



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney *CMS*
DATE: April 20, 2022
RE: Oneida Nation Gaming Ordinance Amendments: Public Comment Review with
Legislative Operating Committee Consideration

On March 16, 2022, the Legislative Operating Committee approved a public comment period for the proposed amendments to the Oneida Nation Gaming Ordinance (“ONGO”) to be held open until April 13, 2022. A public meeting for the proposed amendments to ONGO 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 May 23, 2022, 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, and BC-03-10-21-D, BC-05-12-21-A, BC-06-23-21-B, BC-07-28-21-N, BC-09-22-21-A, BC-11-24-21-F, BC-01-12-22-B, and BC-03-23-22-A.

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.

On December 8, 2021, the Oneida Business Committee adopted resolution BC-12-08-21-B, *Updating Public Gathering Guidelines during Public Health State of Emergency—COVID-19*, which prohibits indoor public gatherings when the following conditions cannot be met:

- When COVID-19 Case Activity rates are at or below low in Brown and Outagamie Counties, or the county in which the activity is being held, as identified on the Wisconsin Department of Health Services website for the most recent period.
- When COVID-19 Percent Positive rates are at or below low in Brown and Outagamie Counties, or the county in which the activity is being held, as identified on the Wisconsin Department of Health Services website for the most recent period.
- When COVID-19 Community Transmission Rates by ZIP Code Tabulation Area are at or below low in ZIP Codes 54155, 54301, 54302 and 54303, or the ZIP Code in which the activity is being held, as identified on the Wisconsin Department of Health Services website for the most recent period.

Due to the fact that the conditions for holding an indoor public meeting had not been met in the Nation at the time this public comment period was scheduled, in accordance with resolution BC-12-08-21-B, a public meeting for the proposed amendments to the ONGO was not held, but a public comment period was still held open. Members of the community were provided an opportunity to provide written submissions of comments or questions regarding the proposed amendments to ONGO to the Legislative Operating Committee through e-mail until April 13, 2022.

The Legislative Operating Committee reviewed and considered the public comments received on April 20, 2022. This memorandum is submitted as a review of the written comments received within the public comment period.

Comment 1 – Elimination of the Executive Director in the ONGO:

501.6. Oneida Gaming Commission

501.6-16. *Oneida Gaming Commission Personnel.* The Commission shall hire an Executive Director who is responsible for hiring and managing the personnel of the Commission.

(a) The Executive Director shall hire such personnel as is necessary to assist the Commission to fulfill its responsibilities under this Ordinance, the IGRA, the Compact and all governing regulations, including the Oneida Gaming Minimum Internal Controls.

(b) The Executive Director and personnel of the Commission must be hired through the Nation's regular personnel procedure and are subject to its personnel policies and salary schedules.

(1) The Executive Director and personnel shall meet the requirements set forth in section 501.12-3 of this Ordinance at hiring and during employment.

Oneida Gaming Commission (written): The Oneida Gaming Commission would like to submit the following comments to the Oneida Nation Gaming Ordinance.

Removal of Executive Director from Section 501.6-16:

~~501.6-16. *Oneida Gaming Commission Personnel.*~~ The Commission shall hire ~~an Executive Director who is responsible for hiring and managing~~ the personnel of the Commission.

~~(a) The Executive Director~~ Commission shall hire such personnel as is necessary to assist the Commission to fulfill its responsibilities under this Ordinance, the IGRA, and the Compact, and all governing regulations, including the Oneida Gaming Minimum Controls.

~~(b) The Executive Director and~~ personnel of the Commission must be hired through the Tribe's regular personnel procedure and are subject to its personnel policies and salary schedules.

~~(1) The Executive Director and~~ personnel shall meet the requirements set forth in section 501.12-3 at hiring and during employment.

The Executive Director position was furloughed during the Nation's initial COVID-19 shut down. In the absence of the Executive Director, the Oneida Gaming Commission has performed the Executive Director's responsibilities. The Oneida Gaming Commission's initial request to bring back the Executive Director from furlough was denied.

The Oneida Gaming Commission is seeking this change to comply with the Oneida Nation Gaming Ordinance. The removal of the Executive Director from the Oneida Nation Gaming Ordinance will allow the Oneida Gaming Commission the ability to evaluate the personnel needs of the Gaming Commission without being required to by the Gaming Ordinance.

Response

The commenter requests that the Legislative Operating Committee consider eliminating the specific reference to the Oneida Gaming Commission's Executive Director in section 501.6-16 of the Law, and that instead the Law provides a general authority for the Oneida Gaming Commission to hire personnel in an effort to allow for more flexibility in evaluating the personnel needs of the Oneida Gaming Commission.

Whether to eliminate the reference to the Oneida Gaming Commission's Executive Director in section 501.6-16 of the Law is a policy decision for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted, so the reference to the Oneida Gaming Commission's Executive Director remains.
2. The Law should be revised to eliminate the reference to the Oneida Gaming Commission's Executive Director in section 501.6-16 of the Law. If the Legislative Operating Committee makes this determination, then the following revision to the Law is recommended:

501.6-16. *Oneida Gaming Commission Personnel.* The Commission shall be responsible for the hiring ~~an Executive Director who is responsible for hiring and managing the~~ of any personnel of the Commission.

(a) The ~~Executive Director~~ Commission shall hire such personnel as is necessary to assist ~~the Commission to~~ in fulfilling its responsibilities under this Ordinance, the IGRA, the Compact and all governing regulations, including the Oneida Gaming Minimum Internal Controls.

(b) ~~The Executive Director and~~ All personnel of the Commission ~~must~~shall be hired through the Nation's regular personnel procedures and are subject to its personnel policies and salary schedules.

(1) ~~The Executive Director and~~All personnel of the Commission shall meet the requirements set forth in section 501.12-3 of this Ordinance at hiring and during employment.

LOC Consideration

The Legislative Operating Committee determined that ONGO should be revised to eliminate the reference to the Oneida Gaming Commission's Executive Director in section 501.6-16 of ONGO, but still provide that the Oneida Gaming Commission may utilize a designee to fulfill its responsibilities for hiring. The Legislative Operating Committee directed that the following revision to ONGO be made based on this comment:

501.6-16. *Oneida Gaming Commission Personnel.* The Commission, or designee, shall be responsible for the hiring ~~an Executive Director who is responsible for hiring and managing the~~ of any personnel of the Commission.

(a) The ~~Executive Director~~ Commission, or designee, shall hire such personnel as is necessary to assist ~~the Commission to~~ in fulfilling its responsibilities under this Ordinance, the IGRA, the Compact and all governing regulations, including the Oneida Gaming Minimum Internal Controls.

(b) ~~The Executive Director and~~ All personnel of the Commission ~~must~~shall be hired through the Nation's regular personnel procedures and are subject to its personnel policies and salary schedules.

(1) ~~The Executive Director and~~All personnel of the Commission shall meet the requirements set forth in section 501.12-3 of this Ordinance at hiring and during employment.

Comment 2 – Security Reports to the Oneida Gaming Commission:

121.3. Definitions

121.3-1. 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.

(j) “Finance Administration” means the department of the Nation which consists of the Chief Financial Officer, Assistant Chief Financial Officer, the executive assistant to the Chief Financial Officer, and any other designated employee.

Oneida Gaming Commission (written): Changes to Section 501.9-1: The proposed changes to Section 501.9-1 remove the requirement for Security to copy all reports to the Oneida Gaming Commission. Currently, the Oneida Gaming Commission does not receive a copy of Security reports. The Oneida Gaming Commission's concern is that the Commission should have access to any reports that are regulatory. In practice, Security does not generally encounter regulatory issues, however, when they do, the Gaming Commission should be copied. This would allow the Gaming Commission the ability to investigate possible licensing issues to ensure compliance with all tribal, state and federal laws. The change should include language that allows for Security to report suspected regulatory violations.

For example, theft from the Nation would be a regulatory violation. If the Gaming Commission receives a copy of that report from Security, the Gaming Commission can investigate to verify if there are any regulatory violations. The Gaming Commission does not foresee many reports that would include possible regulatory violations.

Response

The commenter requests that the elimination of the requirement that all reports of the Gaming Security Department be copied to the Oneida Gaming Commission in section 501.9-1 of the Law be reconsidered, to at least allow for the Gaming Security Department to share reports that are regulatory in nature with the Oneida Gaming Commission.

Section 501.9-2 of the Law provides that the Gaming Security Director, Gaming General Manager, and the Oneida Gaming Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, describing their responsibilities and reporting requirements under this Ordinance. It would be appropriate for this agreement between the Gaming Security Director, Gaming General Manager, and the Oneida Gaming Commission to detail the information sharing expectations for reports of the Security Department that address regulatory issues the Oneida Gaming Commission would need to be notified of. Due to the fact that the issue of information sharing between the Oneida Gaming Commission and the Gaming Security Department can be addressed through the reporting agreement provided for in section 501.9-2 of the Law, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined that there is no revision to ONGO needed based on this comment since issue of information sharing for regulatory issues between the Oneida Gaming Commission and the Gaming Security Department can be addressed through the reporting agreement provided for in section 501.9-2 of ONGO.