



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney *CMS*
DATE: July 21, 2021
RE: Public Peace Law Amendments: Public Comment Review

A public comment period for the proposed Public Peace law (“the Law”) was held open until June 9, 2021. A public meeting for the proposed Law was not held due to the COVID-19 pandemic.

On March 12, 2020, Chairman Tehassi Hill signed a “*Declaration of Public Health State of Emergency*” regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. The Public Health State of Emergency has since been extended until July 28, 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, and BC-06-23-21-B.

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 allowed members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

Although the Nation’s COVID-19 Core Decision Making Team’s “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration suspended public meetings and therefore no public meeting was scheduled for the proposed Public Peace law, on May 5, 2021, the Legislative Operating Committee direct that a public comment period be held open until June 9, 2021, to allow members of the community an opportunity to provide written submissions of comments or questions to the Legislative Operating Committee through e-mail.

The Legislative Operating Committee reviewed and considered the public comments received on July 7, 2021, and July 13, 2021. This memorandum is submitted as a review of the written comments received within the public comment period.

Comment 1 – Noise Disruptions:

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 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;**
- (d) abuses or threatens a person on property of the Nation in an obviously offensive manner;**
- (e) lies or sleeps on any street, alley or sidewalk, or in any other 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 property of the Nation, and the language by its very utterance tends to incite an immediate breach of the peace.**

Raeann Skenandore (written): Please include a section in the law that addresses noise as a category of disruption to public peace.

Example 1: a house in the neighborhood is hosting a party where loud music is playing. The party extends into the late night past 11:00 p.m. where the loud noise is affecting neighboring household members' ability to sleep.

Example 2: a house in the neighborhood is igniting fireworks late into the evening on non-holiday dates (i.e. July 4th) and the loud noise is affecting neighboring households members' ability to sleep and disturbing household animals.

Response

The commenter requests that a section be included in the Law which addresses disruptive noise violations. The Law does currently address noise violations. The Law provides that 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. [3 O.C. 309.6-1]. The Law then goes on to specify that a civil infraction of disorderly conduct may include when a person makes or causes to be made any loud, disturbing, or unnecessary sounds or noises which may annoy or disturb a person of ordinary sensibilities. [3 O.C. 309.6-1(c)].

Due to the fact that noise violations are already addressed by the disorderly conduct civil infraction found in section 309.6-1 of the Law, there is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee confirmed that noise violations are already addressed by the disorderly conduct civil infraction found in section 309.6-1 of the Law, but determined that the Law should be revised to clarify that any excessive noise should be prohibited between the hours of 10:00 p.m. and 6:00 a.m. The Legislative Operating Committee directed that the following revision be made to the Law:

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 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 property of the Nation in an obviously offensive manner;
- (e) lies or sleeps on any street, alley or sidewalk, or in any other 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 property of the Nation, and the language by its very utterance tends to incite an immediate breach of the peace.

Comment 2 – Use of “and/or” throughout the Law:

Hon. Layatalati Hill (written): I just have one suggestion on the Public Peace Law and that is to not use “and/or” throughout the law. It appears “or” could be used instead.

Response

The commenter requests that “and/or” is not used throughout the Law, and that instead simply “or” is used.

It is recommended that the Law be reviewed to determine if the use of “and/or” could be replaced with “or” throughout the Law to aid in clarifying the interpretation of the Law.

LOC Consideration

The Legislative Operating Committee determined that the drafting attorney should review the Law to determine if the use of “and/or” can be replaced with “or” throughout the Law to aid in the clarification of the interpretation of the Law.

Comment 3 – Nuisance:

309.6. Civil Infractions Against the Peace

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.

Lori Elm (written): Line 243 - You need to have something in this line to protect the people who are a nuisance but they need actual help. Medical conditions, and other chronic illnesses and what about homes where people overdose and die in their (not sure if that is HIPPA protected or not) or people who have overdose (heroin/fentanyl) that need to be narcaned. (NOW THAT is a nuisance, to have them officers going back and back to bring them back, to continue on using)

Response

The commenter provides that the Law should address those individuals who commit the civil infraction of nuisance but have underlying issues that may have caused their nuisance behavior. The Law sets forth the community standard that no individual should engage in a thing, act, occupation, condition or use of property which shall continue for such length of time as to substantially annoy, injure or endanger the comfort, health, repose or safety of the public; in any way render the public insecure in life or in the use of property; and/or greatly offend the public morals or decency. [3 O.C. 309.6-6]. Although the Law does not provide an exemption to those individuals who may commit the civil infraction of nuisance but have an underlying condition that resulted in the nuisance behavior, the Law does provide flexibility in how the civil infraction is addressed and handled.

An Oneida Police Department officer may issue a citation to any person he or she has reasonable grounds to believe has committed a violation of a law of the Nation that expressly permits the issuance of a citation. [8 O.C. 807.4-2]. Inherently, the Oneida Police Department officer always has discretion to determine if a citation should be issued to address the situation. When a citation is issued to an individual, the individual has the opportunity to come before the Court and the Court is then provided a plethora of penalties to use as deemed appropriate to best address the actions of the individual and connect the individual to resources that may improve their behavior and prevent future civil infractions from occurring. One such resource the Court has available is the Court may order an individual to participate in counseling and/or any other programs relevant and available to the Nation. The goal of this Law is not simply to penalize civil infractions that occur, but to promote peace and order within the boundaries of the Reservation, by setting 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. [3 O.C. 309.1-1, 309.1-2].

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee discussed that addiction is a problem that is currently plaguing the Reservation. With the development of this Law, as well as other current legislative efforts such as the Wellness Court law, the Legislative Operating Committee hopes that addiction can be addressed and individuals can be connected to the proper resources to help them heal and rehabilitate so that peace, harmony, safety, health, and general welfare of individuals who live

within the boundaries of the Reservation can be preserved. The Legislative Operating Committee determined that no revision to the Law was needed based on this comment.

Comment 4 – Drug Use and Addiction Throughout the Reservation:

Lori Elm (written): A major problem within the reservation is addiction. So, one can assume a major goal of this law is to set forth community standards/controls on our facilities such as: Casino, One Stops, CEC and all other business buildings (such as Walmart & Home Depot)? These buildings have a very high area of addicts and drug dealers/dealings in them and I would like to commend you on addressing the issue. We actually have overdoses happening in the facilities, quite frequently, as well as the drug activities overflowing over to the Radisson area. It will also prevent the addicts from dwelling at One Stop outside as well as passing out at the pumps and in the bathrooms. (GREAT JOB)

Response

The commenter commends the Legislative Operating Committee on developing this Law to address community issues such as drug addiction and activities which are occurring throughout the Reservation. The Legislative Operating Committee developed this Law 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, as well as to promote peace and order within the boundaries of the Reservation while also providing an orderly process for addressing civil infractions that occur. [3 O.C. 309.1-1, 309.1-2]. It was the intent of the Legislative Operating Committee that many of the issues that currently are plaguing neighborhoods throughout the Reservation could be addressed through this Law to build a safe and peaceful community.

There is not recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee confirmed it was their intent to address issues that are currently plaguing neighborhoods through the Reservation through the development of this Law. The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 5 – Jail of the Nation:

Lori Elm (written): If you are trying to establish our Sovereignty for the tribes itself and in that case, I do hope that means a small jail will be coming.

Response

The commenter states that she hopes that the implementation of this Law would include the development of a jail. 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 under this Law. [3 O.C. 309.1-2]. An individual who violates a provision of this law by committing a civil infraction may be subject to the issuance of a citation by an Oneida Police Department officer. [3 O.C. 309.11-1]. The issuance of a citation commences a civil action in the Judiciary for a violation of a law of the Nation for the purpose of collecting a fine or penalty imposed by the law in the name of the Nation. [8 O.C. 807.4-1]. Due to the fact that the issuance of a citation for a violation of this Law commences a civil action, and not a criminal action, it is not intended that the implementation of this law would include the development of a jail.

LOC Consideration

The Legislative Operating Committee confirmed that since the issuance of a citation for a violation of this Law commences a civil action, and not a criminal action, it is not intended that the implementation of this law would include the development of a jail. The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 6 – Types of Land within the Reservation:

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.

Lori Elm (written): Line 3.” Purpose and policy 309.1. Recommend to use the wording from the Zoning and Shoreland Protection somewhere in purpose to ensure the jurisdiction is covered on all properties: “tribal lands held in trust and fee, heirship lands, and individual trust and fee lands within the reservation”

Response

The commenter suggests that wording used from the Zoning and Shoreland Protection law to ensure that jurisdiction is covered on all property types. The Zoning and Shoreland Protection law specifically states that the purpose of that law is to “establish a zoning plan for tribal lands held in trust and fee, heirship lands, and individual trust and fee lands within the Reservation.” [6 O.C. 605.1-1(a)].

Currently, the Law has been developed 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. [3 O.C. 309.1-1]. Reservation is then defined under the Law as **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. [3 O.C. 309.3-1(t)]. Due to the fact that the definition for Reservation specifically states all land, it would be unnecessary to list out the different categories of land designation that can be found throughout the Reservation.

Additionally, the jurisdiction of the Nation’s Court is generally established through the Judiciary law, which provides that the Nation and the Trial Court have territorial jurisdiction over the Reservation and all lands held in trust by the United States for the benefit of the Nation within the State of Wisconsin. [8 O.C. 801.5-3].

LOC Consideration

The Legislative Operating Committee confirmed that since the definition for Reservation specifically states all land, it would be unnecessary to list out the different categories of land designation that can be found throughout the Reservation in this Law. The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 7 – Definition for Public Property:

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 property of the Nation to the degree that the person may endanger himself or herself, or another person.

Lori Elm (written): Line 20. Definitions – define “public property” line 338; this should be defined because in the Zoning Law, states “public nuisance” means a thing, act, occupation, condition, or use of property which continues for such length of time as to:.... (4) Unlawfully and substantially interfere with, obstruct, or tend to obstruct or render dangerous for passage any street, alley, highway, navigable waters or other public way, or the use of public property. Private property means owned by private parties, essentially anyone or anything but the government or state. (In this case the government aka Oneida Nation, Brown County or State of WI, etc..) so one would think any property the Oneida Nation owns is public property.

Response

The commenter requests that a definition for “public property” be included in this Law. Under the section regarding public intoxication, it states that a person commits the civil infraction of public intoxication if he or she appears intoxicated by alcohol beverages and/or prohibited drugs on public property of the Nation. The commenter questions if all property owned by the Nation is public property of the Nation.

Currently, the term “public property” is undefined in the Law and therefore is used in its everyday and ordinary sense. Whether to add a definition for the term public property is a policy consideration for the Legislative Operating Committee to make. The Legislative Operating Committee can make one of the following determinations:

1. The Law should remain as currently drafted, and the term “public property” should remain undefined and used in its everyday and ordinary sense.

2. The Law should be revised to include a definition for the term “public property. If the Legislative Operating Committee makes this determination, then the following revision to the Law is recommended:

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.

- (s) “Public property” means property owned by a government or one of its agencies, divisions, or entities and used by the general public.

LOC Consideration

The Legislative Operating Committee determined that the Law should be revised to include a definition for the term “public property” so that any future interpretation of this Law is clear and transparent. The Legislative Operating Committee did not approve of the proposed definition for public property supplied in this memorandum, and instead directed the drafting attorney to work with the Oneida Law Office on the development of a definition for the term public property.

Comment 8 – Maintaining a Chronic Nuisance House:

309.6. Civil Infractions Against the Peace

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.

Lori Elm (written): You have rental and residential leases in the same category, according to how the DRAFT law reads, is this how you want it to be addressed? I really think, if the laws are going to be the same across the board, anyone who pays taxes should be exempt and the tribe should be responsible for it. Technically we are renting the land and homes on it if you can take it away in 5 days. And if that is the case, you can build your own home, you may be paying taxes if the land is Fee Land, BUT you can’t have a beer in your yard? Clarify property on this.

Response

The commenter references the section of the Law regarding maintaining a chronic nuisance house which addresses individuals who occupy a home through both residential and rental agreements and questions if it was intended that these homes be treated the same.

The provision regarding maintaining a chronic nuisance house applies to any individual who owns a home, occupies a home through a lease, or occupies a home through a rental agreement and has three (3) or more police contacts at his or her home occurring throughout a twelve (12) month period. It was intended that that all these different home occupancy and ownership designations be treated the same under the Law, and that the community standard be set that any individual who either owns a home or occupies a home through a rental or lease agreement bear responsibility for ensuring that his or her home is not a chronic nuisance in his or her neighborhood.

The Nation is sovereign and reserves all sovereign rights, authority, and jurisdiction consistent with being a sovereign nation. [8 O.C. 801.5-2]. Despite the ownership or occupancy designation of a home, the Nation has personal jurisdiction over any individual who is a member of any federally recognized Tribe, and even over non-Indians in certain situations when they have consented to the jurisdiction of the Nation or Trial Court or as otherwise consistent with federal law. [8 O.C. 801.5-4]. Additionally, the Nation and the Trial Court has territorial jurisdiction over the Reservation and all lands held in trust by the United States for the benefit of the Nation within the State of Wisconsin, and subject matter jurisdiction over any issue that a law of the Nation specifically authorizes jurisdiction over. [8 O.C. 801.5-2, 801.5-3]. This Law specifically authorizes the Trial Court to have jurisdiction over any action brought under the Law. [3 O.C. 309.4-1]. Therefore, it is within the purview of the Nation to adopt a law, such as this one, which sets forth community standards and prohibits an individual from maintaining a chronic nuisance house. This does not mean that individuals are not allowed to enjoy their homes and property however they see fit, this means that there is the expectation that the enjoyment of one's property does not substantially annoy, injure or endanger the comfort, health, repose or safety of the public, in any way render the public insecure in life or in the use of property, or greatly offend the public morals or decency. [3 O.C. 309.6-6].

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

LOC Consideration

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

Comment 9 – Prohibited Drugs and Hemp:

309.9. Civil Infractions Involving Alcohol, Tobacco, and Drugs

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.

Lori Elm (written): Line 376 309.9-8: You also have prohibited drugs, listed on here; recommend clarification on categories to NOTE: (Marijuana) Police kits which detect the presence of cannabis, that indicates marijuana, may show THC is present, but because hemp and marijuana are both cannabinoids derived from the cannabis sativa plant, police don't have an easy way to tell the difference, unless they are sent out to be tested. CBD treatment is legal in Wisconsin including: THE, Delta 8 and etc.. Which may look and smell very similar to illegal marijuana. Levels of the cannabidiol preparations with 0.3 percent or less of THC, in compliance with USDA hemp standards and authorizes in-state production according to those rules. And if you really want to do your sovereignty rights, you should be following the Federal Law which passed to allow for hemp-derived CBD products with THC no greater than 0.3 percent. "Federal law passed to allow for hemp-derived CBD products with THC no greater than 0.3 percent"

Response

The commenter requested clarification on marijuana being included as a prohibited drug based on the fact that hemp derived CBD products with THC under a certain level are legal. Under the Law, a prohibited drug is defined as 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, and also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner. [3 O.C. 309.3-1(r)]. Section 812 of Title 21 of the United States Code identifies that the inclusion of tetrahydrocannabinols, or THC, on Schedule I Section (c)(17) does not include those tetrahydrocannabinols found in hemp, as defined under section 1639o of Title 7. Section 1639o of Title 7 defines hemp as the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

The Law provides that 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. [3 O.C. 309.9-11].

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

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment since Schedules I through V, as defined by Section 812 of Title 21 of the United States Code, already addresses the relationship between hemp and THC.

Comment 10 – Notification of a Citation to the Comprehensive Housing Division:

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.

(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.

Lori Elm (written): LINE 114: “any citation issued to an individual located at a property rented or leased through the Comprehensive Housing Division” This should say something like “any citation issued to an individual, whom(s) address is property of the Oneida Nation” Because if Bob Bob is gets caught with a bunch of drugs, not 10 saplings, I am talking Meth, Heroin, rigs loaded and etc. And he lives at 1235 Deer Path, and he gets caught at Oneida One Stop, Comprehensive Housing Division Attorney should be let know about this, because it is they’re job to keep our community safe. We need to stop protecting family, friends and loved ones, and start making a

change. And you want to get the Pot dealers have at it too. But you need it to be in the law that citations go for all of the properties, not matter what.

Response

The commenter states that the Comprehensive Housing Division should be notified of a citation issued to any individual who has entered into a rental or lease agreement with the Comprehensive Housing Division, whether or not the citation was issued at a property subject to the rental or lease agreement.

Any person who violates a provision of the Law by committing a civil infraction may be subject to an issuance of a citation by an Oneida Police Department officer – no matter where within the Reservation the civil infraction occurs. [3 O.C. 309.11-1]. The Law then goes on to 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. [3 O.C. 309.11-1(c)]. When a person enters into a rental or lease agreement with the Comprehensive Housing Division they are agreeing to abide by a certain set of terms and expectations. For example, under the Leasing law, if a lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, Land Management or another interested party may take appropriate emergency action, which may include cancelling the lease and/or securing judicial relief. [6 O.C. 602.11-2]. While the Eviction and Termination law provides a contract may be terminated prior to the contract term and the occupant may be evicted if the occupant violates the terms of the contract, is alleged to have violated any applicable law or rule, or is alleged to have committed one or more nuisance activities. [6 O.C. 610.5-1]. Notification of a citation issued to an individual located at a property rented or leased through the Comprehensive Housing Division is provided by the Oneida Police Department officer to the Oneida Law Office attorney assigned to the Comprehensive Housing Division in an effort to ensure that the Comprehensive Housing Division is aware of any civil infractions and police contacts which are occurring on a property rented or leased through the Nation in case those activities implicate further action by the Comprehensive Housing Division in accordance with the terms of the rental or lease agreement.

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

LOC Consideration

The Legislative Operating Committee discussed that fact that the Oneida Law Office attorney assigned to the Comprehensive Housing Division is provided notice of a citation issued by the Oneida Police Department at a property rented or leased through the Comprehensive Housing Division in case that police contact results in any enforcement action needed to be taken by the Comprehensive Housing Division in accordance with the Nation's laws and rules regarding housing and property. Therefore, the Legislative Operating Committee determined it would be too far reaching and unnecessary for the Comprehensive Housing Division to be provided notice of every citation issued within the boundaries of the Reservation, even those that did not occur on a property rented or leased through the Comprehensive Housing Division. The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 11 – Disrupting a Meeting or Government Function:

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 property of the Nation upon being requested to do so by any official charged with maintaining order in such 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 property of the Nation;
- (d) at or in any 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 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.

Lori Elm (written): Line 262 309.7 -1: Disrupting a Meeting or Governmental Function (REALLY) should say Disrupting a Meeting of a Governmental Function or have clarification/definition to define this. Add parties who are considered disorderly or obstructed shall be subjected to drug/alcohol testing and restrained and arrested by Police. or something like that.

Response

The commenter requests further clarification on the civil infraction of disrupting a meeting or government function and requests that this provision require those individuals who have disrupted the meeting or government function to be drug or alcohol tested and restrained by Police.

The Law provides that a person commits the civil infraction of disrupting a meeting or government function if he or she:

- 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;
- refuses or fails to leave any property of the Nation upon being requested to do so by any official charged with maintaining order in such property of the Nation;
- 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 property of the Nation;
- at or in any 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
- at any meeting or session conducted by any official of the Nation, held in any 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. [3 O.C. 309.7-1(a)-(e)].

Although the Law does not require that an individual who disrupts a meeting of the government, or disrupts a function of the government in action be subjected to drug and/or alcohol testing, if an individual appears intoxicated by alcohol beverages and/or prohibited drugs on public property of the Nation to the degree that the person may endanger himself or herself, or another person, that individual may also be issued a citation for public intoxication. [3 O.C. 309.9-1].

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

LOC Consideration

During the consideration of this comment the Legislative Operating Committee had a lengthy discussion regarding how this provision of the Law may affect peaceful protesting. The Legislative Operating Committee discussed that it is not intended that this provision would stop interaction between the people and the government, but instead set a boundary that ensures all members of the government can complete their work undisrupted in a safe manner. The Legislative Operating Committee determined there is no revision to the Law needed based on this comment

Comments 12 through 13 – Halting the Legislative Process:

GTC Legal Resource Center – Gerald Hill, Wesley Martin, and Tsyolake House (written):

The General Tribal Council-Legal Resource Center (GTC LRC) has been established by the Oneida General Tribal Council (OGTC) pursuant to Resolution BC Resolution #05-24-17-A Legal Resource Center Emergency Law and adopted BC Resolution# 09-13-171 Legal Resource Center for the purpose of assisting Oneida Tribal Members and Employees to address matters arising out of Oneida Nation laws and policies, and which can be addressed in the courts of the Oneida Nation Judiciary. As officials elected by the OGTC this office is obliged to represent, as best we can, the general concerns of the people who elected us. The membership of the Nation will be those most affected by these proposed laws and thus should have the most opportunity to review and comment on them. It is in that capacity we wish to make some cursory comments on the two proposed laws named above.

Those effected by this law are most likely to seek legal assistance when the citations under this law are issued. This will also bring the GTC LRC into a new area of practice within the Judiciary, criminal sanctions being comingled under civil authority. The GTC LRC has not been consulted in the development of this law notwithstanding the public notice of the comment period. It is understandable that because of COVID-19 Emergency Protocols the usual public hearings have been omitted. However, with the easing of such limitations it is likely that the OBC will soon create a means of having an OGTC meeting at which proposals, such as this can be presented. We believe with the consultation of the OGTC, the law can still be crafted not just to punish violators, but also to understand the affects the law will have on the economically vulnerable families within the Oneida Nation.

GTC Legal Resource Center – Gerald Hill, Wesley Martin, and Tsyolake House (written):
CONCLUSION For the reasons stated above it is recommended that the LOC delay further processing of these proposed laws until such time as the OBC can formally present them, in their totality, to the duly assembled OGTC.

Response

The commenters request that the Legislative Operating Committee delay the processing of this Law until such a time that the Oneida Business Committee can formally present them to the General Tribal Council.

General Tribal Council prescribed the manner in which legislation of the Nation should be drafted, developed, and adopted through the adoption of the Legislative Procedures Act. The Legislative Procedures Act provides a consistent process for the adoption of laws of the Nation. [1 O.C. 109.1-1]. The Legislative Procedures Act provides:

- The Legislative Operating Committee is the legislative committee of the Nation that is responsible for the development of laws of the Nation. [1 O.C. 109.4-1, 109.4-2].
- The Legislative Operating Committee handles requests for legislation and determines if the request for the development of legislation should be accepted or denied. [1 O.C. 109.5].
- The Legislative Operating Committee will direct an agency of the Nation to complete a fiscal impact statement for all legislation. [1 O.C. 109.6].
- A legislative analysis shall be completed by the Legislative Reference Office and provided to the Legislative Operating Committee. [1 O.C. 109.7].
- The Legislative Operating Committee will hold open a public comment period with a public meeting, and then consider fully all comments received. [1 O.C. 109.8].
- The Legislative Operating Committee shall forward the legislation, legislative analysis and fiscal impact statement to the Oneida Business Committee when legislation is ready for consideration. [1 O.C. 109.9-1].
- The Oneida Business Committee shall consider the adoption of the legislation, or forward the legislation to the General Tribal Council for consideration. [1 O.C. 109.9-1].

The adoption of the Legislative Procedures Act demonstrates General Tribal Council’s intention to have the members of the Legislative Operating Committee draft and develop legislation of the Nation, and then the members of the Oneida Business Committee adopt legislation, or forward legislation to the General Tribal Council for adoption. The Legislative Operating Committee has developed this Law in accordance with the Legislative Procedures Act, as it has been modified by the COVID-19 Team’s “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration.

As a result of the COVID-19 pandemic, in accordance with the authority granted to the Oneida Business Committee through the Emergency Management law, on March 12, 2020, Chairman Tehassi Hill signed a “*Declaration of Public Health State of Emergency*” which sets into place the necessary authority should action need to be taken, and allows the Oneida Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. [3 O.C. 302.8-1]. The Oneida Business Committee has extended this Public Health State of Emergency until July 28, 2021, through the adoption of the following resolutions: BC-03-26-20-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, and BC-06-23-21-B. [3 O.C. 302.8-2].

On March 17, 2020, the Oneida Business Committee adopted emergency amendments to the Emergency Management law (formally known as the Emergency Management and Homeland Security law) through resolution BC-03-17-20-E to create and delegate authority to a COVID-19 Core Decision Making Team so that upon the declaration of a public health emergency, the COVID-19 Core Decision Making Team would have the authority to declare exceptions to the Nation’s laws, policies, procedures, regulations, or standard operating procedures during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation’s community, members, and employees. [3 O.C. 302.9-2]. These declarations remain in effect for the duration of the Public Health State of Emergency, unless identified to be effective for a shorter period of time. [3 O.C. 302.9-4]. The Oneida Business Committee then permanently adopted amendments to the Emergency Management law through resolution BC-03-10-21-A which incorporated the authority of an Emergency Core Decision Making Team to make declarations.

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 an in person public meeting for the proposed Law was not held, the public comment period was still held open until June 9, 2021, allowing members of the Nation the opportunity to comment and input on this proposed law.

Since the Legislative Operating Committee is developing this Law in accordance with the Legislative Procedures Act, as it has been modified by the COVID-19 Team’s “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration, it is not recommended that processing of this Law be halted since members of the community were indeed provided an opportunity to participate in the legislative process on comment on the Law.

LOC Consideration

The Legislative Operating Committee determined that the development of this Law should not be halted since has been developed in accordance with the Legislative Procedures Act, as it has been modified by the COVID-19 Team’s “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration.

Comment 14 – Economic Impacts of Fines:

GTC Legal Resource Center – Gerald Hill, Wesley Martin, and Tsyolake House (written):

The lowest income citizens of our Nation will be even more at risk of being double fined by not only our court system. This will put these citizens in a worse off position. This will lead to more

evictions of those lower income families. Under the Chapter 610, Eviction and Termination, (610.5-3(c)), when a tenant allegedly violates an "applicable law", the owner, in this case the Nation, may terminate the contract or lease, which they now do. This means any alleged violation of any portion of this law would put a tenant in violation of their lease or contract with the Nation. Not only would the tenant face eviction, but in the same breath, double fines, and possible jail time for the violation of applicable State law. This would cause an undue burden, not only to the person committing a violation, but also hardship to the family of the individual. Depending on how each case is prosecuted, the discretion and investigation by the Oneida police department, we can see problems for the citizens of the Nation who cannot afford them. Based on past cases involving evictions, there is a lack of Due Process afforded to tenants who were only alleged to have violated an applicable law, and this law would exacerbate that issue.

Response

The commenters express concern that individuals of the Nation risk being double fined by our Court, and then risk eviction due to the economic effects of being fined for violations of the Law.

The intent of the 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. [3 O.C. 309.1-1]. One such way to ensure that the community standards are met by all individuals within the Reservation is to allow for citations and penalties to be issued to those individuals who violate the Law and commit a civil infraction in an effort to deter civil infractions from being committed. When an Oneida Police Officer reasonably believes that an individual violated this Law and committed a civil infraction, the Oneida Police Officer may issue that individual a citation. [3 O.C. 309.11-1]. It is not the intent of the Oneida Police Department that its officers would issue a citation under this Law and simultaneously issue a citation under the laws of another municipality or the State of Wisconsin. Upon the adoption of this Law, the Nation would be assuming jurisdiction over these issues, unless it was determined that it was better suited that jurisdiction of a specific issue remain with the State of Wisconsin, in which a citation under this Law would not be issued.

Additionally, the use of fines is not the only penalty available to the Trial Court. Upon a finding by the Trial Court that a violation of this law has occurred, the individual may be subject to fines, community service, participation in counseling or other programs, restitution, and any other penalty as deemed appropriate by the Trial Court. [3 O.C. 309.11-2(a)-(e)]. When an individual is ordered to perform community service, that community service may be used in lieu of, or in addition to, a fine issued by the Trial Court. [3 O.C. 309.11-2(b)]. The Law also recognizes that the Oneida Law Office may negotiate an alternative payment plan with an individual for the payment of fines that is approved by the Trial Court. [3 O.C. 309.11-2(a)(2)(A)]. The variety of penalties allowed under the Law will provide the Trial Court with flexibility to utilize its discretion to best address each individual who comes before the Court in an effort to ensure that the individual will not commit another civil infraction in the future.

In regard to the due process concerns about the Eviction and Termination law, although violations of this Law may trigger action under the Eviction and Termination law, the development and

discussion of this Law is separate than any discussions of the Eviction and Termination law and therefore will not be discussed in this public comment memo.

LOC Consideration

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

Comment 15 – Miscellaneous:

Lori Elm (written): yes, you all think I am some big gangster drug dealer, but I still don't want drugs on the reservation, even though you tossed me off. I never had a drug house nor was I a dealer, and sorry I called the cops for help, Sorry I had black eyes, and was scared for my life, but is what it is. YOU NEED A HUMANITY LAW, SAFE HOUSES AS WELL, NOT GIVING THEM ADDICTS FREE ROOMS TO MAKE THEM KNOW MORE ADDICTS. CRAZY PEOPLE TRYING TO BE CLEAN AND YOU FORCED THEM TO LIVE WITH PEOPLE USING AT HOTELS ... BUT DO WHAT YOU GOTTA DO... it still not right, but do it right then stop the favoritism and do the right thing.

Response

This comment is unrelated to the consideration of the proposed Law.

LOC Consideration

The Legislative Operating Committee determined this comment is unrelated to the consideration of the proposed Law.