after this law goes into effect, and then every two (2) years thereafter, the Direct Report Level and supervisory positions, along with any of their duly authorized designees, who would be subject to one (1) or more of the responsibilities set forth within this law in the event of a furlough program implementation, shall be required to attend training on the application of this law, as well as the programs to be implemented hereunder.

(1) The Human Resources Department shall be responsible for the creation and administration of the training required herein.

(b) Failure to adhere to the requirements or processes set forth within this law may result in disciplinary action or other consequences consistent with the Nation's employment laws.

205.10-2. Direct Report Level Positions. Upon the passage of a resolution directing a furlough be implemented, all Direct Report Level positions and/or duly authorized designees shall immediately carry out the directive consistent with the resolution; this law, including the Standard Operating Procedure created by the Human Resources Department in accordance therewith; and the furlough implementation plan that was approved for their respective departments and agencies department or division.

205.5-2. The furlough plans shall set forth how each department or agency intends to implement a furlough. The plan shall include, but not be limited to, the following:

(a) an explanation of how employees will be selected;

(1) Temporary employees shall be furloughed first, followed by employees who volunteer to be furloughed. All other employees shall then be eligible to be

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furloughed.

(b) ~~a tentative schedule for a furlough;~~

(1) ~~Furloughs shall be scheduled in a way that allows the departments to continue to provide a basic level of service.~~

(c) ~~the estimated number of employees affected; and~~

(d) ~~a summary of how the furlough will relieve budgetary shortfalls.~~

~~205.510-3. Disciplinary Furlough.~~ Furloughs shall not be used for disciplinary reasons.

~~205.54. Indian Preference.~~ Indian preference may not be used as a consideration in identifying employees to be furloughed.

~~205.55. All furlough plans shall be kept on file with the Human Resources Department.~~

~~205.6~~ **Supervisor Responsibilities**

~~205.61.~~ Upon notification directive from the appropriate Direct Report Level ~~position that~~ furloughs are necessary, a supervisor shall:

(a) ~~Identify positions and/or duly authorized designees, supervisors shall be responsible to provide notice to those employees who will be furloughed.~~

(b) Notify those employees that they will be furloughed and within their furlough dates; respective department or division as required under section 205.6-3 of this law and provide copies of such notice to the Human Resources Department to maintain in accordance with governing law.

(c) ~~Notify the Human Resources Department of the chosen employees and their furlough dates.~~

(a) Supervisors shall ensure that job descriptions within their respective departments or divisions are accurately maintained and up-to-date.

~~205.711~~ **Appeal**

~~205.711-1.~~ An employee who has been ~~furloughed~~ placed in furlough status under this ~~Policy~~ law may only appeal ~~a furlough that is said placement if~~ based on ~~disciplinary reasons~~ a claim that it occurred in violation of this law.

(a) A written appeal must be submitted to the Direct Report Level position and/or duly authorized designee within ten (10) business days ~~from of the notification~~ employees receipt of the furlough notice under section 205.6 of this law.

(b) The burden for showing that the employee was placed in furlough status in violation of this law is ~~based on disciplinary reasons~~ rests on the employee. ~~appealing the placement.~~

(c) The Direct Report Level position and/or duly authorized designee may make a decision based on the written appeal alone.

(1) The Direct Report Level position and/or duly authorized designee shall provide a written decision on the matter to the employee and the ~~supervisor~~ employee's supervisor within ten (10) business days of receiving the written appeal unless for good cause an extension is necessary.

(2) This decision is final and cannot be appealed.

~~205.711-2.~~ An employee who has been ~~furloughed~~ placed in furlough status does not have any other right to appeal a furlough decision under any ~~Tribal~~ law, policy or the personnel grievance process of the Nation.

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560

561 *End.*

562

563 Emergency Adoption – BC-10-15-13-A

564 Emergency Adoption Extension – BC-04-09-14-D

565 Adoption – BC-11-10-15-B_

566 Adoption – BC- - - -

Title 2. Employment – Chapter 205
[Oneida Language]
[Translation]
FURLOUGH

205.1. Purpose and Policy
205.2. Adoption, Amendment, Repeal
205.3. Definitions
205.4. Application
205.5. Furlough Implementation Plan
205.6. Furlough Implementation

205.7. Placing Employees in Furlough Status
205.8. Furloughed Employees
205.9. Recall of Furloughed Employees
205.10. Direct Report Level and Supervisor Responsibilities
205.11. Appeal

205.1. Purpose and Policy

205.1-1. *Purpose.* The purpose of this law is to:

- (a) Enable the Nation to implement a furlough program in response to an interruption of governmental revenues or operations, insufficient treasury funds or other emergencies/unplanned events as determined by the Oneida Business Committee in accordance with this law;
- (b) Establish a consistent and equitable process for implementation of a furlough program; and
- (c) Incorporate Indian preference into the furlough program and require that it be applied in accordance with this law.

205.1-2. *Policy.* It is the policy of the Nation to have consistent and standard procedures to address events and/or incidents that impact employees of the Nation. It is further the policy of the Nation to incorporate and adhere to Indian preference in all aspects of employment within the Oneida Nation.

205.2. Adoption, Amendment, Repeal

205.2-1. This law was adopted by the Oneida Business Committee by resolution BC-11-10-15-B and amended by resolution BC-__-__-__-__.

205.2-2. 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.

205.2-3. 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.

205.2-4. 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.

205.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

205.3. Definitions

205.3-1. This section shall govern the definitions of words or phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Additional duties” means responsibilities of another position within the Nation that is not within an employee’s current scope of work.
- (b) “Authorized designee” means an employee identified by a Direct Report Level position to develop or assist in developing a furlough implementation plan when the individual employed in the Direct Report Level position is unavailable or requests such assistance

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from that employee.

(c) “Critical position” means a position of employment within the Nation that is crucial to governmental functions, including, but not limited to, health, safety, regulatory compliance and/or revenue generation.

(d) “Direct Report Level position” means a position of employment within the Nation that is the highest level in the chain of command under the Oneida Business Committee and is responsible for a department and/or division of the Nation.

(e) “Employee” means any individual employed by the Nation, including, but not limited to, employees of any program or enterprise of the Nation, political appointees, temporary employees and employees on probationary status.

(f) “Furlough” means temporary, unpaid time off of work for a specified period of time.

(g) “Indian” means any person, other than an Oneida citizen, who is a citizen of a federally-recognized Indian tribe, other than the Oneida Nation.

(h) “Indian preference” means preference for Indians, regardless of tribal affiliation, in all aspects of employment, with Oneida citizens receiving the highest levels of preference for purposes of this law.

(i) “Nation” means the Oneida Nation.

(j) “Oneida citizen” means those persons who are enrolled members of the Nation, eligible for enrollment in the Nation or documented first generation Oneida descendants.

(k) “Supervisor” means an employee of the Nation who directly oversees the work and performance of an employee on a daily basis.

(l) “Temporary employee” means an employee hired by the Nation for a short-term assignment and consists of the following classifications:

- (1) Emergency/Temp;
- (2) Limited Term;
- (3) Seasonal;
- (4) Substitute/Relief;
- (5) Youth Worker; and
- (6) Student/Intern.

205.4. Application

205.4-1. Unless otherwise stated herein, this law shall apply to all employees of the Nation and all employment decisions of the Nation that are governed, whether in whole or in part, by this law.

205.4-2. *Indian Preference.* It is the intent of this law, and the policy of the Nation, that no employee who is Indian shall be furloughed so long as an employee, within the same department/division and position, who is non-Indian is still employed.

(a) Title VII of the Civil Rights Act of 1964 allows private and government employers on or near a Federal Trust Indian Reservation to exercise Indian preference in employment.

(b) The Indian Self Determination and Education Act affirms that any tribal employment or contract preference laws adopted by such tribe shall govern.

(c) In accordance with this section and subject to any express exceptions set forth herein, a furlough program shall be administered in a manner that affords preferential treatment to Oneida citizens and Indians in the following order, starting with those employees to be given the highest level of preference when applying the provisions of this law:

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- (1) Enrolled members of the Oneida Nation;
- (2) Oneida citizens eligible for enrollment in the Oneida Nation;
- (3) Documented first generation Oneida descendants;
- (4) Indians; and
- (5) Non-Indians.

205.4-3. *Equal Opportunity Employer.* Notwithstanding section 205.4-2 above, the Nation is an Equal Opportunity Employer that prohibits the application of this law and/or the implementation of a furlough program in a manner that discriminates based on race, color, religion, sex, pregnancy, age, national origin, citizenship status, veteran status, physical or mental disability, genetic information and/or any other basis protected by the anti-discrimination provisions of Title VII of the Civil Rights Act of 1964.

205.4-4. *Training on Indian Preference.* The Human Resources Department shall be responsible for introducing new employees of the Nation to the concept of Indian preference, as well as how it applies to the furlough program set forth herein, during employee orientation. Such introduction shall include, at a minimum, coverage of the following topics:

- (a) The history behind Indian preference, including the role that the Bureau of Indian Affairs (“BIA”) had in its development;
- (b) The Indian Self-Determination and Education Assistance Act of 1975, as well as the exception to Title VII of the Civil Rights Act of 1964; and
- (c) Examples of how Indian preference would apply in the event of a furlough program when deciding which employees of the Nation would be placed in furlough status, as well as the order in which they would be recalled, using methods to include, but not be limited to, hypotheticals and charting.

205.4-5. *Prohibitions.* Any furlough program of the Nation that is initiated in accordance with this law shall not:

- (a) Be used as a means to resolve performance-related problems, grievance issues or to take the place of disciplinary actions;
- (b) Be administered or implemented in violation of this law or any other applicable laws/policies of the Nation; and/or
- (c) Be implemented in a manner that requires interdepartmental transfers when applying Indian preference to the processes set forth herein.

205.5. Furlough Implementation Plan

205.5-1. *Implementation Plan.* Within a reasonable time after this law goes into effect, all Direct Report Level positions, or their duly authorized designees, shall submit a furlough implementation plan to the Human Resources Department for approval.

- (a) The Human Resources Department shall create a standard template that Direct Report Level positions and/or duly authorized designees must use when developing their furlough implementation plan hereunder.

- (1) The intent of the standard template shall be to elicit, in advance, information that will allow the Nation to implement a furlough program in as efficient and consistent a manner as possible under the circumstances, the information of which shall include, but not be limited to:

- (A) Which positions within their respective department or division may

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- 126 qualify as a critical position;
- 127 (B) Which employees within their respective department or division may
- 128 qualify for Indian preference and the corresponding level of preference that
- 129 would apply under section 205.4-2 of this law;
- 130 (C) Which positions and/or employees within their respective department
- 131 or division may be exempt from the application of Indian preference and
- 132 the basis for said exemption;
- 133 (D) Whether any employees within their respective department or division
- 134 may be interested in volunteering to be placed in furlough status in the event
- 135 a furlough program is implemented; and
- 136 (E) Whether any positions within their respective department or division
- 137 are capable of being adjusted to promote Indian preference when deciding
- 138 which employees to place in furlough status.
- 139 (2) The Human Resources Department shall submit its standard template to the
- 140 Oneida Business Committee for approval by resolution prior to distributing it to the
- 141 Direct Report Level positions and/or duly authorized designees for development in
- 142 accordance herewith.
- 143 (b) The Human Resources Department shall create a Standard Operating Procedure which
- 144 sets forth how a furlough implementation plan shall be processed under this law once the
- 145 standard template is approved by the Oneida Business Committee, that shall, at a minimum,
- 146 address the following:
- 147 (1) Distribution of the standard template to the Direct Report Level positions and/or
- 148 their duly authorized designees;
- 149 (2) The process for Direct Report Level positions and/or duly authorized designees
- 150 to follow upon receiving the standard template, including, but not limited to:
- 151 (A) How a furlough implementation plan shall be created using the standard
- 152 template;
- 153 (B) How a furlough implementation plan shall be submitted to the Human
- 154 Resources Department for approval; and
- 155 (C) The amount of time the Direct Report Level positions and/or their duly
- 156 authorized designees have to submit their furlough implementation plans to
- 157 the Human Resources Department upon receipt of the standard template.
- 158 (3) How the Human Resources Department will process furlough implementation
- 159 plans for approval upon submission by the Direct Report Level positions and/or
- 160 duly authorized designees; and
- 161 (4) How the Human Resources Department will notify the Direct Report Level
- 162 positions and/or duly authorized designees of its decision to approve or reject their
- 163 furlough implementation plan and, if rejected, the reason for the rejection and the
- 164 process for resubmitting the furlough implementation plan for reconsideration.
- 165 (c) Copies of approved furlough implementation plans shall be retained by the Human
- 166 Resources Department, as well as the Direct Report Level positions and/or duly authorized
- 167 designees, consistent with governing law.
- 168 205.5-2. *Furlough Implementation Plan Updates.* The furlough implementation plan, as well as
- 169 the standard template upon which it is developed, shall be updated as follows:

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(a) *Standard Template*. Within two (2) years of its initial approval by resolution and then every two (2) years thereafter, the Human Resources Department shall review its standard template to assess whether it should be updated to better advance the underlying goals/policies of this section, as well as the law in general.

(1) Updates to the standard template must be approved by the Oneida Business Committee in accordance with section 205.5-1 of this law.

(b) *Implementation Plan*. Within two (2) years of initial approval by the Human Resources Department and then every (2) years thereafter, the Direct Report Level positions and/or duly authorized designees shall review their furlough implementation plan to assess whether it needs to be updated to account for any relevant changes within their department/division, including, but not limited to, changes in personnel, changes in positions and/or changes to any of the job descriptions attached to a position.

(1) Updates to a furlough implementation plan must be processed and approved in accordance with section 205.5-1 of this law, as well as the Standard Operating Procedure created by the Human Resources Department in accordance therewith.

(c) Nothing in this section shall be interpreted to prohibit an earlier review of the standard template or furlough implementation plan nor the number of times they are reviewed.

205.6. Furlough Implementation

205.6-1. *Alternatives to Furlough*. Prior to adopting a furlough resolution hereunder, the Oneida Business Committee shall consider whether any reasonable alternative options to implementation of a furlough program exist and, if so, exhaust the option or options in advance of implementation so long as the burden of doing so on the Nation as a whole does not outweigh the benefit to the employees who may be affected by the implementation of a furlough program.

205.6-2. *Furlough Resolution*. If the Oneida Business Committee has identified the need for a furlough program, a directive by resolution shall be given to the appropriate Direct Report Level positions, duly authorized designees, and any other individual or entity deemed necessary by the Oneida Business Committee.

(a) The resolution shall include the following:

(1) The basis for implementing the furlough program;

(2) Whether it is being implemented as an administrative or emergency furlough program;

(3) If feasible under the circumstances and to the extent of such feasibility so long as not less than is required under this law for the particular furlough program being implemented, the beginning and ending dates of the furlough program;

(4) If feasible under the circumstances and to the extent of such feasibility, which areas within the Nation will be subject to the furlough program and which positions, if any, are considered critical positions exempt from being placed in furlough status; and

(5) Whether an ad hoc committee will be established pursuant to this section to assist in the implementation of the furlough program.

(b) *Ad Hoc Committee*. The Oneida Business Committee may, in its discretion, establish an ad hoc committee to assist in the implementation of a furlough program by, among other activities, helping to identify which areas of the Nation should be subject to the furlough

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program and which positions, if any, should be deemed critical, including the number of those critical positions to be retained, when directed to by the Oneida Business Committee.

(1) The ad hoc committee shall be made up of employees of the Nation, identified by the Oneida Business Committee within the furlough resolution or through a subsequent resolution or motion, who possess an expertise commensurate with the type and severity of the event giving rise to the need for the implementation of a furlough program.

(2) The ad hoc committee shall meet as necessary and at the request of the Oneida Business Committee to carry out its responsibilities per the directive of the Oneida Business Committee and in a manner consistent with this law.

(3) The ad hoc committee shall not be subject to the Boards, Committees and Commissions law and employees shall not be entitled to stipends or any additional form of compensation for serving on an ad hoc committee established hereunder.

(4) The ad hoc committee shall dissolve upon conclusion of the furlough program for which it was established or on an early date as determined by the Oneida Business Committee, subject to the following:

(A) The ad hoc committee shall prepare, as well as present, a close-out report, in accordance with the Oneida Business Committee's directive; and

(B) The ad hoc committee shall forward all materials and records that were used and/or created to carry out its responsibilities hereunder to the Human Resources Department for storage/disposal in accordance with governing law.

205.6-3. *Furlough Programs.* A furlough program shall be characterized as either an emergency or an administrative program in the furlough resolution and then carried out in accordance with the portions of this section that apply to such characterization.

(a) *In General.* The following shall apply to all furlough programs implemented hereunder, regardless of their characterization.

(1) Notice of the implementation of a furlough program shall be provided to employees in writing and, along with information relevant to the furlough program being implemented, include the following:

(A) Fair warning regarding the failure to respond to a notice of recall as set forth in section 205.9-2 of this law; and

(B) A directive that it is the employee's responsibility to ensure that the Nation has his or her most current contact information.

(2) Written notice shall be sent to employees via the outlet(s) deemed most capable of reaching them in as efficient a manner as possible under the circumstances.

(A) In the event that the Nation develops a formal process to provide mass notifications to employees for events such as the implementation of a furlough program, such process shall be deemed the most capable outlet hereunder and used to provide written notice to employees for purposes hereof.

(b) *Emergency Furlough Program.* An emergency furlough program may be initiated by the Oneida Business Committee on an emergency basis when in the best interest of the Nation due to acts of God or sudden emergencies requiring immediate curtailment of

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activities.

(1) *Notice.* Employees shall be notified of the Oneida Business Committee's decision to implement an emergency furlough program as far in advance of the program's implementation date as is reasonably possible under the circumstances.

(A) If circumstances do not allow for the Oneida Business Committee to set a specific date upon which the emergency furlough program will end within the furlough resolution, notice of the anticipated end date shall be provided as soon thereafter as is reasonably possible, consistent with section 205.6-3 of this law.

(2) *Duration.* No emergency furlough program implemented hereunder shall last for longer than twenty-six (26) weeks from the date of implementation, unless extended by the Oneida Business Committee through a subsequent resolution.

(c) *Administrative Furlough Program.* The Oneida Business Committee may initiate an administrative furlough in response to a foreseeable event that is likely to result in a temporary reduction in revenue/funding or some other organizational issue where the intent is to recall employees back to work once the event has subsided.

(1) *Notice.* Employees shall be notified of the Oneida Business Committee's decision to implement an administrative furlough program at least five (5) business days in advance of the program's implementation date.

(2) *Duration.* The beginning and ending dates of the administrative furlough program shall be specified within the furlough resolution.

(A) An administrative furlough program shall end on the date specified within the furlough resolution, unless revised or extended by the Oneida Business Committee through a subsequent resolution.

(B) Notice of a revised or extended end date for an administrative furlough program shall be provided as soon as reasonably possible in advance of the original end date, consistent with section 205.6-3 of this law.

205.7. Placing Employees in Furlough Status

205.7-1. This section shall govern the manner in which employees of the Nation are selected to be placed in furlough status following the adoption of a resolution triggering the implementation of a furlough program.

205.7-2. *Critical Positions.* Except as otherwise stated herein, employment positions identified as critical pursuant to this section of the law shall be exempt from placement into furlough status during the specific furlough program for which the position was deemed critical.

(a) Critical positions, as well as the requisite number thereof, shall be identified by the Oneida Business Committee, or ad hoc committee upon directive of the Oneida Business Committee and subject to its approval, within the furlough resolution referenced in section 205.6-2 of this law or as soon thereafter as is reasonably possible under the circumstances in a subsequent resolution or motion.

(1) *Number of Critical Positions.* If the number of individuals employed in the same position within a department or division that is deemed critical exceeds the maximum number directed to be retained, employees within that same position will be retained in accordance with the order of preference and priority provided in

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section 205.9-1 of this law.

(A) Critical position employees who are not retained hereunder shall be placed in furlough status and subject to recall in accordance with section 205.9 of this law.

(2) *Amendments.* The Oneida Business Committee, in its discretion, and if so desired with assistance from the ad hoc committee, may amend the list of identified critical positions as it deems necessary under the circumstances.

(A) Direct Report Level positions or their duly authorized designees may submit requests for amendments to the list of identified critical positions within their department or division to the Oneida Business Committee for consideration.

205.7-3. *Order for Placement in Furlough Status.* Unless otherwise stated herein, the following order shall be adhered to when placing non-critical position employees within the same department or division in furlough status.

(a) *Temporary Employees.* Temporary employees within a department or division shall be the first category of employees to be placed in furlough status.

(b) *Volunteer Employees.* Following the placement of temporary employees in furlough status, eligible employees who volunteer for said placement shall be the next category of employees to be placed in furlough status, subject to the following:

(1) Employees who volunteer to be placed in furlough status must sign a form, created by the Human Resources Department, confirming that:

(A) They volunteered to be placed in furlough status, notwithstanding any preference or eligibility for retention that they may have;

(B) Their decision to volunteer was not coerced or based on any promises of compensation or other consideration; and

(C) They understand that they are not guaranteed a recall back to work, and as a result, could be terminated from their employment with the Nation.

(2) Once signed, the employee shall be provided with a copy for his or her records and the Human Resources Department shall retain the original copy in a manner consistent with the Nation's Open Records and Open Meetings law and/or any other applicable laws of the Nation.

(3) Employees who volunteer to be placed in furlough status shall retain the rights afforded under, as well as be subject to, the recall process set forth in section 205.9 of this law.

(c) *Indian Preference.* Absent an express exception and upon application of (a) and (b), above, when the remaining number of employees in the same position within a department or division exceeds the number of said employees to be placed in furlough status, the order of placement shall occur in the following order, beginning with the first category:

(1) Non-Indians;

(2) Indians;

(3) Documented first generation Oneida descendants;

(4) Oneida citizens eligible for enrollment in the Oneida Nation; and

(5) Enrolled members of the Oneida Nation.

(A) *Exceptions.*

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(i) *Grant Positions*. Employment positions within the Nation that are funded, in whole or part, by appropriations from outside of the Nation, which prohibit, as a condition of receiving said funds, the application of Indian preference in employment practices, shall be exempt from the requirements of section 205.7-3 of this law.

(ii) *Other Exceptions*. Where it would violate an applicable federal law, including any regulations related thereto, or the terms of an applicable loan, memorandum of understanding, contract or other agreement for which the Nation is a party, the requirements of section 205.7-3 shall not apply.

(d) *Other Priorities*. If, following application of Indian preference, employees subject to placement in furlough status within the same preference category still remain, priority shall be given to their retention in the following order, beginning with the first category:

(1) *Seniority*. Employees who have served the Nation as a regular status employee without a break in employment for the longest amount of time shall be retained first;

(2) *Veteran Status*. If employees remain after applying the priority for seniority, the remaining employees with veteran status shall be retained over those with a more favorable performance evaluation; and

(3) *Performance Evaluation*. If employees remain after applying the priority for veterans, the remaining employees with a more favorable performance evaluation shall be retained over those with a less favorable performance evaluation.

(A) The most current performance evaluation in existence on the date the furlough resolution is adopted by the Oneida Business Committee shall be the evaluation that is used when assessing priority hereunder.

205.8. Furloughed Employees

205.8-1. Employees shall not perform any work for the Nation when off of work due to being placed in furlough status, which includes, but is not limited to, responding to work-related e-mail and voicemail, as well as traveling on behalf of the Nation.

(a) Employees within the Nation's Gaming Operations who are placed in furlough status, shall continue to adhere to the "*Who May Not Play Policy*" throughout the furlough period.

205.8-2. *Continuous Employment*. Being placed in furlough status shall not be considered a break in continuous service under the Nation's Personnel Policies and Procedures law or any other governing law of the Nation that contemplates continuous employment therein.

205.8-3. *Unemployment*. Employees placed in furlough status shall be responsible for contacting the State of Wisconsin Department of Workforce Development to determine if they qualify for unemployment insurance benefits.

(a) Eligibility for unemployment insurance benefits shall be determined by the State of Wisconsin.

205.8-4. *Benefits*. Employees placed in furlough status shall not use or accrue personal or vacation time for the time that they are off of work as a result of said placement.

(a) To the extent feasible and subject to the policy of insurance or contractual agreement governing the specific benefit, employees placed in furlough status shall continue to

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390 receive other benefits for which they were entitled to prior to the implementation of the
391 furlough program throughout the period of time in which the furlough program is in place.
392 205.8-5. *Overtime and Additional Duty Pay*. Unless otherwise approved by the Oneida Business
393 Committee on a case-by-case basis, when a furlough program is implemented in a department or
394 division, no employee in that department or division shall be eligible for:

395 (a) Overtime during the same pay period that another employee from the same department
396 or division is placed in furlough status; or

397 (b) Additional duty pay for performing duties for other employees in his or her department
398 or division who have been placed in furlough status.

399 205.8-6. *Back Pay*. Except as provided for in section 205.11 of this law, employees placed in
400 furlough status shall not be eligible for back pay upon their return to work.

401 205.8-7. *Outside Employment*. Employees placed in furlough status shall be allowed to obtain
402 outside employment while in furlough status but shall remain subject to the recall provisions of
403 section 205.9 of this law.

404 (a) Employees who obtain outside employment shall continue to adhere to any existing
405 policies of the Nation that govern their positions of employment with the Nation, including,
406 but not limited to, employee confidentiality and social media use, while in furlough status.
407

408 **205.9. Recall of Furloughed Employees**

409 205.9-1. The following shall be adhered to when deciding the order in which employees placed
410 in furlough status are recalled back to work at the end of a furlough program.

411 (a) *Order for Employee Recall*. If every employee placed in furlough status is unable to be
412 recalled back to work at the same time, or at all, employees shall be recalled as follows:

413 (1) *Indian Preference*. Indian preference shall be applied to the recall process in
414 the following order, with the first category of employees receiving the greatest level
415 of preference:

416 (A) Enrolled members of the Oneida Nation;

417 (B) Oneida citizens eligible for enrollment in the Oneida Nation;

418 (C) Documented first generation Oneida descendants;

419 (D) Indians; and

420 (E) Non-Indians.

421 (2) *Other Priorities*. If, following application of Indian preference, employees
422 subject to placement in furlough status within the same preference category still
423 remain, priority shall be given to the recall of those remaining employees in the
424 following order, beginning with the first category:

425 (A) *Seniority*. Employees who have served the Nation as a regular status
426 employee without a break in employment for the longest amount of time
427 shall be given recall priority first;

428 (B) *Veteran Status*. If employees remain after applying the priority for
429 seniority, the remaining employees with veteran status shall be given recall
430 priority over those with a more favorable performance evaluation; and

431 (C) *Performance Evaluation*. If employees remain after applying the
432 priority for veterans, the remaining employees with a more favorable
433 performance evaluation shall be given recall priority over those with a less

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favorable performance evaluation.

(i) The most current performance evaluation in existence on the date the furlough resolution was adopted by the Oneida Business Committee shall be the evaluation that is used when assigning priority hereunder.

(b) *Volunteers.* Except as stated herein, employees who qualify for Indian preference and volunteered to be placed in furlough status shall retain said preference rights during the recall process, regardless of volunteering, and be recalled consistent therewith.

(1) A volunteer employee in the same Indian preference category as an employee, who did not volunteer to be placed in furlough status and has no other priority over the volunteer employee, shall be recalled before the non-volunteer employee.

205.9-2. *Notice of Recall and Responses.*

(a) Employees shall be provided with written notice of their recall from placement in furlough status, using a method that can accurately determine the date of the employee's receipt of said notice.

(1) Along with information relevant to the employee's recall back to work, the written notice of recall shall include the language of subsection (b), below, in its entirety.

(b) *Failure to Respond.* A failure to respond to the notice of recall, in the manner indicated within the writing, within ten (10) business days of the employee's receipt thereof shall be interpreted to mean that the employee does not intend to return on the date of his or her recall and treated as a resignation of employment by that employee per the governing laws and policies of the Nation.

205.9-3. *Separation in Lieu of Recall.* Employees placed in furlough status who are not recalled at the end of the furlough program shall be terminated from their employment with the Nation in accordance with the governing laws/policies of the Nation.

205.10. Responsibilities of Direct Report Level and Supervisor Positions

205.10-1. *Generally.* Persons employed in Direct Report Level and supervisory positions with the Nation, along with any of their duly authorized designees, shall be responsible for familiarizing themselves with this law, including any policies or procedures promulgated thereunder.

(a) Within a reasonable time after this law goes into effect, and then every two (2) years thereafter, the Direct Report Level and supervisory positions, along with any of their duly authorized designees, who would be subject to one (1) or more of the responsibilities set forth within this law in the event of a furlough program implementation, shall be required to attend training on the application of this law, as well as the programs to be implemented hereunder.

(1) The Human Resources Department shall be responsible for the creation and administration of the training required herein.

(b) Failure to adhere to the requirements or processes set forth within this law may result in disciplinary action or other consequences consistent with the Nation's employment laws.

205.10-2. *Direct Report Level Positions.* Upon the passage of a resolution directing a furlough be implemented, all Direct Report Level positions and/or duly authorized designees shall immediately carry out the directive consistent with the resolution; this law, including the Standard Operating

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Procedure created by the Human Resources Department in accordance therewith; and the furlough implementation plan that was approved for their respective department or division.

205.10-3. *Supervisor Responsibilities.* Upon directive from the appropriate Direct Report Level positions and/or duly authorized designees, supervisors shall be responsible to provide notice to those employees within their respective department or division as required under section 205.6-3 of this law and provide copies of such notice to the Human Resources Department to maintain in accordance with governing law.

(a) Supervisors shall ensure that job descriptions within their respective departments or divisions are accurately maintained and up-to-date.

205.11. Appeal

205.11-1. An employee who has been placed in furlough status under this law may only appeal said placement if based on a claim that it occurred in violation of this law.

(a) A written appeal must be submitted to the Direct Report Level position and/or duly authorized designee within ten (10) business days of the employees receipt of the notice under section 205.6 of this law.

(b) The burden for showing that the employee was placed in furlough status in violation of this law is on the employee appealing the placement.

(c) The Direct Report Level position and/or duly authorized designee may make a decision based on the written appeal alone.

(1) The Direct Report Level position and/or duly authorized designee shall provide a written decision on the matter to the employee and the employee's supervisor within ten (10) business days of receiving the written appeal unless for good cause an extension is necessary.

(2) This decision is final and cannot be appealed.

205.11-2. An employee who has been placed in furlough status does not have any other right to appeal a furlough decision under any law, policy or the personnel grievance process of the Nation.

End.

Emergency Adoption – BC-10-15-13-A

Emergency Adoption Extension – BC-04-09-14-D

Adoption – BC-11-10-15-B

Adoption – BC-__-__-__-__



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



AGENDA REQUEST FORM

- 1) Request Date: August 4, 2021
- 2) Contact Person(s): Kaylynn Gresham
 Dept: Emergency Management
 Phone Number: 920-869-6650 Email: kgresham@oneidanation.org
- 3) Agenda Title: Oneida Nation Emergency Planning Committee Bylaws
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
See attached

List any supporting materials included and submitted with the Agenda Request Form

- 1) Email from the Emergency Management Director
- 2) _____
- 3) _____
- 4) _____
- 5) Please list any laws, policies or resolutions that might be affected:
n/a
- 6) Please list all other departments or person(s) you have brought your concern to:
n/a
- 7) Do you consider this request urgent? ☒ Yes ☐ No
 If yes, please indicate why:
Amendments are necessary for the committee to conduct business

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester:

Please send this form and all supporting materials to:

LOC@oneidanation.org

or

Legislative Operating Committee (LOC)

P.O. Box 365

Oneida, WI 54155

Phone 920-869-4376

Kristen M. Hooker

From: Kaylynn Gresham
Sent: Friday, July 23, 2021 1:15 PM
To: Kristen M. Hooker; Clorissa N. Santiago
Cc: David P. Jordan
Subject: ONEPC Bylaws

Importance: High

Good afternoon,

I am requesting that the Oneida Nation Emergency Planning Committee Bylaws be added to the active files list. Due to the changes to the Boards, Committees and Commissions Law I am requesting that the Committee name be changed.

Per the Boards.... Law no Division Directors can participate on a Board Committee or Commission outside of the ones that were specifically listed as exempt. ONEPC was not provided exemption. It is important that the Division Directors be able to participate in the "Group" since they will be in the EOC in the event of an emergency or disaster and they have the needed knowledge to know what their divisions are working on and where more emergency planning is needed. They also have the authority to delegate/designate participation in any projects or initiatives the "Group" determines is need.

Secondly due to organization changes within the Nation the Bylaws need to be updated to reflect the correct names and areas of the Nation as it is currently understood.

Please let me know when this is added to the active files list, I am working to get the "Group" together and scheduling regular meetings, however I can not move forward until these changes are made so that the necessary individuals needed to participate in the group can participate, in compliance with the current Laws and Ordinances of the Nation. Thank you for assistance with this initiative.

Kaylynn Gresham
Emergency Management Director Oneida Nation
2783 Freedom Road, Oneida WI 54155
kgresham@oneidanation.org
920-869-6650/920-366-0411

July 2021

July 2021							August 2021						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
					1	2	1	2	3	4	5	6	7
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SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jun 27	28	29	30	Jul 1	2	3
4	5	6	7 8:30am LOC Prep (BC_Conf_Room) - Clorissa N. Santiago 9:00am LOC Meeting (BC_Conf_Room) - LOC	8	9	10
11	12	13 9:00am 7-13-21 EHN Covid 19 Update (Microsoft) 1:30pm LOC Work Session (Microsoft Teams)	14	15	16	17
18	19	20	21 8:30am LOC Prep (BC_Conf_Room) - Clorissa 9:00am LOC Meeting (BC_Conf_Room) 2:30pm Public Peace Law:	22	23	24
25	26	27	28	29	30	31